

that he was not representing a particular client in conveying the above allegations.<sup>1556</sup> Sussmann, however, was in fact continuing to represent at least Joffe – a matter Sussmann subsequently acknowledged under oath in December 2017 testimony before Congress (without identifying the client by name).<sup>1557</sup>

Sussmann provided a similar set of allegations to the CIA that he had previously provided to the FBI. Specifically, Sussmann provided the CIA with an updated version of the Alfa Bank allegations and a new set of allegations that supposedly demonstrated that Trump or his associates were using, in the vicinity of the White House and other locations, one or more telephones from the Russian mobile telephone provider Yotaphone. The Office's investigation revealed that these additional allegations relied, in part, on the DNS traffic data that Joffe and others had assembled pertaining to the Trump Tower, Trump's New York City apartment building, the EOP,<sup>1558</sup> and Spectrum Health. Sussmann provided data to the CIA that he said reflected suspicious DNS lookups by these entities of domains affiliated with Yotaphone.<sup>1559</sup> Sussmann further stated that these lookups demonstrated that Trump or his associates were using a Yotaphone in the vicinity of the White House and other locations.<sup>1560</sup>

The FBI DNS experts with whom we worked also identified certain data and information that cast doubt upon several assertions, inferences, and allegations contained in (i) the above-quoted white papers about the Yotaphone allegations, and (ii) the presentation and Yotaphone-related materials that Sussmann provided to the CIA in 2017. In particular:

- Data files obtained from Tech Company-2, a cyber-security research company, as part of the Office's investigation reflect DNS queries run by Tech Company-2 personnel in 2016, 2017, or later reflect that Yotaphone lookups were far from rare in the United States, and were not unique to, or disproportionately prevalent on, Trump-related networks. Particularly, within the data produced by Tech Company-2, queries from the United States IP addresses accounted for approximately 46% of all yota.ru queries. Queries from Russia accounted for 20%, and queries from Trump-associated IP addresses accounted for less than 0.01%.
- Data files obtained from Tech Company-1, Tech Company-2, and University-1 reflect that Yotaphone-related lookups involving IP addresses assigned to the EOP began long before November or December 2016 and therefore seriously undermine the inference set forth in the white paper that such lookups likely reflected the presence of a Trump transition-team member who was using a Yotaphone in the EOP. In particular, this data reflects that approximately 371 such lookups involving

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<sup>1556</sup> *Sussmann* Tr. 05/20/2022 PM at 1366:13-16; *Sussmann* Government Exhibit 814.

<sup>1557</sup> U.S. House of Representatives Permanent Select Cmte. on Intelligence Interview of Michael Sussmann, (Dec. 18, 2017) at 29-30, 54-67.

<sup>1558</sup> "Executive Office of the President."

<sup>1559</sup> *Sussmann* Government Exhibit 817.

<sup>1560</sup> *Id.*

Yotaphone domains and EOP IP addresses occurred *prior* to the 2016 election and, in at least one instance, as early as October 24, 2014.

Two CIA employees (“CIA Employee-2” and “CIA Employee-3”) prepared a memorandum summarizing the meeting they had with Sussmann in February 2017. The final version included Sussmann’s representation that he was not representing any “particular client.”<sup>1561</sup> In their interviews with the Office, both CIA employees specifically recalled Sussmann stating he was not representing a particular client.<sup>1562 1563</sup>

During the meeting, Sussmann provided two thumb drives and four paper documents that, according to Sussmann, supported the allegations.<sup>1564</sup> The CIA analyzed the allegations and data that Sussmann provided and prepared a report to reflect its findings. The report explained that the analysis was done to examine whether the materials provided demonstrated “technical plausibility” of the following: “do linkages exist to any Russian foreign intelligence service; do linkages exist to Alpha [sic] Bank; are the provided documents/data based upon open source [] tools/activities; and is the provided

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<sup>1561</sup> *Sussmann* Government Exhibit 814.

<sup>1562</sup> OSC Report of Interview of CIA Employee-2 on Aug. 13, 2020 at 1; OSC Report of Interview of CIA Employee-3 on June 29, 2021 at 3-4.

<sup>1563</sup> Complete resolution of these issues is difficult. The Office’s investigation determined that Sussmann’s billing practices were irregular. For example, prior to the 2016 election, Sussmann billed all Alfa Bank-related work to the Clinton campaign. Following the election, Sussmann appears to have retroactively billed some of his time for the Alfa Bank-related work to Joffe. The Office did not receive a satisfactory explanation from Perkins Coie for this practice.

Sussmann also engaged in questionable client record keeping. For example, and for reasons unknown, Sussmann’s client retention letter to Tech Company-2 Executive-1 was addressed to a “Ms. Tina Wells” with the address of “1200 Pennsylvania Avenue, NW, Washington, D.C. 20004.” Sussmann’s letter memorializing his joint representation of Joffe and Tech Company-2 Executive-1 was addressed to “Ms. Tina Wells” and “Mr. Bob Hale.” *See* Representation letters from Perkins Coie to Rodney Joffe and Tech Company-2 Executive-1 dated 4/12/2017 and 4/13/2017. These fake names are apparent references to the actors who played “Mary Ann” and the “Skipper” on the television series “Gilligan’s Island.” (Though “Mary Ann” was actually played by Dawn Wells and the “Skipper” was played by Alan Hale.) The address provided for “Ms. Wells” (Tech Company-2 Executive-1) is “1200 Pennsylvania Avenue, NW, Washington, D.C.,” which is the William Jefferson Clinton EPA Headquarters and which has no apparent connection to Tech Company-2 Executive-1. The use of false names would appear to prevent a law firm from, among other things, conducting proper conflicts checks.

