United States Department of Justice

Office of Special Counsel
John H. Durham

Department of Justice, 2CON
145 N Street, NE
Washington, D.C. 20002

May 12, 2023

TO: ATTORNEY GENERAL MERRICK B. GARLAND

FROM: JOHN H. DURHAM
SPECIAL COUNSEL

SUBJECT: REPORT ON MATTERS RELATED TO INTELLIGENCE ACTIVITIES AND INVESTIGATIONS ARISING OUT OF THE 2016 PRESIDENTIAL CAMPAIGNS

The attached report is submitted to the Attorney General pursuant to 28 C.F.R. § 600.8(c), which states that, "[a]t the conclusion of the Special Counsel's work, he . . . shall provide the Attorney General a confidential report explaining the prosecution or declination decisions reached by the Special Counsel." In addition to the confidential report required by section 600.8(c), the Attorney General has directed that the Special Counsel, "to the maximum extent possible and consistent with the law and the policies and practices of the Department of Justice, shall submit to the Attorney General a final report . . . in a form that will permit public dissemination."[1] This two-part report (Unclassified Report and Classified Appendix) is presented in fulfillment of these requirements and sets forth our principal findings and recommendations concerning the matters that were the subject of our review. The principal report is confidential, but contains no classified information based on thorough, coordinated reviews of the information contained therein by the appropriate authorities within the Federal Bureau of Investigation, the Central Intelligence Agency, and the National Security Agency. The Classified Appendix likewise has been coordinated with those same agencies for classification purposes.

We note that the Classified Appendix contains some information that is derived from Foreign Intelligence Surveillance Act ("FISA") authorities. Accordingly, to the extent the Department determines that it is appropriate to share information contained in the Classified Appendix with congressional or other government entities outside of the Department, steps will need to be taken in accordance with that Act and any relevant Orders that have been issued by the Foreign Intelligence Surveillance Court.

[1] Office of the Att'y Gen., Order No. 4878-2020, Appointment of Special Counsel to Investigate Matters Related to Intelligence Activities and Investigations Arising Out of the 2016 Presidential Campaigns ¶ (f) (Oct. 19, 2020).

Finally, we want to thank you and your Office for permitting our inquiry to proceed independently and without interference as you assured the members of the Senate Judiciary Committee would be the case during your confirmation hearings to become Attorney General of the United States.

Report on Matters Related to Intelligence Activities and Investigations Arising Out of the 2016 Presidential Campaigns

Special Counsel John H. Durham

Submitted Pursuant to 28 C.F.R. § 600.8(c)

Washington, D.C.

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INTRODUCTION

This report is submitted to the Attorney General pursuant to 28 C.F.R. § 600.8(c), which states that, "[a]t the conclusion of the Special Counsel's work, he . . . shall provide the Attorney General a confidential report explaining the prosecution or declination decisions reached by the Special Counsel." In addition to the confidential report required by section 600.8(c), the Attorney General has directed that the Special Counsel, "to the maximum extent possible and consistent with the law and the policies and practices of the Department of Justice, shall submit to the Attorney General a final report, and such interim reports as he deems appropriate, in a form that will permit public dissemination."[1] This report is in fulfillment of these requirements and sets forth our principal findings and recommendations concerning the matters that were the subject of our review. Section I briefly describes the scope of our investigation, and Section II is an Executive Summary of this report. Section III describes the laws and Department and Federal Bureau of Investigation ("FBI") policies that applied to, or were addressed in, our investigation. Section IV summarizes the facts and evidence that we found and describes our prosecution and declination decisions. In Section V, we provide some observations on issues pertinent to our areas of inquiry.

I. THE SPECIAL COUNSEL'S INVESTIGATION

In March 2019, Special Counsel Robert S. Mueller, III concluded his investigation into the Russian government's efforts to interfere in the 2016 presidential election, "including any links or coordination between the Russian government and individuals associated with the Trump Campaign." That investigation "did not establish that members of the Trump Campaign conspired or coordinated with the Russian government in its election interference activities."[2] Following Special Counsel Mueller's report, on May 13, 2019, Attorney General Barr "directed United States Attorney John Durham to conduct a preliminary review into certain matters related to the 2016 presidential election campaigns," and that review "subsequently developed into a criminal investigation."[3] On February 6, 2020, the Attorney General appointed Mr. Durham "as Special Attorney to the Attorney General pursuant to 28 U.S.C. § 515."[4] On October 19, 2020, the Attorney General determined that, "in light of the extraordinary circumstances relating to these matters, the public interest warrants Mr. Durham continuing this investigation pursuant to the powers and independence afforded by the Special Counsel regulations." Relying on "the authority vested" in the Attorney General, "including 28 U.S.C. §§ 509, 510, and 515," the

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[1] Office of the Att'y Gen., Order No. 4878-2020, Appointment of Special Counsel to Investigate Matters Related to Intelligence Activities and Investigations Arising Out of the 2016 Presidential Campaigns ¶ (f) (Oct. 19, 2020) (hereinafter "Appointment Order").

[2] 1 Robert Mueller, *Report on the Investigation into Russian Interference in the 2016 Presidential Election* 1-2 (2019) (hereinafter "*Mueller Report*"); *see also id.* at 173.

[3] *Appointment Order* (introduction). When Mr. Durham was asked to lead the review, he was serving as the United States Attorney for the District of Connecticut. Before May 2019, Mr. Durham had been asked by Attorneys General of both major political parties, namely Janet Reno, Judge Michael Mukasey, Eric Holder, and Senator Jeff Sessions, to conduct other sensitive investigations for the Department.

[4] Letter from the Attorney General to United States Attorney John Durham (Feb. 6, 2020).

Attorney General ordered the appointment of the Special Counsel "in order to discharge the [Attorney General's] responsibility to provide supervision and management of the Department of Justice, and to ensure a full and thorough investigation of these matters."[5] The Order stated:

> The Special Counsel is authorized to investigate whether any federal official, employee, or any other person or entity violated the law in connection with the intelligence, counter-intelligence, or law-enforcement activities directed at the 2016 presidential campaigns, individuals associated with those campaigns, and individuals associated with the administration of President Donald J. Trump, including but not limited to Crossfire Hurricane and the investigation of Special Counsel Robert S. Mueller, III.[6]

"If the Special Counsel believes it is necessary and appropriate," the Order further provided, "the Special Counsel is authorized to prosecute federal crimes arising from his investigation of these matters." The Order also provided that "28 C.F.R. §§ 600.4 to 600.10 are applicable to the Special Counsel."[7]

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[5] *Appointment Order* (introduction).

[6] *Appointment Order* ¶ (b).