<sup>1564</sup> The titles of the four documents were: (i) “Network Analysis of Yota-Related Resolution Events”; (ii) “YotaPhone CSV File Collected on December 11<sup>th</sup>, 2016”; (iii) “Summary of Trump Network Communications”; and (iv) “ONINT on Trump Network Communications.” The two thumb drives contained six Comma Separated Value (“CSV”) files containing IP addresses, domain names and date/time stamps.

information/data technically conceivable.”<sup>1565</sup> The CIA ultimately concluded that the materials that Sussmann provided were neither “technically plausible” nor did they “withstand technical scrutiny” and further, that none of the materials showed any linkages between the Trump campaign or Trump Organization and any Russian foreign intelligence service or Alfa Bank.<sup>1566</sup> The report also noted that one of the thumb drives contained hidden data, which included Tech Company-2 Executive-1’s name and email address.<sup>1567</sup>

Accordingly, Sussmann’s conduct supports the inference that his representations to both the FBI and the CIA that he was not there on behalf of a client reflect attempts to conceal the role of certain clients, namely the Clinton campaign and Joffe, in Sussmann’s work. Such evidence also further supports the inference that Sussmann’s false statements to two different agencies were not a mistake or misunderstanding but, rather, a deliberate effort to conceal the involvement of specific clients in his delivery of data and documents to the FBI and CIA.

h. Sussmann’s Congressional testimony

On December 18, 2017, Sussmann testified under oath before the HPSCI and addressed his role in providing the Alfa Bank and Yotaphone allegations to the FBI and CIA. During the proceedings, the following exchange, in part, occurred:

Question: Okay. Did you have any other meetings with any other administration officials regarding the information you conveyed to the FBI G(eneral) C(ounsel) and CIA GC? Was there anyone else you contacted that worked for the Federal Government?

Sussmann: Not that I recall.

Question: Okay. So those are the only two? Now, I want to ask you, what was the information about?

Sussmann: The information was about communications, or potential communications between persons unknown in Russia, and persons unknown associated with the Trump Organization.

Question: Information that was given to you by a client?

Sussmann: Yes.

Question: So that information was not given to you by any other source but the client you represented?

Sussmann: Absolutely.

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<sup>1565</sup> SCO-074879 (Special Project – Trump Organization Yotaphone and Email Server Network Communications Analysis dated 02/15/2017 at 1).

<sup>1566</sup> *Id.*

<sup>1567</sup> *Id.* at 2.

Question: No, that's fair. So let me ask you this question: When you decided to engage the two principles [sic] one, Mr. Baker in September, and the general counsel of CIA in December, you were doing that on your own volition, based on information another client provided you. Is that correct?

Sussmann: No.

Question: So what was -- so did your client direct you to have those conversations?

Sussmann: Yes.

Question: Okay. And your client also was witting of you going to -- in February to disclose the information that individual had provided you?

Sussmann: Yes.

Question: Back to the FBI. You obviously had a conversation or you had a meeting at the FBI with Mr. Baker. Was there anybody else in the room from the FBI in that room with you?

Sussmann: No.

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Question: Okay. I want to ask you, so you mentioned that your client directed you to have these engagements with the FBI and - and to disseminate the information that client provided you. Is that correct?

Sussmann: Well, I apologize for the double negative. It isn't not correct, but when you say my client directed me, we had a conversation, as lawyers do with their clients, about client needs and objectives and the best course to take for a client. And so it may have been a decision that we came to together. I mean, I don't want to imply that I was sort of directed to do something against my better judgment, or that we were in any sort of conflict, but this was -- I think it's most accurate to say it was done on behalf of my client.<sup>1568</sup>

Sussmann's congressional testimony concealed and obscured the origins and political nature of his work on the Alfa Bank allegations. Moreover, Sussmann's testimony was also misleading in that it conveyed the impression to Congress that Sussmann's only client for the Alfa Bank allegations was Joffe, when in fact he was billing the work to the Clinton campaign. Indeed, during points in the testimony not quoted above, Sussmann was specifically asked if Fusion GPS was his client in these matters.<sup>1569</sup> Sussmann's answer

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<sup>1568</sup> U.S. House of Representatives Permanent Select Cmte. on Intelligence Interview of Michael Sussmann, (Dec. 18, 2017) at 59-67.

<sup>1569</sup> *Id.* at 74.

failed to disclose or volunteer that Fusion, in fact, had drafted one of the white papers that Sussmann gave to the FBI. Sussmann also failed to mention that the only client billed for Sussmann's pre-election work on those allegations was the Clinton campaign.

i. Perkins Coie's statements to the media

On October 4, 2018, Perkins Coie stated to multiple media outlets that "[w]hen Sussmann met with [the FBI General Counsel] on behalf of a client, it was not connected to the firm's representation of the Hillary Clinton Campaign, the DNC or any Political Law Group client."<sup>1570</sup> The following week, John Devaney, the Managing Partner of Perkins Coie, wrote to the editor of the *Wall Street Journal* and stated, "Mr. Sussmann's meeting with the FBI General [ ] was on behalf of a client with no connections to either the Clinton campaign, the DNC or any other Political Law Group client."<sup>1571</sup> The Office interviewed Perkins Coie leadership, including Mr. Devaney, regarding their knowledge of Sussmann's promotion of the Alfa Bank allegations and his billing entries related to the Clinton campaign. Each of the Perkins Coie employees denied knowing that Sussmann had in fact billed all of his time related to the Alfa Bank allegations to Clinton campaign.

Sussmann could have easily corrected Perkins Coie's mistaken belief that Sussmann's work on the Alfa Bank allegations "was not connected to the firm's representation of the Hillary Clinton Campaign, the DNC or any Political Law Group client." He chose not to.

j. Providing the Alfa Bank and Yotaphone allegations to Congress

The Office identified documents reflecting that in March and April 2017 – during the months after Sussmann provided the Alfa Bank and Yotaphone allegations to the CIA – the offices of at least two U.S. Senators received similar materials.