[7] *Id.* ¶¶ (c)-(d). We have not interpreted the Order as directing us to investigate the Department's handling of matters associated with the investigation of former Secretary of State Hillary Clinton's use of a private email server. For a review of those matters, *see* Office of the Inspector General, U.S. Department of Justice, *A Review of Various Actions by the Federal Bureau of Investigation and Department of Justice in Advance of the 2016 Election* (June 2018). We also have not interpreted the Order as directing us to consider the handling of the investigation into President Trump opened by the FBI on May 16, 2017. *See* FBI EC from Counterintelligence, *Re: [Redacted] Foreign Agents Registration Act – Russia; Sensitive Investigative Matter* (May 16, 2017). (The following day, the Deputy Attorney General appointed Special Counsel Mueller "to investigate Russian interference with the 2016 presidential election and related matters." *See* 1 *Mueller Report* at 11-12 (describing the authorities given to Special Counsel Mueller). Finally, we have not interpreted the Order as directing us to consider matters addressed by the former United States Attorney for the District of Utah or by the former United States Attorney for the Eastern District of Missouri, other than those relating to Crossfire Hurricane or the FISA applications targeting Carter Page. For accounts of these matters in the news media, *see* Thomas Burr & Pamela Manson, *U.S. Attorney for Utah Is Investigating GOP-Raised Concerns About the FBI Surveilling Trump Aide and About Clinton's Uranium Ties*, Salt Lake Tribune (Mar. 29, 2018), https://www.sltrib.com/news/2018/03/29/us-attorney-for-utah-huber-probing-gop-raised-concerns-about-the-fbi-surveilling-trump-aide-ignoring-clinton-uranium-ties/; Charlie Savage et al., *Barr Installs Outside Prosecutor to Review Case Against Michael Flynn, Ex-Trump Adviser*, N.Y. Times (Feb. 14, 2020), https://www.nytimes.com/2020/02/14/us/politics/michael-flynn-prosecutors-barr.html.

On December 21, 2020, the Attorney General delegated certain authority to use classified information to the Special Counsel.[8]

After the inauguration of President Biden, Attorney General Garland met with the Office of Special Counsel ("OSC" or "the Office"). The Office very much appreciates the support, consistent with his testimony during his confirmation hearings, that the Attorney General has provided to our efforts and the Department's willingness to allow us to operate independently.

The Special Counsel structured the investigation in view of his power and authority "to exercise all investigative and prosecutorial functions of any United States Attorney."[9] Like a U.S. Attorney's Office, the Special Counsel's Office considered in the course of its investigation a range of classified and unclassified information available to the FBI and other government agencies. A substantial amount of information and evidence was immediately available to the Office at the inception of the investigation as a result of numerous congressional investigations[10] and Special Counsel Mueller's investigation. The examinations by the Office of the Inspector General ("OIG") of the Crossfire Hurricane investigation, the Foreign Intelligence Surveillance Act ("FISA") applications targeting Carter Page, and other matters provided additional evidence and information,[11] as did an internal report prepared by the FBI's Inspection Division.[12] The Office reviewed the intelligence, counterintelligence, and law-enforcement activities directed at the 2016 Trump campaign and individuals associated either with the campaign or with the Trump administration in its early stages. The Office structured its work around evidence for possible use in prosecutions of federal crimes (assuming that one or more crimes were identified that warranted prosecution). The Office exercised its judgment regarding what to investigate but

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[8] Office of the Att'y Gen., Order No. 4942-2020, *Delegation to John Durham, Special Counsel, Authority to Use Classified Information* (Dec. 21, 2020). The Special Counsel has not used this authority.

[9] 28 C.F.R. § 600.6.

[10] *See, e.g.*, Senate Select Committee on Intelligence, S. Rep. No. 116-290, 116th Cong., 2d Sess. (2020) (hereinafter "*SSCI Russia Report*").

[11] *See* OIG, U.S. Department of Justice, *Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation* at xiii-xiv, 414 (Dec. 8, 2019) (redacted version) (hereinafter "*OIG Review*" or "*Redacted OIG Review*"), https://www.justice.gov/storage/120919-examination.pdf; OIG, U.S. Department of Justice, *Management Advisory Memorandum for the Director of the Federal Bureau of Investigation Regarding the Execution of Woods Procedures for Applications Filed with the Foreign Intelligence Surveillance Court Relating to U.S. Persons* (Mar. 30, 2020) (hereinafter "*OIG Management Advisory Memorandum*"); OIG, U.S. Department of Justice, *Audit of the Federal Bureau of Investigation's Execution of Its Woods Procedures for Applications Filed with the Foreign Intelligence Surveillance Court Relating to U.S. Persons* (Sept. 2021) (hereinafter "*Audit of 29 Applications*").

[12] FBI Inspection Division, Internal Affairs Section, *Closing Electronic Communication for Case ID # [redacted]* (Nov. 15, 2021) (hereinafter "*Inspection Division Report*" or "*FBI Inspection Division Report*").

did not investigate every public report of an alleged violation of law in connection with the intelligence and law enforcement activities directed at the 2016 presidential campaigns.

In addition to the Special Counsel, the Office has been staffed by experienced FBI and Internal Revenue Service Criminal Investigation Division Agents; Department attorneys and prosecutors; support personnel; and contractor employees.

The Office's investigation was broad and extensive. It included investigative work both domestically and overseas. It entailed obtaining large document productions from businesses, firms, government agencies, universities, political campaigns, internet service providers, telephone companies, and individuals. The Office interviewed hundreds of individuals, many on multiple occasions. The Office conducted the majority of interviews in classified settings; for some interviewees and their counsel security clearances needed to be obtained. The Office conducted interviews in person and via video link, with the vast majority of the latter occurring after the COVID-19 pandemic-related closures began in March 2020. Although a substantial majority of individuals voluntarily cooperated with the Office, some only provided information under a subpoena or grant of immunity. Some individuals who, in our view, had important and relevant information about the topics under investigation refused to be interviewed or otherwise cooperate with the Office. As of April 2023, with two trials completed, the Office has conducted more than 480 interviews; obtained and reviewed more than one million documents consisting of more than six million pages; served more than 190 subpoenas under the auspices of grand juries; executed seven search warrants; obtained five orders for communications records under 18 U.S.C. § 2703(d); and made one request to a foreign government under a Mutual Legal Assistance Treaty.

The Office would like to express its appreciation to, among others, the FBI's Office of General Counsel ("OGC")[13] and Inspection Division; the Litigation Technology Support Services Unit in the National Security Division ("NSD"); the eDiscovery Team in the Office of the Chief Information Officer of the Justice Management Division ("JMD"); and JMD's Service Delivery Staff. The NSD and JMD entities created and maintained the databases and technology infrastructure needed to organize and review the large amount of data we obtained. The Office would also like to express its appreciation to the Department's Office of Privacy and Civil Liberties for its guidance on appropriate information to include in a public report.

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[13] The FBI's OGC produced more than 6,580,000 pages of documentation in response to our multiple requests. We note that it did so at the same time it was coping with the personnel shortages brought about by the COVID-19 crisis, working to comply with various production demands from congressional committees, and addressing requests from other government entities. Moreover, FBI leadership made it clear to its personnel that they were to cooperate fully with our inquiry, which, in all but a few instances involving some personnel in the Counterintelligence Division, proved to be the case. In those few instances in which individuals refused to cooperate, FBI leadership intervened to urge those individuals to agree to be interviewed. Similarly, both the Central Intelligence Agency ("CIA") and the National Security Agency ("NSA") made their employees available for interview, including former CIA Director John Brennan and former NSA Director Mike Rogers, who voluntarily made themselves available for interviews.

The Office has concluded its investigation into whether "any federal official, employee, or any other person or entity violated the law in connection with the intelligence, counter-intelligence, or law-enforcement activities directed at the 2016 presidential campaigns, individuals associated with those campaigns, and individuals associated with the administration of President Donald J. Trump."

This report is a summary. It contains, in the Office's judgment, that information necessary to account for the Special Counsel's prosecution and declination decisions and describe the investigation's main factual results. It then sets forth some additional observations.