On March 22, 2017, Senators Jack Reed and Mark Warner wrote to Director Comey urging the FBI "to conduct an investigation" into reports that "a server belonging to the Trump Organization was purposefully communicating with servers belonging to a major Russian bank and the Spectrum Health organization in Michigan during the 2016 election."<sup>1572</sup> In support of its request, the letter attached an untitled white paper of unknown authorship. The paper included a summary of the Alfa Bank allegations, which was similar in substance to materials that Sussmann had provided to the FBI and CIA."<sup>1573</sup>

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<sup>1570</sup> See, e.g., *Michael Sussmann, Hillary Clinton Lawyer, Gave FBI Russia Meddling Document*, Wash. Times (Oct. 4, 2018); *Lawyer for Clinton Campaign and DNC Gave FBI Documents for Russia Probe, Sources Say*, Fox News (Oct. 4, 2018).

<sup>1571</sup> John Devaney, *Our Michael Sussmann Is an Honorable Man*, Wall St. J. (Oct. 18, 2018).

<sup>1572</sup> SCO-012000 (Letter from Senators Jack Reed and Mark Warner to Director Comey dated Mar. 22, 2017 and attachment).

<sup>1573</sup> *Id.* at 2-8.

About a month later, Senator Reed sent a second letter to Comey about the Yotaphone allegations.<sup>1574</sup> Like the first letter, this one attached a white paper of unknown authorship.<sup>1575</sup> The paper stated that a small number of Yotaphones are sold globally and a very small number – in the dozens – presently operate in the United States.<sup>1576</sup> The paper noted that a group of internet technical experts had discovered a pattern of Yotaphone-like activity occurring within the Trump Organization and the Spectrum Health networks, which it correlated with Trump campaign and transition team visits to Michigan.<sup>1577</sup> The data also purportedly showed that Yotaphone-like activity continued at the Trump Organization until December 15th when the same activity began within the EOP, from which the experts inferred that the person or persons using this device in the Trump campaign were part of the transition team that began working within the EOP.<sup>1578</sup> The paper concluded that “[g]iven the broad concerns about the Trump campaign’s connections to Russia, the existence and activity of the YotaPhone, as described here, stands out as an extraordinary oddity that warrants investigation.”<sup>1579</sup>

Finally, on May 8th, a staffer to Senator Reed sent a follow-up memorandum to the FBI’s Office of Congressional Affairs.<sup>1580</sup> The memorandum noted that the source of the analysis “insists on remaining anonymous, but is represented by an attorney.” It went on to say that “[t]he source is willing, through counsel, to have extensive technical discussions with the Bureau’s technical staff to explain the DNS records and the analysis that has been conducted.” The memorandum also noted that Senator Reed continued to request that the FBI pursue the allegations and that the source’s attorney was Michael Sussmann.<sup>1581</sup>

Because, however, either the FBI or the CIA, or both agencies, had already examined these allegations, the FBI did not take further investigative steps in response to these requests.<sup>1582</sup> The Office did not determine how, or from whom, Senators Reed and Warner received the above-described materials. An executive at Research Organization-1 (“Research Executive-1”) appears to have learned about the allegations from Senator Reed’s office and thereafter conducted work on these issues in coordination and consultation with Senator Reed’s staff. Research Executive-1 was a former FBI analyst and Hill staffer and

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<sup>1574</sup> SC-00081652 (Letter from Senator Jack Reed to Director Comey dated April 27, 2017 and attachment).

<sup>1575</sup> The paper was titled “An Unusual Russian Phone Operating on Trump Organization Networks and in the Executive Office of the President.”

<sup>1576</sup> *Id.* at 1.

<sup>1577</sup> *Id.* at 3.

<sup>1578</sup> *Id.*

<sup>1579</sup> *Id.*

<sup>1580</sup> SC-00081658 (Memorandum from Senator Reed Staffer-1 to FBI Office of Congressional Affairs Employee-1 dated 05/08/2017).

<sup>1581</sup> *Id.*

<sup>1582</sup> SCO\_007878 (Email from Moffa to Strzok, others dated 05/31/2017).

the founder of Research Organization-1. Research Executive-1's activities are further described below.

k. Tech Company-1's connections to the DNC and the Clinton campaign

The Office's investigation also identified evidence that the Clinton campaign and the DNC maintained or sought contemporaneous relationships with Tech Company-1 personnel, and used or considered using Tech Company-1 products and services, at around the same time as Joffe's efforts to promote the Alfa Bank and Yotaphone allegations. The campaign and the DNC considered Tech Company-1 a possible source of data, including telephone metadata, and there were a number of communications regarding Tech Company-1 data.<sup>1583</sup> The Office examined this information in considering whether the campaign or the DNC maintained broader relationships with Tech Company-1 that might have led or contributed to Joffe's Alfa Bank and Yotaphone activities. Although the Office identified multiple instances in which the campaign or the DNC maintained ties or communicated with Tech Company-1 and its employees, we did not identify evidence establishing that any such activities originated with Joffe or related to the Alfa Bank or Yotaphone allegations. Joffe was not copied or addressed on these communications, and the Office did not identify evidence of his awareness of these discussions. We also are not aware of any evidence that the campaign or the DNC used this data to conduct opposition research (*i.e.*, to gather information regarding an opposing candidate, as opposed to voter information) or otherwise target Trump or his associates.<sup>1584</sup>

The Office also considered whether any conduct related to the Tech Company-1 data constituted an illegal campaign contribution to the Clinton campaign by Tech Company-1 or other related criminal statutes. The Office did not identify any chargeable criminal conduct in this regard.

l. Other post-election efforts to continue researching and disseminating the Alfa Bank and Yotaphone allegations

In addition to the above efforts to disseminate the Alfa Bank and Yotaphone allegations to the FBI, the CIA, and Congress, the Office identified other efforts to generate

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<sup>1583</sup> See, e.g., SC-00013425 (Email from Clinton Campaign Official-1, to DNC Employee-1 and others, dated 05/13/2016) (referencing Tech Company-1 "who we use for digital stuff currently"); SC-00013423 (Email from DNC Employee-1 to Clinton Campaign Official-1 dated 05/13/2016) (stating "Yep, we're talking to [Tech Company-1] too"); SC-00013242 (Email from an employee of a data firm to a DNC employee and others dated 05/20/2016) (referencing Tech Company-1 "phone metadata"); SC-00014434 (Email from DNC Employee-2, to representatives of the Clinton campaign and others, dated 07/30/2016) (including Tech Company-1 data as among the data that the DNC would like to test).

<sup>1584</sup> In the course of our investigation, we also found evidence that Tech Company-1 or other private sector entities collected and sold certain other types of user data, such as telephone data, geolocation data, and other kinds of user information. See, e.g., SC-00013383 (Email dated 05/27/2016). The scope and detail of the data raise privacy issues that may be of public interest but that are outside the scope of this report. We expect that today most major campaigns likely buy and use these kinds of data.

and disseminate research and other materials relevant to these allegations during the post-election period. These post-election activities included (i) continued efforts by employees of Tech Company-1 and Tech Company-2 (including Tech Company-2 Executive-1) to gather data and information concerning Trump, Russia, and other topics, and (ii) efforts by Research Executive-1 to conduct research and analysis through a non-profit organization that Research Executive-1 created in 2017 with the assistance of former HFA Chairman John Podesta, Fusion GPS founder Glenn Simpson,<sup>1585</sup> and others.

*i. Continued efforts through Joffe-affiliated companies*

Documents and other records that the Office gathered from private entities reflect that during or around the same time period as the aforementioned letters from Senator Reed and afterwards, Joffe was continuing to use Tech Company-1 resources and personnel to discuss research issues relating to Trump and Russia, including the Alfa Bank and Yotaphone allegations.

For example, emails and other evidence reflect that in early 2017 and afterwards, Joffe tasked Tech Company-1 Employee-1 to run searchers over Tech Company-1's DNS traffic to gather additional information concerning the Alfa Bank and Yotaphone allegations. In particular:

- According to Tech Company-1 Employee-1, at or around the time of Trump's inauguration, Tech Company-1 Employee-1 had been running queries for Joffe relating to Trump, including queries concerning Alfa Bank, Yotaphone, and the EOP.<sup>1586</sup> Joffe and Tech Company-1 Employee-1 intended to continue running certain of these queries after Trump's inauguration.<sup>1587</sup> Soon after the inauguration, however, Tech Company-1 Employee-1 and Joffe noticed that Tech Company-1's access to the EOP's DNS traffic had ceased.<sup>1588</sup> Tech Company-1 Employee-1 and Joffe never learned why Tech Company-1 no longer had access to the EOP's DNS data, but it was clear that Tech Company-5, the contractor that handled the EOP's DNS traffic and the company for which Tech Company-1 maintained the EOP's DNS servers, was no longer handling the EOP's data.<sup>1589</sup> The Office was unable to determine the reason such data access ceased.
- During the time period, Joffe also continued to direct Tech Company-1 Employee-1 to run Trump-related searches over Tech Company-1's data, and emails reflect the aforementioned end of Tech Company-1's access to EOP data.
- For example, on February 14, 2017—five days after Sussmann's meeting with the CIA—Joffe emailed Tech Company-1 Employee-1 with the subject line “for obvious reasons. . . ,” and stated in the email: “Could you please run a search going back

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<sup>1585</sup> Simpson declined to be interviewed by the Office.

<sup>1586</sup> OSC Report of Interview of Tech Company-1 Employee-1 on Feb. 25, 2021 at 2-5.

<sup>1587</sup> *Id.*

<sup>1588</sup> *Id.*

<sup>1589</sup> OSC Report of Interview of Tech Company-1 Employee-1 on July 9, 2021.

from Feb 1 to this moment (or later ;-)) searching for all activity (not just RCODE 0) for wildcard \*.yota.\* in recursive? Thanks!”<sup>1590</sup>

- That same day, Tech Company-1 Employee-1 uploaded data responsive to Joffe’s request to a file transfer site and emailed Joffe: “feb 01-14 uploaded to sftp site. . . Note that these contain everything, including TLD queries.”<sup>1591</sup>
- On the following day, Joffe replied: “[Tech Company-1 Employee-1], looks like no activity for EOP, right? Odd. Could you redo all of Jan so we can see when it disappeared.”<sup>1592</sup>
- Later that day, Tech Company-1 Employee-1 responded to Joffe: “yeah – I only looked at a couple of hours on the first day but I noticed the same thing. Most of the recursive traffic was from Comodo address. I think I need to look at overall EOP volumes since Jan 20 to see if there have been significant volume changes.”<sup>1593</sup>
- On February 16, 2017 Tech Company-1 Employee-1 emailed Joffe, analyzing location information for three IP addresses that Tech Company-1 Employee-1 had found communicated with Yotaphone IP addresses between January 6, 2017 and January 19, 2017. Tech Company-1 Employee-1 stated, in part:

The resolver address in the queries is the address that is dedicated to [Tech Company-5] and was used for EOP traffic. Only the first client address maps to EOP. The others are:

[IP address] – Haifa, Israel

[IP address] – Madison, Wisconsin

[IP address] – amazonaws

The timestamps on the records are a bit confusing as well – two queries from two different addresses for the same qname as the exact same second in two different nodes (Chicago and Frankfurt). May be an error in processing but still odd.<sup>1594</sup>

- As of approximately five months later, Tech Company-1 Employee-1 was continuing to run Trump-related searches over Tech Company-1’s DNS traffic. In particular, on July 18, 2018, Tech Company-1 Employee-1 emailed Joffe:

I have 4 jobs that look specifically for Trump data

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<sup>1590</sup> SC-00030423 (Email from Joffe to Tech Company-1 Employee-1 dated 02/14/2017).