The Office made its criminal charging decisions based solely on the facts and evidence developed in the investigation and without fear of, or favor to, any person. What is stated below in the *Mueller Report* is equally true for our investigation:

> This report describes actions and events that the Special Counsel's Office found to be supported by the evidence collected in our investigation. In some instances, the report points out the absence of evidence or conflicts in the evidence about a particular fact or event. In other instances, when substantial, credible evidence enabled the Office to reach a conclusion with confidence, the report states that the investigation established that certain actions or events occurred. A statement that the investigation did not establish particular facts does not mean there was no evidence of those facts.[14]

Conducting this investigation required us to consider U.S. criminal laws, the Constitutional protections our system provides to individuals, and the high burden placed on the government to prove every element of a crime "beyond a reasonable doubt." Moreover, the law does not always make a person's bad judgment, even horribly bad judgment, standing alone, a crime. Nor does the law criminalize all unseemly or unethical conduct that political campaigns might undertake for tactical advantage, absent a violation of a particular federal criminal statute. Finally, in almost all cases, the government is required to prove a person's actual criminal intent – not mere negligence or recklessness – before that person's fellow citizens can lawfully find him or her guilty of a crime. The Office's adherence to these principles explains, in numerous instances, why conduct deserving of censure or disciplinary action did not lead the Office to seek criminal charges.

There are also reasons why, in examining politically-charged and high-profile issues such as these, the Office must exercise – and has exercised – special care. First, juries can bring strongly held views to the courtroom in criminal trials involving political subject matters, and those views can, in turn, affect the likelihood of obtaining a conviction, separate and apart from the strength of the actual evidence and despite a court's best efforts to empanel a fair and impartial jury. Second, even when prosecutors believe that they can obtain a conviction, there are some instances in which it may not be advisable to expend government time and resources on a criminal prosecution, particularly where it would create the appearance – even if unfounded – that the government is seeking to criminalize the behavior of political opponents or punish the activities of a specific political party or campaign. At the same time, prosecutors should not shy

[14] 1 *Mueller Report* at 2.

away from pursuing justifiable cases solely due to the popularity of the defendant or the controversial nature of the government's case.

The *Principles of Federal Prosecution* provide the following pertinent guidance on this point, which informed the Special Counsel's charging and declination decisions:

> Where the law and the facts create a sound, prosecutable case, the likelihood of an acquittal due to unpopularity of some aspect of the prosecution or because of the overwhelming popularity of the defendant or his/her cause is not a factor prohibiting prosecution. For example, in a civil rights case or a case involving an extremely popular political figure, it might be clear that the evidence of guilt—viewed objectively by an unbiased factfinder—would be sufficient to obtain and sustain a conviction, yet the prosecutor might reasonably doubt, based on the circumstances, that the jury would convict. In such a case, despite his/her negative assessment of the likelihood of a guilty verdict (based on factors extraneous to an objective view of the law and the facts), the prosecutor may properly conclude that it is necessary and appropriate to commence or recommend prosecution and allow the criminal process to operate in accordance with the principles set forth here.[15]

The decision of whether to bring criminal charges in any given matter thus is a complicated one that is neither entirely subjective nor mechanistic. If this report and the outcome of the Special Counsel's investigation leave some with the impression that injustices or misconduct have gone unaddressed, it is not because the Office concluded that no such injustices or misconduct occurred. It is, rather, because not every injustice or transgression amounts to a criminal offense, and criminal prosecutors are tasked exclusively with investigating and prosecuting violations of U.S. criminal laws. And even where prosecutors believe a crime occurred based on all of the facts and information they have gathered, it is their duty only to bring criminal charges when the evidence that the government reasonably believes is *admissible in court* proves the offense beyond a reasonable doubt.

Both Attorneys General Barr and Garland have stated that one of their most important priorities is to ensure the proper functioning and administration of federal law by government agencies. Indeed, the first goal of the Department's current *Strategic Plan* is to uphold the rule of law:

> We will continue our work to ensure that the public views the Department as objective, impartial, and insulated from political influence. . . .
>
> The Justice Department['s] . . . foundational norms . . . include the principled exercise of discretion; independence from improper influence; treating like cases alike; and an unwavering commitment to following the facts and the law. Reaffirming and, where necessary, strengthening the Justice Department policies

[15] *Principles of Federal Prosecution*, Section 9-27.220.

that are foundational to the rule of law – many of which were initially adopted in the aftermath of Watergate – is essential to this effort.[16]

In the aftermath of Crossfire Hurricane and the FISA surveillances of Page, the Department has adopted other important policies. We discuss them, and possible additional changes, in portions of the report that follow.

II. EXECUTIVE SUMMARY

The public record contains a substantial body of information relating to former President Trump's and the Trump Organization's relationships with Russian businesses, Russian business people, and Russian officials, as well as separate evidence of Russia's attempts to interfere in the 2016 presidential election. These and related subjects are well-documented in the careful examinations undertaken by (i) the Department's Office of the Inspector General of issues related to the FBI's Crossfire Hurricane investigation and its use of Foreign Intelligence Surveillance Act ("FISA") authorities,[17] (ii) former FBI Director Robert Mueller as detailed in his report entitled "*Report on the Investigation into Russian Interference in the 2016 Presidential Election*," issued in March 2019,[18] and (iii) the *Senate Select Committee on Intelligence entitled, "Russian Active Measures Campaigns and Interference in the 2016 U.S. Election."*[19] The scope of these earlier inquiries, the amount of important information gathered, and the contributions they have made to our understanding of Russian election interference efforts are a tribute to the diligent work and dedication of those charged with the responsibility of conducting them. Our review and investigation, in turn has focused on separate but related questions, including the following:

- Was there adequate predication for the FBI to open the Crossfire Hurricane investigation from its inception on July 31, 2016 as a full counterintelligence and Foreign Agents

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[16] U.S. Department of Justice, *FYs 2022 – 2026 Strategic Plan* at 15. *See* Attorney General Message – DOJ Strategic Plan (July 1, 2022), https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-announces-department-justice-2022-26-strategic-plan. *See also* U.S. Department of Justice, OIG, *Department of Justice Top Management and Performance Challenges 2021* ("One important strategy that can build public trust in the Department is to ensure adherence to policies and procedures designed to protect DOJ from accusations of political influence or partial application of the law"), https://oig.justice.gov/reports/top-management-and-performance-challenges-facing-department-justice-2021; Attorney General Memorandum, *Additional Requirements for the Opening of Certain Sensitive Investigations* at 1 (Feb. 5, 2020) ("While the Department must respond swiftly and decisively when faced with credible threats to our democratic processes, we also must be sensitive to safeguarding the Department's reputation for fairness, neutrality, and nonpartisanship") (hereinafter "*Sensitive Investigations Memorandum*").

[17] *See supra* footnote 11.

[18] *See supra* footnote 2.

[19] *See supra* footnote 10; *see also* Intelligence Community Assessment, *Assessing Russian Activities and Intentions in Recent U.S. Elections* (Jan. 6, 2017).

Registration Act ("FARA") investigation given the requirements of *The Attorney General's Guidelines for FBI Domestic Operations* and FBI policies relating to the use of the least intrusive investigative tools necessary?[20]

- Was the opening of Crossfire Hurricane as a full investigation on July 31, 2016 consistent with how the FBI handled other intelligence it had received *prior to* July 31, 2016 concerning attempts by foreign interests to influence the Clinton and other campaigns?