<sup>1591</sup> SC-00030425 (Email from Joffe to Tech Company-1 Employee-1 dated 02/15/2017).

<sup>1592</sup> *Id.*

<sup>1593</sup> SC-00030424 (Email from Tech Company-1 Employee-1 to Joffe dated 02/15/2017)

<sup>1594</sup> SC-00030427 (Email from Tech Company-1 Employee-1 to Joffe dated 02/16/2017).

- clnt\_ip='217.12.97.15' or clnt\_ip='217.12.96.15' or clnt\_ip='167.73.110.8'
- qname = 'trump1.contact-client.com'
- qname = 'mail1.trump-email.com'
- a query that looks for a bunch of alfa ban.ru domains<sup>1595</sup>

In sum, it appears that efforts to gather and mine data concerning Trump from Tech Company-1's DNS data continued for many months after the 2016 Presidential election.

*ii. Efforts by Research Executive-1 and others*

The Office also gathered information reflecting that, soon after the 2016 election, a number of individuals with ties to the Clinton campaign or Democratic politics met, organized, and executed additional efforts through which they intended to ensure that research and dissemination of materials concerning election interference, including Trump's possible illicit ties to Russia, would continue. These efforts included continued work regarding the Alfa Bank and Yotaphone allegations. As described in further detail below, participants in these activities continued to provide materials to the FBI in an effort to trigger further investigations of Trump's ties to Russia.

In the days immediately after the election, former Clinton campaign Chair Podesta began speaking with associates about a specific potential research project, namely, to create a non-profit organization that would conduct research regarding election interference and would assist the U.S. government and the media in gathering information on this issue.<sup>1596</sup> Podesta spoke and met with Glenn Simpson, Research Executive-1, and others regarding his idea. (Podesta told investigators that he was unaware at that time, or at any time prior to October 2017, that Glenn Simpson and Fusion GPS had carried out opposition work on the Steele Dossier and related matters on behalf of Podesta's prior employer, the Clinton campaign. According to Podesta, he knew during the campaign that Perkins Coie was conducting opposition research for the campaign, but did not know who had been actually conducting that research until October 2017 when he learned specifically that Fusion GPS had been paid by both the campaign and the DNC.)<sup>1597</sup>

In approximately the late 2016 time period, former U.S. Senator Tom Daschle brokered an introduction between Podesta and Research Executive-1—who previously had worked as an FBI analyst, as a Senate Armed Services Committee staffer, and at a private firm founded by Daschle, the Daschle Group. By that time, Research Executive-1 had founded and was running Research Organization-1, which conducted research for private clients.<sup>1598</sup> Podesta assisted Research Executive-1 by helping him contact and vet numerous

<sup>1595</sup> SC-00030428 (Email from Tech Company-1 Employee-1 to Joffe dated 07/18/2017).

<sup>1596</sup> OSC Report of Interview of Research Executive-1 on Apr. 14, 2021 at 1.

<sup>1597</sup> OSC Report of Interview of John Podesta on Jan. 19, 2022 at 1-2.

<sup>1598</sup> OSC Report of Interview of Research Executive-1 on Apr. 14, 2021 at 1; OSC Report of Interview of John Podesta on Jan. 19, 2022 at 5.

potential donors on the West Coast who would ultimately fund Research Executive-1's research on election interference.<sup>1599</sup>

Also, at around this time, Glenn Simpson called Research Executive-1 and sought his/her assistance on Podesta's proposed election interference project. Research Executive-1 and Simpson initially met for coffee in Washington, D.C. In December 2016, Simpson briefed Research Executive-1 on the work he had been doing concerning Trump's purported ties to Russia and expressed concern for his own safety.<sup>1600</sup> According to Research Executive-1, Simpson did not mention – and Research Executive-1 did not know at this time – that Simpson had been doing work for Perkins Coie or the Clinton campaign.<sup>1601</sup>

In January 2017, Simpson and Research Executive-1 again met to discuss the potential research project.<sup>1602</sup> Also in January 2017, and as a result of these discussions, Research Executive-1 formed Research Organization-2, a non-profit organization that would continue researching election interference issues, including Trump's potential ties to Russia.<sup>1603</sup>

Following its formation, Research Organization-2 entered into a contract with Fusion GPS and hired a number of specialists to assist its research. Research Organization-2 also maintained a contract with Steele's firm, Orbis Business Intelligence, a/k/a "Walsingham Partners."<sup>1604</sup>

As noted above, among the research that Research Organization-2 conducted, and provided to the FBI, was an analysis of the Alfa Bank allegations. According to Research Executive-1, he first became aware of these allegations when Senator Reed's office contacted him in 2017 to inform him of them.<sup>1605</sup> Research Executive-1 learned from a staffer for Senator Reed, ("Reed Staffer-2") – whom Research Executive-1 knew from his time on the Senate staff – that there was a particular "client" who used the name "Max" and who was behind the allegations.<sup>1606</sup> Research Executive-1 also learned that Reed had requested further information from the FBI about its efforts to investigate this matter because multiple Senators were reportedly frustrated that, in their view, the FBI was not investigating the Alfa Bank allegations.<sup>1607</sup> Research Executive-1 agreed to research the issue through Research Organization-2. In conducting work on the Alfa Bank matter,

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<sup>1599</sup> OSC Report of Interview of John Podesta on Jan. 19, 2022 at 5.

<sup>1600</sup> OSC Report of Interview of Research Executive-1 on Apr. 14, 2021 at 2.

<sup>1601</sup> *Id.* at 1-2.

<sup>1602</sup> *Id.* at 1.

<sup>1603</sup> *Id.* at 1-2.

<sup>1604</sup> *Id.* at 2.

<sup>1605</sup> *Id.* at 2.

<sup>1606</sup> *Id.* at 3.

<sup>1607</sup> *Id.*

Research Executive-1 isolated Fusion GPS from the project for reasons unknown to the Office.<sup>1608</sup>

As a result of receiving this information from the Senate Armed Services Committee, Research Executive-1 met in early 2017 with Sussmann at Perkins Coie's office.<sup>1609</sup> At the meeting, Sussmann discussed the allegations, including media reports concerning them.<sup>1610</sup> According to Research Executive-1, Sussmann did not identify his "client" by name, but stated that he (Sussmann) was dealing with the government on the issue; that he was persuaded by the data; and that he was frustrated by the FBI's dismissal of it.<sup>1611</sup> Sussmann also described to Research Executive-1 his interactions with the media and his frustration with their coverage of it.<sup>1612</sup>

Later that year, Research Executive-1 again met Sussmann at Perkins Coie regarding the Alfa Bank allegations. Sussmann's client, Joffe, was also present at this meeting. During their discussions, Sussmann and Joffe stated that they believed the FBI had sent the Alfa Bank allegations to the wrong investigative team.<sup>1613</sup> Research Executive-1 was told that Joffe was part of a multi-million-dollar program that collected DNS data, which was the source of the data underlying the Alfa Bank allegations.<sup>1614</sup>

During the same time period, Research Executive-1 had assembled an investigative team to examine the Alfa Bank allegations, including a number of DNS experts who had previously worked for multiple U.S. intelligence agencies. Research Executive-1's team tested Joffe's data and conducted their own analysis. The team was skeptical of the Alfa Bank data and found no evidence of a secret channel of communications, but Research Executive-1 said, "it was something."<sup>1615</sup>

Research Executive-1 also learned of the Yotaphone allegations from Sussmann. Research Executive-1's team did some, but not a lot of, work on these allegations. Research Executive-1 told our investigators that he was "totally" skeptical of the Yotaphone assertions.<sup>1616</sup> Research Executive-1 understood that the EOP's computer network was run by the Department of Homeland Security, which contracted out the services to an unknown vendor with access to the data that formed the basis of the Yotaphone allegations.<sup>1617</sup>

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<sup>1608</sup> *Id.* at 2-3.

<sup>1609</sup> *Id.*

<sup>1610</sup> *Id.*

<sup>1611</sup> *Id.*

<sup>1612</sup> *Id.*

<sup>1613</sup> *Id.* at 3.

<sup>1614</sup> *Id.* at 4.

<sup>1615</sup> *Id.*

<sup>1616</sup> *Id.*

<sup>1617</sup> *Id.* at 3-4.

*iii. Meetings between DARPA and University-1*

In connection with its consideration of the Alfa Bank issue, the Office also gathered information about meetings between certain of the aforementioned University-1 employees and staff members of both the Senate Armed Services Committee and HPSCI. During at least one of these meetings, the participants discussed the Alfa Bank allegations, including the possibility that researchers under DARPA's Enhanced Attribution ("EA") program might assist HPSCI in investigating the allegations.<sup>1618</sup> The Office considered whether these activities might be relevant to a prosecution for contract fraud or abuse of government resources.

In early October 2018, a representative of the Senate Armed Services Committee requested via University-1's Government Affairs representative that researchers affiliated with the EA program provide a briefing to Committee staff members in Washington, D.C. Personnel at University-1 agreed to facilitate such a briefing.<sup>1619</sup>

In late October 2018, another University-1 researcher ("University-1 Researcher-3") and a DARPA Program Manager, ("DARPA Program Manager-1") traveled to Washington, D.C. to provide the briefing. Upon their arrival, University-1 Researcher-3 and DARPA Program Manager-1 met with Reed Staffer-2 and another Committee staffer in the Russell Senate Office Building. At the meeting, which lasted only a short time, University-1 Researcher-3 and DARPA Program Manager-1 provided a broad and brief overview of the EA program – which they understood to be the purpose of the meeting. At the conclusion of the meeting, which had been cut short due to scheduling conflicts, Reed Staffer-2 indicated to University-1 Researcher-3 that he would like to schedule a follow-up meeting with University-1 researchers in attendance so that the Committee staff could receive a more comprehensive briefing on the EA program.<sup>1620</sup>

The following month, in November 2018, University-1 Researcher-3 and University-1 Researcher-2 traveled to Washington, D.C. to provide a second briefing on EA for staffers for the Senate Armed Services Committee. University-1 Researcher-2 recalled that the night before the meeting, he spoke with Joffe, who told him that after the Senate briefing, there was going to be another meeting Joffe wanted him to attend. Joffe told University-1 Researcher-2 that there would be someone to meet him and take him to this other meeting.<sup>1621</sup>

The November 2018 meeting occurred in the Hart Senate Office Building with Reed Staffer-2 and two staffers present. At the meeting, University-1 Researcher-3 and

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<sup>1618</sup> The Enhanced Attribution program is intended to bring transparency to the actions of malicious cyber actions undertaken by adversaries and other individual cyber operators. *See* <https://www.darpa.mil/enhanced-attribution>.

<sup>1619</sup> OSC Report of Interview of University-1 Researcher-3 on Aug. 10, 2021 at 2.

<sup>1620</sup> *Id.*

<sup>1621</sup> OSC Report of Interviews of University-1 Researcher-2 in July, Aug. 2021 at 4.