- Similarly, did the FBI properly consider other highly significant intelligence it received at virtually the same time as that used to predicate Crossfire Hurricane, but which related not to the Trump campaign, but rather to a purported Clinton campaign plan "to vilify Donald Trump by stirring up a scandal claiming interference by Russian security services," which might have shed light on some of the Russia information the FBI was receiving from third parties, including the Steele Dossier, the Alfa Bank allegations and confidential human source ("CHS") reporting? If not, were any provable federal crimes committed in failing to do so?

- Was there evidence that the actions of any FBI personnel or third parties relating to the Crossfire Hurricane investigation violated any federal criminal statutes, including the prohibition against making false statements to federal officials? If so, was that evidence sufficient to prove guilt beyond a reasonable doubt?

- Was there evidence that the actions of the FBI or Department personnel in providing false or incomplete information to the Foreign Intelligence Surveillance Court ("FISC") violated any federal criminal statutes? If so, was there evidence sufficient to prove guilt beyond a reasonable doubt?

Our findings and conclusions regarding these and related questions are sobering.

State of Intelligence Community Information Regarding Trump and Russia Prior to the Opening of Crossfire Hurricane

As set forth in greater detail in Section IV.A.3.b, before the initial receipt by FBI Headquarters of information from Australia on July 28, 2016 concerning comments reportedly made in a tavern on May 6, 2016 by George Papadopoulos, an unpaid foreign policy advisor to the Trump campaign, the government possessed no verified intelligence reflecting that Trump or the Trump campaign was involved in a conspiracy or collaborative relationship with officials of the Russian government.[21] Indeed, based on the evidence gathered in the multiple exhaustive and costly federal investigations of these matters, including the instant investigation, neither U.S. law enforcement nor the Intelligence Community appears to have possessed any actual evidence of collusion in their holdings at the commencement of the Crossfire Hurricane investigation.

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[20] *See The Attorney General's Guidelines for FBI Domestic Operations* § I.C.2 (Sept. 29, 2008) (hereinafter "*AGG-Dom*"); FBI, *Domestic Investigations and Operations Guide* § 4.4 (Mar. 3, 2016) (hereinafter "*DIOG*").

[21] *See infra* § IV.A.3.b.

The Opening of Crossfire Hurricane

As set forth in greater detail in Section IV, the record in this matter reflects that upon receipt of unevaluated intelligence information from Australia, the FBI swiftly opened the Crossfire Hurricane investigation. In particular, at the direction of Deputy Director Andrew McCabe, Deputy Assistant Director for Counterintelligence Peter Strzok opened Crossfire Hurricane immediately.[22] Strzok, at a minimum, had pronounced hostile feelings toward Trump.[23] The matter was opened as a full investigation without ever having spoken to the persons who provided the information. Further, the FBI did so without (i) any significant review of its own intelligence databases, (ii) collection and examination of any relevant intelligence from other U.S. intelligence entities, (iii) interviews of witnesses essential to understand the raw information it had received or (iv) using any of the standard analytical tools typically employed by the FBI in evaluating raw intelligence. Had it done so, again as set out in Sections IV.A.3.b and c, the FBI would have learned that their own experienced Russia analysts had no information about Trump being involved with Russian leadership officials, nor were others in sensitive positions at the CIA, the NSA, and the Department of State aware of such evidence concerning the subject. In addition, FBI records prepared by Strzok in February and March 2017 show that at the time of the opening of Crossfire Hurricane, the FBI had no information in its holdings indicating that at any time during the campaign anyone in the Trump campaign had been in contact with any Russian intelligence officials.[24]

The speed and manner in which the FBI opened and investigated Crossfire Hurricane during the presidential election season based on raw, unanalyzed, and uncorroborated intelligence also reflected a noticeable departure from how it approached prior matters involving possible attempted foreign election interference plans aimed at the Clinton campaign. As described in Section IV.B, in the eighteen months leading up to the 2016 election, the FBI was required to deal with a number of proposed investigations that had the potential of affecting the election. In each of those instances, the FBI moved with considerable caution. In one such matter discussed in Section IV.B.1, FBI Headquarters and Department officials required defensive briefings to be provided to Clinton and other officials or candidates who appeared to be the targets of foreign interference. In another, the FBI elected to end an investigation after one of its longtime and valuable CHSs went beyond what was authorized and made an improper

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[22] Peter Strzok, *Compromised: Counterintelligence and the Threat of Donald J. Trump* at 115 (Houghton Mifflin Harcourt 2020) (hereinafter "Strzok, *Compromised*").

[23] Strzok and Deputy Director McCabe's Special Assistant had pronounced hostile feelings toward Trump. As explained later in this report, in text messages before and after the opening of Crossfire Hurricane, the two had referred to him as "loathsome," "an idiot," someone who should lose to Clinton "100,000,000 – 0," and a person who Strzok wrote "[w]e'll stop" from becoming President. Indeed, the day before the Australian information was received at FBI Headquarters, Page sent a text message to Strzok stating, "Have we opened on him yet? [angry-faced emoji]" and referenced an article titled *Trump & Putin. Yes, It's Really a Thing.*

[24] *See* SENATE-FISA2020-001163 (Annotated version of article titled *Trump Campaign Aides Had Repeated Contacts With Russian Intelligence,* N.Y. Times (February 14, 2017); FBI-EMAIL-428172 (Annotated version of article titled *Obama Administration Rushed to Preserve Intelligence of Russian Election Hacking*, N.Y. Times (Mar. 1, 2017).

and possibly illegal financial contribution to the Clinton campaign on behalf of a foreign entity as a precursor to a much larger donation being contemplated. And in a third, the Clinton Foundation matter, both senior FBI and Department officials placed restrictions on how those matters were to be handled such that essentially no investigative activities occurred for months leading up to the election. These examples are also markedly different from the FBI's actions with respect to other highly significant intelligence it received from a trusted foreign source pointing to a Clinton campaign plan to vilify Trump by tying him to Vladimir Putin so as to divert attention from her own concerns relating to her use of a private email server. Unlike the FBI's opening of a full investigation of unknown members of the Trump campaign based on raw, uncorroborated information, in this separate matter involving a purported Clinton campaign plan, the FBI never opened any type of inquiry, issued any taskings, employed any analytical personnel, or produced any analytical products in connection with the information. This lack of action was despite the fact that the significance of the Clinton plan intelligence was such as to have prompted the Director of the CIA to brief the President, Vice President, Attorney General, Director of the FBI, and other senior government officials about its content within days of its receipt. It was also of enough importance for the CIA to send a formal written referral memorandum to Director Comey and the Deputy Assistant Director of the FBI's Counterintelligence Division, Peter Strzok, for their consideration and action.[25] The investigative referral provided examples of information the Crossfire Hurricane fusion cell had "gleaned to date."[26]

The Crossfire Hurricane Investigation

Within days after opening Crossfire Hurricane, the FBI opened full investigations on four members of the Trump campaign team: George Papadopoulos, Carter Page, Paul Manafort, and Michael Flynn.[27] No defensive briefing was provided to Trump or anyone in the campaign concerning the information received from Australia that suggested there might be some type of collusion between the Trump campaign and the Russians, either prior to or after these investigations were opened. Instead, the FBI began working on requests for the use of FISA authorities against Page and Papadopoulos. The effort as related to Papadopoulos proved

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[25] Memorandum from the CIA to the Director of the Federal Bureau of Investigation, *Re: [Redacted] CROSSFIRE HURRICANE [redacted]* (Sept. 7, 2016) (sent to the Director of the FBI and to the attention of Peter Strzok, Deputy Assistant Director for Operations Branch I, Counterintelligence Division)) (redacted version) (hereinafter "*Referral Memo*").

[26] The *Referral Memo* states that the FBI made a verbal request for examples of relevant information the fusion cell had obtained. *Id.* at 2. In his July 26, 2021 interview with the Office, Supervisory Analyst Brian Auten advised that on the Friday before Labor Day, which was September 2, 2016, CIA personnel briefed Auten and Intelligence Section Chief Moffa (and possibly FBI OGC Unit Chief-1) at FBI Headquarters on the Clinton intelligence plan. Auten advised that at the time he wanted to see an actual investigative referral memo on the information. OSC Report of Interview of Brian Auten dated July 26, 2021 at 7.

Separately, we note that the masked identities used in this report do not necessarily correspond to those used in any other document such as the *OIG Review*.

[27] *See infra* §§ IV.A.3 and 4.

unsuccessful.[28] Similarly, the initial effort directed at Page was unsuccessful until the Crossfire Hurricane investigators first obtained what were designated as "Company Intelligence Reports" generated by Christopher Steele. As set forth in Sections IV.D.1.b.ii and iii and in brief below, the Steele Reports were first provided to the FBI in early July 2016 but, for unexplained reasons, only made their way to the Crossfire Hurricane investigators in mid-September. The reports were ostensibly assembled based on information provided to Steele and his company by a "primary sub source," who the FBI eventually determined in December 2016 was Igor Danchenko.

Our investigation determined that the Crossfire Hurricane investigators did not and could not corroborate any of the substantive allegations contained in the Steele reporting. Nor was Steele able to produce corroboration for any of the reported allegations, even after being offered $1 million or more by the FBI for such corroboration.[29] Further, when interviewed by the FBI in January 2017, Danchenko also was unable to corroborate any of the substantive allegations in the Reports. Rather, Danchenko characterized the information he provided to Steele as "rumor and speculation"[30] and the product of casual conversation.[31]

Section IV.D.1.h describes other efforts undertaken by the Crossfire Hurricane investigators working on the Page FISA application. Those efforts included having CHSs record conversations with Page, Papadopoulos and a senior Trump foreign policy advisor. The FBI's own records and the recordings establish that Page made multiple exculpatory statements to the individual identified as CHS-1, but the Crossfire Hurricane investigators failed to make that information known to the Department attorneys or to the FISC. Page also made explicit statements refuting allegations contained in the Steele reporting about his lack of any relationship with Paul Manafort, but the FBI failed to follow logical investigative leads related to those statements and to report to Department lawyers what they found. Similarly, multiple recordings of Papadopoulos were made by CHS-1 and a second CHS, in which Papadopoulos also made multiple exculpatory statements that were not brought to the attention of the Department lawyers or the FISC.

Furthermore, our investigation resulted in the prosecution and conviction of an FBI OGC attorney for intentionally falsifying a document that was material to the FISC's consideration of one of the Page FISA applications.[32]

The Steele Dossier

In the spring of 2016, Perkins Coie, a U.S.-based international law firm, acting as counsel to the Clinton campaign, retained Fusion GPS, a U.S.-based investigative firm, to conduct

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[28] OSC Report of Interview of Chicago Agent-1 on Aug. 7, 2019 at 4.

[29] SCO-101648 (Email from Special Agent-2 to Supervisory Special Agent-1, Strzok, Auten, Case Agent-1, Acting Section Chief-1 & Handling Agent-1 dated Oct. 4, 2016); *United States v. Igor Danchenko*, 21-CR-245 (E.D. Va.) Trial Transcript 10/11/2022 PM at 81:7-20 (hereinafter "*Danchenko* Tr.").

[30] SCO_005801 (Interview of Igor Danchenko Electronic Communication dated 02/09/17) at 39.

[31] SCO_105282 (CHS Reporting Document dated 06/01/2017) at 1.

[32] *See infra* § IV.D.2.a.

opposition research on Trump and his associates. In mid-May 2016, Glenn Simpson of Fusion GPS met with Steele in the United Kingdom and subsequently retained Steele and his firm, Orbis Business Intelligence ("Orbis"), to investigate Trump's ties to Russia.[33] Steele described himself as a former intelligence official for the British government,[34] and was also at the time an FBI CHS. Beginning in July 2016 and continuing through December 2016, the FBI received a series of reports from Steele and Orbis that contained derogatory information about Trump concerning Trump's purported ties to Russia. As discussed in Section IV.D.1.b.ii, Steele provided the first of his reports to his FBI handler on July 5th. These reports were colloquially referred to as the "Steele Dossier" or "Steele Reports."

As noted, it was not until mid-September that the Crossfire Hurricane investigators received several of the Steele Reports.[35] Within days of their receipt, the unvetted and unverified Steele Reports were used to support probable cause in the FBI's FISA applications targeting Page, a U.S. citizen who, for a period of time, had been an advisor to Trump. As discussed later in the report, this was done at a time when the FBI knew that the same information Steele had provided to the FBI had also been fed to the media and others in Washington, D.C.[36]

In particular, one allegation contained in an undated Steele Report, identified as 2016/095, described a "well-developed conspiracy of co-operation" between Trump, his campaign, and senior Russian officials. This allegation would ultimately underpin the four FISA applications targeting Page. Specifically, the allegation stated:

> Speaking in confidence to a compatriot *in late July 2016, Source E, an ethnic Russian close associate of Republican US presidential candidate Donald TRUMP,* admitted that there was a well-developed conspiracy of co-operation between them and the Russian leadership. This was managed on the TRUMP side by the Republican candidate's campaign manager, Paul MANAFORT, who was using foreign policy advisor, Carter PAGE, and others as intermediaries. The two sides had a mutual interest in defeating Democratic presidential candidate Hillary CLINTON, whom President PUTIN apparently both hated and feared.[37]

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[33] Glenn Simpson & Peter Fritsch, *Crime in Progress: Inside the Steele Dossier and the Fusion GPS Investigation of Donald Trump* at 69-70 (2019) (hereinafter "*Crime in Progress*").

[34] Steele has testified in prior legal proceedings that between 1987 and 2009 that he was an intelligence professional working for the British government. Trial Testimony of Christopher Steele, *Peter Aven, et al. v. Orbis Bus. Intel. Ltd.*, Claim No. HQ18M01646 (hereinafter "*Steele Transcript*") (Mar. 17, 2020) at 147-48.

[35] While Steele first provided several of his Reports to his FBI handler in July 2016, the transmittal of these Reports to FBI Headquarters and the Crossfire Hurricane team met an inexplicable delay. This delay is discussed in Section IV.D.1.b.iii.

[36] *See infra* § IV.D.1.

[37] SCO-105084 (Documents Known to the FBI Comprising the "Steele Dossier") at 9 ("Company Intelligence Report 2016/095") (Emphasis added, capitalization in original).