University-1 Researcher-2 gave an unclassified presentation regarding the EA program and the history of DNS.<sup>1622</sup>

Following the meeting in the Senate space, Reed Staffer-2 informed University-1 Researcher-3 and University-1 Researcher-2 that some other people were interested in speaking with them. University-1 Researcher-3 and University-1 Researcher-2 agreed to meet with these other people, who turned out to be HPSCI staffers, but the meeting needed to be quick due to University-1 Researcher-3's schedule. Reed Staffer-2 then brought them into the secure space of the HPSCI.<sup>1623</sup> Before the meeting, University-1 Researcher-3 told Reed Staffer-2 that University-1 Researcher-2 did not possess a security clearance, to which Reed Staffer-2 stated that the briefing would be unclassified.<sup>1624</sup>

After arriving in the HPSCI secure conference room, Reed Staffer-2 introduced University-1 Researcher-3 and University-1 Researcher-2 to several HPSCI staffers. During the meeting, University-1 Researcher-3 and University-1 Researcher-2 began to provide a similar presentation to that which they had given to the Senate staffers. Soon after the start of the presentation, however, the Committee staffers cut University-1 Researcher-3 off and showed him and University-1 Researcher-2 a news article about Trump, Russia, and Alfa Bank that University-1 Researcher-3 had not seen previously.<sup>1625</sup> The staffers asked University-1 Researcher-3 to read the article and said they wanted University-1's help with the matter, and Reed Staffer-2 said University-1 Researcher-3 "... could make it easier."<sup>1626</sup>

University-1 Researcher-3 said he responded by saying that it would be inappropriate for a public university to do that, and he suggested they contact DARPA. University-1 Researcher-3 told investigators that Reed Staffer-2 then said, "We are now in charge," and one of the HPSCI staffers said that their boss (Congressman Adam Schiff) would soon take over leadership of HPSCI.<sup>1627</sup> University-1 Researcher-3 took the comment as a mild threat. University-1 Researcher-3 said he then "dragged" University-1 Researcher-2 out of the meeting. University-1 Researcher-2 similarly recalled that University-1 Researcher-3 had quickly ended the meeting.<sup>1628</sup> University-1 Researcher-3 told investigators that he told University-1 Researcher-2, "Don't touch this with a ten foot pole, stay away from this."<sup>1629</sup> University-1 Researcher-3 said he had no recollection of

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<sup>1622</sup> OSC Report of Interview of University-1 Researcher-3 on Aug. 10, 2021 at 2.

<sup>1623</sup> *Id.*

<sup>1624</sup> *Id.* at 2.

<sup>1625</sup> OSC Report of Interview of University-1 Researcher-3 on Aug. 10, 2021 at 2-3.

University-1 Researcher-2 recalled that the staffers showed him articles about Trump's DNS ties to Alfa Bank, and they asked him and University-1 Researcher-3 if there was anything they could do to help with "this." OSC Report of Interviews of University-1 Researcher-2 in July, Aug. 2021 at 4.

<sup>1626</sup> OSC Report of Interview of University-1 Researcher-3 on Aug. 10, 2021 at 3.

<sup>1627</sup> *Id.*

<sup>1628</sup> OSC Report of Interviews of University-1 Researcher-2 in July, Aug. 2021 at 4.

<sup>1629</sup> OSC Report of Interview of University-1 Researcher-3 on Aug. 10, 2021 at 3.

University-1 Researcher-2 mentioning the work and research he (University-1 Researcher-2) already had done at University-1 regarding the Alfa Bank-related allegations.<sup>1630</sup>

University-1 Researcher-3 recalled that he informed DARPA Program Manager-1 of this request from the HPSCI staffers, including his objections to the nature of the request.<sup>1631</sup> University-1 Researcher-3 recalls that DARPA Program Manager-1 listened but did not react substantively to the information.<sup>1632</sup> When interviewed by the Office, DARPA Program Manager-1 denied learning of the Alfa Bank allegations other than through media reports.<sup>1633</sup> DARPA Program Manager-1 maintained that he was unaware of any role that University-1 personnel played in the Alfa Bank allegations.<sup>1634</sup>

iv. *The relevant Trump Organization email domain and Yotaphone data*

This subsection first describes what our investigation found with respect to the allegation that there was a covert communications channel between the Trump Organization and Alfa Bank. It includes the information we obtained from interviews of Listrak and Cendyn employees. It then turns to the allegation that there was an unusual Russian phone operating on the Trump Organization networks and in the Executive Office of the President. We tasked subject matter experts from the FBI's Cyber Technical Analysis and Operations Section to evaluate both of these allegations.

With respect to the allegation that there was a covert channel of communication between the Trump Organization and Alfa Bank, FBI subject matter experts conducted technical analyses and made assessments of the passive DNS data and information that was provided to the FBI and CIA in the white paper[s].<sup>1635</sup> We also interviewed employees at the two contractors involved in managing the trump-email.com domain, Cendyn and Listrak. Cendyn, a customer relationship manager, or marketing services provider, registered the domain on behalf of the Trump Organization in 2009. The IP address associated with the domain, 66.216.133.29, is, and was, operated by Listrak, a subcontractor

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<sup>1630</sup> *Id.*

<sup>1631</sup> *Id.*

<sup>1632</sup> *Id.*

<sup>1633</sup> OSC Report of Interview of DARPA Program Manager-1 on Feb. 11, 2021 at 3.