Igor Danchenko – Steele's Primary Sub-Source

As noted, the FBI attempted, over time, to investigate and analyze the Steele Reports but ultimately was not able to confirm or corroborate any of the substantive allegations contained in those reports. In the context of these efforts, and as discussed in Sections IV.D.1.b.ix and x, the FBI learned that Steele relied primarily on a U.S.-based Russian national, Igor Danchenko, to collect information that ultimately formed the core allegations found in the reports. Specifically, our investigation discovered that Danchenko himself had told another person that he (Danchenko) was responsible for 80% of the "intel" and 50% of the analysis contained in the Steele Dossier.[38] [39]

In December 2016, the FBI identified Danchenko as Steele's primary sub-source. Danchenko agreed to meet with the FBI and, under the protection of an immunity letter, he and his attorney met with the Crossfire Hurricane investigators on January 24, 25, and 26, 2017. Thereafter, from January 2017 through October 2020, and as part of its efforts to determine the truth or falsity of specific information in the Steele Reports, the FBI conducted multiple interviews of Danchenko regarding, among other things, the information he provided to Steele. As discussed in Section IV.D.1.b.ix, during these interviews, Danchenko was unable to provide any corroborating evidence to support the Steele allegations, and further, described his interactions with his sub-sources as "rumor and speculation" and conversations of a casual nature.[40] Significant parts of what Danchenko told the FBI were inconsistent with what Steele told the FBI during his prior interviews in October 2016 and September 2017. At no time, however, was the FISC informed of these inconsistencies. Moreover, notwithstanding the repeated assertions in the Page FISA applications that Steele's primary sub-source was based in Russia, Danchenko for many years had lived in the Washington, D.C. area. After learning that Danchenko continued to live in the Washington area and had not left except for domestic and foreign travel, the FBI never corrected this assertion in the three subsequent Page FISA renewal applications. Rather, beginning in March 2017, the FBI engaged Danchenko as a CHS and began making regular financial payments to him for information – none of which corroborated Steele's reporting.

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[38] *Danchenko* Government Exhibit 1502 (LinkedIn message from Danchenko dated Oct. 11, 2020).

[39] Our investigators uncovered little evidence suggesting that, prior to the submission of the first Page FISA application, the FBI had made any serious attempts to identify Steele's primary sub-source other than asking Steele to disclose the identities of his sources, which he refused to do. The reliability of Steele's reporting depended heavily on the reliability of his primary sub-source because, as represented to the FISC, Steele's source reporting was principally derived from the primary sub-source, who purportedly was running a "network of sub-sources." *In re Carter W. Page*, Docket No. 16-1182, at 16 n.8 (FISC Oct. 21, 2016). The failure to identify the primary sub-source early in the investigation's pursuit of FISA authority prevented the FBI from properly examining the possibility that some or much of the non-open source information contained in Steele's reporting was Russian disinformation (that wittingly or unwittingly was passed along to Steele), or that the reporting was otherwise not credible.

[40] *See supra* footnotes 30 and 31.

The Unresolved Prior FBI Counterintelligence Investigation of Danchenko

Importantly, and as discussed in Section IV.D.1.c, the FBI knew in January 2017 that Danchenko had been the subject of an FBI counterintelligence investigation from 2009 to 2011. In late 2008, while Danchenko was employed by the Brookings Institution, he engaged two fellow employees about whether one of the employees might be willing or able in the future to provide classified information in exchange for money. According to one employee, Danchenko believed that he (the employee) might be following a mentor into the incoming Obama administration and have access to classified information. During this exchange, Danchenko informed the employee that he had access to people who were willing to pay for classified information. The concerned employee passed this information to a U.S. government contact, and the information was subsequently passed to the FBI. Based on this information, in 2009 the FBI opened a preliminary investigation into Danchenko. The FBI converted its investigation into a full investigation after learning that Danchenko (i) had been identified as an associate of two FBI counterintelligence subjects and (ii) had previous contact with the Russian Embassy and known Russian intelligence officers. Also, as discussed in Section IV.D.1.c, at that earlier time, Agents had interviewed several former colleagues of Danchenko who raised concerns about Danchenko's potential involvement with Russian intelligence. For example, one such colleague, who had interned at a U.S. intelligence agency, informed the Office that Danchenko frequently inquired about that person's knowledge of a specific Russian military matter.

Meanwhile in July 2010, the FBI initiated a request to use FISA authorities against Danchenko, which was subsequently routed to Department attorneys in August 2010. However, the investigation into Danchenko was closed in March 2011 after the FBI incorrectly concluded that Danchenko had left the country and returned to Russia.

Our review found no indication that the Crossfire Hurricane investigators ever attempted to resolve the prior Danchenko espionage matter before opening him as a paid CHS. Moreover, our investigation found no indication that the Crossfire Hurricane investigators disclosed the existence of Danchenko's unresolved counterintelligence investigation to the Department attorneys who were responsible for drafting the FISA renewal applications targeting Carter Page. As a result, the FISC was never advised of information that very well may have affected the FISC's view of Steele's primary sub-source's (and Steele's) reliability and trustworthiness. Equally important is the fact that in not resolving Danchenko's status vis-à-vis the Russian intelligence services, it appears the FBI never gave appropriate consideration to the possibility that the intelligence Danchenko was providing to Steele – which, again, according to Danchenko himself, made up a significant majority of the information in the Steele Dossier reports – was, in whole or in part, Russian disinformation.

Danchenko's Relationship with Charles Dolan

During the relevant time period, Danchenko maintained a relationship with Charles Dolan, a Virginia-based public relations professional who had previously held multiple positions and roles in the Democratic National Committee ("DNC") and the Democratic Party. In his role as a public relations professional, Dolan focused much of his career interacting with Eurasian clients, with a particular focus on Russia. As described in Section IV.D.1.d.ii, Dolan previously conducted business with the Russian Federation and maintained relationships with several key Russian government officials, including Dimitry Peskov, the powerful Press Secretary of the Russian Presidential Administration. A number of these Russian government officials with

whom Dolan maintained a relationship – and was in contact with at the time Danchenko was collecting information for Steele – would later appear in the Dossier.

In the summer and fall of 2016, at the time Danchenko was collecting information for Steele, Dolan traveled to Moscow, as did Danchenko, in connection with a business conference. As discussed in Section IV.D.1.d.iii, the business conference was held at the Ritz Carlton Moscow, which, according to the Steele Reports, was allegedly the site of salacious sexual conduct on the part of Trump. Danchenko would later inform the FBI that he learned of these allegations through Ritz Carlton staff members. Our investigation, however, revealed that it was Dolan, not Danchenko, who actually interacted with the hotel staff identified in the Steele Reports, so between the two, Dolan appears the more likely source of the allegations.

As discussed in Section IV.D.1.d.vi, our investigation also uncovered that Dolan was the definitive source for at least one allegation in the Steele Reports. This allegation, contained in Steele Report 2016/105, concerned the circumstances surrounding the resignation of Paul Manafort from the Trump campaign. When interviewed by the Office, Dolan admitted that he fabricated the allegation about Manafort that appeared in the Steele Report. Our investigation also revealed that, in some instances, Dolan independently received other information strikingly similar to allegations that would later appear in the Steele Reports. Nevertheless, when interviewed by the FBI, Danchenko denied that Dolan was a source for any information in the Steele Reports.

Furthermore, as discussed in Section IV.D.1.d.iii, during the relevant time period, Dolan maintained a business relationship with Olga Galkina, a childhood friend of Danchenko, who, according to Danchenko, was a key source for many of the allegations contained in the Steele Reports. In fact, when Galkina was interviewed by the FBI in August 2017, she admitted to providing Dolan with information that would later appear in the Steele Reports.

The FBI's Failure to Interview Charles Dolan

Our investigation revealed that the Crossfire Hurricane investigators were aware of Dolan and his connections to Danchenko and the Steele Reports. In fact, as discussed in Section IV.D.1.b.v, in early October 2016, Steele informed the FBI that Dolan was a person who might have relevant information about Trump. The FBI interviewed hundreds of individuals through the course of the Crossfire Hurricane and later investigations, and yet it did not interview Dolan as a possible source of information about Trump. Our investigators interviewed Dolan on several occasions, as well as the two other persons mentioned by Steele. Dolan initially denied being a source of information for the Steele Reports. When, however, he was shown a particular Steele Report relating to Paul Manafort and his resignation as Trump's campaign manager, along with related emails between himself and Danchenko in August 2016, he acknowledged that the reporting mirrored the information he had provided to Danchenko. Dolan acknowledged to the Office that he fabricated this information. Although both Steele and Olga Galkina suggested to the FBI that Dolan may have had information related to the Steele Reports, our investigation was not able to definitively show that Dolan was the actual source – whether wittingly or unwittingly – for any additional allegations set forth in the Steele Reports. Regardless, in light of the foregoing, there does not appear to have been an objectively sound reason for the FBI's failure to interview Dolan.

Danchenko's Claims Regarding Sergei Millian

Perhaps the most damning allegation in the Steele Dossier reports was Company Report 2016/95, which Steele attributed to "Source E," one of Danchenko's supposed sub-sources. This report, portions of which were included in each of the four Page FISA applications, contributed to the public narrative of Trump's conspiring and colluding with Russian officials. As discussed in Section IV.D.1.f, Danchenko's alleged source for the information (Source E) was an individual by the name of Sergei Millian who was the president of the Russian-American Chamber of Commerce in New York City and a public Trump supporter. The evidence uncovered by the Office showed that Danchenko never spoke with Sergei Millian and simply fabricated the allegations that he attributed to Millian.

When interviewed by Crossfire Hurricane investigators in late January 2017, Danchenko said that Source E in Report 2016/95 sounded as though it was Sergei Millian. As discussed in Section IV.D.1.f.i, Danchenko stated that he never actually met Millian. Instead, he said that in late-July 2016 he received an anonymous call from a person who did not identify himself, but who spoke with a Russian accent. Danchenko further explained that he thought it might have been Millian – someone Danchenko previously had emailed twice and received no response – after watching a *YouTube* video of Millian speaking. Thus, as detailed in Section IV.D.1.f.i, the total support for the Source E information contained in Steele Report 2016/95 is a purported anonymous call from someone Danchenko had never met or spoken to but who he believed might be Sergei Millian – a Trump supporter – based on his listening to a *YouTube* video of Millian. Unfortunately, the investigation revealed that, instead of taking even basic steps, such as securing telephone call records for either Danchenko or Millian to investigate Danchenko's hard-to-believe story about Millian, the Crossfire Hurricane investigators appear to have chosen to ignore this and other red flags concerning Danchenko's credibility, as well as Steele's.[41]

The Alfa Bank Allegations

The Office also investigated the actions of Perkins Coie attorney Michael Sussmann and others in connection with Sussmann's provision of data and "white papers" to FBI General Counsel James Baker purporting to show that there existed a covert communications channel between the Trump Organization and a Russia-based bank called Alfa Bank. As set forth in Section IV.E.1.c.iii, in doing so he represented to Baker by text message and in person that he was acting on his own and was not representing any client or company in providing the information to the FBI. Our investigation showed that, in point of fact, these representations to Baker were false in that Sussmann was representing the Clinton campaign (as evidenced by, among other things, his law firm's billing records and internal communications).[42] In addition, Sussmann was representing a second client, a technology executive named Rodney Joffe (as evidenced by various written communications, Sussmann's subsequent congressional testimony, and other records).

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[41] As noted in Section IV.D.2.f, a federal grand jury in the Eastern District of Virginia returned a five-count indictment against Danchenko charging him with making false statements. A trial jury, however, found that the evidence was not sufficient to prove his guilt beyond a reasonable doubt. *See United States v. Igor Danchenko*, 21-CR-245 (E.D. Va.).

[42] *Sussmann* Government Exhibit 553 (Perkins Coie billing records for HFA).

Cyber experts from the FBI examined the materials given to Baker and concluded that they did not establish what Sussmann claimed they showed. At a later time, Sussmann made a separate presentation regarding the Alfa Bank allegations to another U.S. government agency and it too concluded that the materials did not show what Sussmann claimed. In connection with that second presentation, Sussmann made a similar false statement to that agency, claiming that he was not providing the information on behalf of any client.

With respect to the Alfa Bank materials, our investigation established that Joffe had tasked a number of computer technology researchers who worked for companies he was affiliated with, and who had access to certain internet records, to mine the internet data to establish "an inference" and "narrative" tying then-candidate Trump to Russia. In directing these researchers to exploit their access in this manner, Joffe indicated that he was seeking to please certain "VIPs," in context referring to individuals at Perkins Coie who were involved in campaign matters and the Clinton campaign. During its investigation, the Office also learned that, after the 2016 presidential election, Joffe emailed an individual and told that person that "[he - Joffe] was tentatively offered the top [cybersecurity] job by the Democrats when it looked like they'd win."

As explained in Section IV.E.1.c.i, the evidence collected by the Office also demonstrated that, prior to providing the unfounded Alfa bank claims to the FBI, Sussmann and Fusion GPS (the Clinton campaign's opposition research firm) had provided the same information to various news organizations and were pressing reporters to write articles about the alleged secret communications channel. Moreover, during his September 2016 meeting at the FBI, Sussmann told Baker that an unnamed news outlet was in possession of the information and would soon publish a story about it. The disclosure of the media's involvement caused the FBI to contact the news outlet whose name was eventually provided by Sussmann in the hope of delaying any public reporting on the subject. In doing so it confirmed for the *New York Times* that the FBI was looking into the matter. On October 31, 2016, less than two weeks before the election, the *New York Times* and others published articles on the Alfa Bank matter and the Clinton campaign issued tweets and public statements on the allegations of a secret channel of communications being used by the Trump Organization and a Russian bank - allegations that had been provided to the media and the FBI by Fusion GPS and Sussmann, both of whom were working for the Clinton campaign.

Conclusion

Based on the review of Crossfire Hurricane and related intelligence activities, we conclude that the Department and the FBI failed to uphold their important mission of strict fidelity to the law in connection with certain events and activities described in this report. As noted, former FBI attorney Kevin Clinesmith committed a criminal offense by fabricating language in an email that was material to the FBI obtaining a FISA surveillance order. In other instances, FBI personnel working on that same FISA application displayed, at best, a cavalier attitude towards accuracy and completeness. FBI personnel also repeatedly disregarded important requirements when they continued to seek renewals of that FISA surveillance while acknowledging – both then and in hindsight – that they did not genuinely believe there was probable cause to believe that the target was knowingly engaged in clandestine intelligence

activities on behalf of a foreign power, or knowingly helping another person in such activities.[43] And certain personnel disregarded significant exculpatory information that should have prompted investigative restraint and re-examination.[44]

Our investigation also revealed that senior FBI personnel displayed a serious lack of analytical rigor towards the information that they received, especially information received from politically affiliated persons and entities. This information in part triggered and sustained Crossfire Hurricane and contributed to the subsequent need for Special Counsel Mueller's investigation. In particular, there was significant reliance on investigative leads provided or funded (directly or indirectly) by Trump's political opponents. The Department did not adequately examine or question these materials and the motivations of those providing them, even when at about the same time the Director of the FBI and others learned of significant and potentially contrary intelligence.[45]

In light of the foregoing, there is a continuing need for the FBI and the Department to recognize that lack of analytical rigor, apparent confirmation bias, and an over-willingness to rely on information from individuals connected to political opponents caused investigators to fail to adequately consider alternative hypotheses and to act without appropriate objectivity or restraint in pursuing allegations of collusion or conspiracy between a U.S. political campaign and a foreign power. Although recognizing that in hindsight much is clearer, much of this also seems to have been clear at the time. We therefore believe it is important to examine past conduct to identify shortcomings and improve how the government carries out its most sensitive functions. Section V discusses some of these issues more fully.

This report does not recommend any wholesale changes in the guidelines and policies that the Department and the FBI now have in place to ensure proper conduct and accountability in how counterintelligence activities are carried out. Rather, it is intended to accurately describe the matters that fell under our review and to assist the Attorney General in determining how the Department and the FBI can do a better, more credible job in fulfilling its responsibilities, and in analyzing and responding to politically charged allegations in the future. Ultimately, of course, meeting those responsibilities comes down to the integrity of the people who take an oath to follow the guidelines and policies currently in place, guidelines that date from the time of Attorney General Levi and that are designed to ensure the rule of law is upheld. As such, the answer is not the creation of new rules but a renewed fidelity to the old. The promulgation of additional rules and regulations to be learned in yet more training sessions would likely prove to be a fruitless exercise if the FBI's guiding principles of "Fidelity, Bravery and Integrity" are not

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[43] *See, e.g.,* OSC Report of Interview of Supervisory Special Agent-2 on May 5, 2021 at 1-2; OSC Report of Interview of Supervisory Special Agent-3 on Mar. 18, 2021 at 2-3.

[44] *See, e.g.,* FBI-EC-00008439 (Lync message exchange between Case Agent-1 and Support Operations Specialist-1 dated 09/27/2016); E2018002-A-002016 (Handwritten notes of FBI OGC Unit Chief-1 dated 10/12/2016); FBI-LP-00000111 (Handwritten notes of Lisa Page dated 10/12/2016); OSC Report of Interview of OI Attorney-1 on July 1, 2020 at 2-7.

[45] *See infra* § IV.B.1.

engrained in the hearts and minds of those sworn to meet the FBI's mission of "Protect[ing] the American People and Uphold[ing] the Constitution of the United States."[46]

III. APPLICABLE LAWS AND DEPARTMENT AND FBI POLICIES

This section begins by summarizing some of the *Principles of Federal Prosecution*, which govern all federal prosecutions. Next, this section describes the laws and policies that we considered in the course of our investigation. These include the requirements that apply to the FBI's assessments and investigations of counterintelligence matters, most of which are found in guidelines promulgated by the Attorney General and FBI policies, and the legal standards for conducting electronic surveillance under FISA. This section concludes by describing the principal statutes that we used to evaluate possible criminal conduct for prosecution: 18 U.S.C. § 1001(a)(2) (false statements); 18 U.S.C. § 1621(2) (perjury); 18 U.S.C. § 1519 (falsification of records); 18 U.S.C. § 242 (violation of civil rights); 18 U.S.C. §§ 241, 371 (conspiracy); 18 U.S.C. § 1031(a) (fraud against the United States); 52 U.S.C. §§ 30116, 30121(a) (campaign contributions); 18 U.S.C. §§ 1956-57 (money-laundering); and 18 U.S.C. § 793(d) (transmission of classified information).

A. Principles of Federal Prosecution

In deciding whether to exercise prosecutorial authority with respect to the statutes discussed below, the Office has been guided by the *Principles of Federal Prosecution* set forth in the *Justice Manual*.[47] Those principles include:

1. Determination to prosecute

A determination to prosecute represents a policy judgment that the fundamental interests of society require the application of federal criminal law to a particular set of circumstances. The attorney for the government should commence or recommend federal prosecution if he/she believes that the person's conduct constitutes a federal offense, and that the admissible evidence will probably be sufficient to obtain and sustain a conviction, unless (i) the prosecution would serve no substantial federal interest; (ii) the person is subject to effective prosecution in another jurisdiction; or (iii) there exists an adequate non-criminal alternative to prosecution.[48]

2. Substantial federal interest

In determining whether a prosecution would serve a substantial federal interest, the attorney for the government should weigh all relevant considerations, including:

> Federal law enforcement priorities, including any federal law enforcement initiatives or operations aimed at accomplishing those priorities;
> The nature and seriousness of the offense;
> The deterrent effect of prosecution;

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[46] *See* Mission Statement of the Federal Bureau of Investigation, https://www.fbi.gov/about/mission.

[47] U.S. Department of Justice, *Justice Manual* § 9-27.000 (Feb. 2018), https://www.justice.gov/jm/jm-9-27000-principles-federal-prosecution#9-27.001.

[48] *Justice Manual* §§ 9-27.001; 9-27.220.

The person's culpability in connection with the offense;
The person's history with respect to criminal activity;
The person's willingness to cooperate in the investigation or prosecution of others;
The person's personal circumstances;
The interests of any victims; and
The probable sentence or other consequences if the person is convicted.[49]

*3. **Most serious, readily provable offense***

During our investigation, the *Justice Manual* provided that once the decision to prosecute has been made, the attorney for the government should charge and pursue the most serious, readily provable offenses. By definition, the most serious offenses are those that carry the most substantial guidelines sentence, including mandatory minimum sentences.[50]

*4. **Unpopularity***

Where the law and the facts create a sound, prosecutable case, the likelihood of an acquittal due to unpopularity of some aspect of the prosecution or because of the overwhelming popularity of the defendant or his/her cause is not a factor prohibiting prosecution.[51] This provision from the *Justice Manual* is quoted more fully in section I.

*5. **Interests of uncharged parties***

In all public filings and proceedings, federal prosecutors should remain sensitive to the privacy and reputation interests of uncharged third parties. In the context of public plea and sentencing proceedings, this means that, in the absence of some significant justification, it is not appropriate to identify (either by name or unnecessarily specific description), or cause a defendant to identify, a third-party wrongdoer unless that party has been officially charged with the misconduct at issue.[52]

As a series of cases makes clear, there is ordinarily "no legitimate governmental interest served" by the government's public allegation of wrongdoing by an uncharged party, and this is true "[r]egardless of what criminal charges may . . . b[e] contemplated by the Assistant United States Attorney against the [third-party] for the future."[53] Courts have applied this reasoning to preclude the public identification of unindicted third-party wrongdoers in plea hearings, sentencing memoranda, and other government pleadings.[54]

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[49] *Id.* § 9-27.230.

[50] *Id.* § 9-27.300. This charging policy has since been revised. *See* Att'y Gen., General Department Policies Regarding Charging, Pleas, and Sentencing Memorandum (Dec. 16, 2022).

[51] *Justice Manual* § 9-27.220.

[52] *Id.* § 9-27.760.

[53] *In re Smith*, 656 F.2d 1101, 1106-07 (5th Cir. 1981).

[54] *Justice Manual* § 9-27.760. *See Finn v. Schiller*, 72 F.3d 1182, 1189 (4th Cir. 1996) ("Overzealous prosecutors must not be allowed to file sweeping statements of fact alleging violations of various laws by unindicted individuals. A primary purpose of Rule 6 is to protect