<sup>1634</sup> *Id.*

<sup>1635</sup> FBI Cyber Division Cyber Technical Analysis Unit, Technical Analysis Report (April 20, 2022) (hereinafter "*FBI Technical Analysis Report*") (SCO\_094755). As explained by the FBI experts who assisted us in this area, DNS (Domain Name System) refers to a distributed system of computers on the internet that maintain the association between domain names and IP addresses. *Passive DNS* is an industry practice of cataloging and aggregating DNS queries at various observable points for research, analytical, marketing, and security purposes. *FBI Technical Analysis Report* at 5-6.

of Cendyn. Listrak provides marketing automation services, including sending bulk email.<sup>1636</sup>

Listrak personnel stated that the Trump Organization's IP address was one of numerous IP addresses assigned to a cluster of four to eight physical servers that handle all outbound email for thousands of Listrak clients. Significantly, Listrak informed us that the IP address and domain used for the Trump Organization were configured to only send *outbound* email.<sup>1637</sup> Moreover, Listrak explained that, as is customary for such services, no one in the Trump Organization had direct technical or system administrator access to Listrak servers.<sup>1638</sup> Indeed, the very notion of a "Trump Server" is a misnomer in that the servers involved did not belong to and were not controlled by the Trump Organization.<sup>1639</sup> To the contrary, the servers belonged to and were controlled by Listrak at all times.<sup>1640</sup> Listrak further stated that it never had, during this time period, a dedicated server (physical or virtual) to handle Trump Organization communications.<sup>1641</sup> Rather, the server that hosted the Trump Organization housed hundreds of other clients and that each server sent millions of emails out for clients.<sup>1642</sup>

Cendyn personnel told us that the Trump Organization's contract with Cendyn for digital and email marketing ended in 2015, but the domain name continued to be registered and pointed to the same IP address.<sup>1643</sup> Moreover, after Cendyn's contract with the Trump Organization expired in 2015, Cendyn continued to use the IP address to send emails out on behalf of other Cendyn clients.<sup>1644</sup> However, there was no data provided at the time, nor is such currently available, that shows which clients were sending email from the IP address during the May through September 2016 time period examined in the white paper.<sup>1645</sup> Cendyn, however, maintained technical control of the domain until March 2017.<sup>1646</sup> Similarly, Listrak maintained complete technical control of its servers during the same May through September 2016 time period.<sup>1647</sup>

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<sup>1636</sup> OSC Report of Interview of Cendyn CEO and CTO on Nov. 17, 2021; OSC Report of Interview of Listrak Employee-1 and personnel on Oct. 27, 2021.

<sup>1637</sup> OSC Report of Interview of Listrak Employee-1 and personnel on Oct. 27, 2021 at 1-2.

<sup>1638</sup> *Id.*

<sup>1639</sup> *Id.*

<sup>1640</sup> OSC Report of Interview of Cendyn CEO and CTO on Nov. 17, 2021 at 1-2.

<sup>1641</sup> OSC Report of Interview of Listrak Employee-1 and personnel on Oct. 27, 2021 at 1-2.

<sup>1642</sup> *Id.*

<sup>1643</sup> OSC Report of Interview of Cendyn CEO and CTO on Nov. 7, 2021 at 2.

<sup>1644</sup> *Id.*

<sup>1645</sup> *Id.* at 1. Cendyn explained that it does not retain these outbound emails, as they are marketing emails, which are wiped from Cendyn's systems within 30 days of being sent.

<sup>1646</sup> *Id.* at 2.

<sup>1647</sup> OSC Report of Interview of Listrak Employee-1 and personnel on Oct. 27, 2021 at 2.

Because the Trump Organization had no access to the server or any of the systems involved, Listrak personnel told us that the only way any alleged covert communications channel could have existed would be if Listrak employees deliberately modified their mission critical servers with non-standard software or configurations. But they pointed out that making such changes would risk the integrity, reliability or availability of their systems. Moreover, Listrak told us that changing its servers to accommodate incoming messages would completely alter the core structure of its business operations, which is primarily to send outgoing mass marketing emails.<sup>1648</sup> Listrak employees responsible for the design and administration of these servers categorically stated this did not happen and that it would be impossible for it to have happened without their knowledge and without affecting other clients' account functions and operations.<sup>1649</sup>

In addition to investigating the actual ownership and control of the IP address, the Office tasked FBI cyber experts with analyzing the technical claims made in the white paper.<sup>1650</sup> This endeavor included their examination of the list of email addresses and send times for all emails sent from the Listrak email server from May through September 2016, which is the time period the white paper purportedly examined.<sup>1651</sup> The FBI experts also conducted a review of the historical TOR exit node data.<sup>1652</sup>

The technical analysis done by the FBI experts revealed that the data provided by Sussmann to the FBI and used to support Joffe and the cyber researchers' claim that a "very unusual distribution of source IP addresses" was making queries for mail1.trump-email.com was incomplete.<sup>1653</sup> Specifically, the FBI experts determined that there had been a substantial amount of email traffic from the IP address that resulted in a significantly larger volume of DNS queries for the mail1.trump-email.com domain than what Joffe, University-1 Researcher-2 and the cyber researchers reported in the white paper or included on the thumb drives accompanying it.<sup>1654</sup> The FBI experts reviewed all of the outbound email transmissions, including address and send time for all emails sent from the Listrak server

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<sup>1648</sup> *Id.* at 2.

<sup>1649</sup> *Id.*

<sup>1650</sup> *FBI Technical Analysis Report* at 3-4.

<sup>1651</sup> *Id.* at 4, 10-11.

<sup>1652</sup> *Id.* at 5-6, 12-13. The Onion Router ("TOR") is an open source global anonymous communications platform, frequently used to access websites without exposing the IP address of the browser to the website or to intermediary observation. TOR publishes a list of TOR exit nodes, which are the last node in a TOR circuit and which provides an unencrypted connection to internet hosts. <https://collector.torproject.org/archive/exit-lists/>.

<sup>1653</sup> Our experts noted that the assertion of the white paper is not only that Alfa Bank and Spectrum Health servers had resolved, or looked up, the domain [mail1.trump-email.com] during a period from May through September of 2016, but that their resolutions accounted for the vast majority of lookups for this domain. *FBI Technical Analysis Report* at 6.

<sup>1654</sup> The USB drive that Sussman provided to the FBI on September 19, 2016, which was proffered as data supporting the claims in the white paper, contained 851 records of DNS resolutions for domains ending in trump-email.com. *FBI Technical Analysis Report* at 7.

from May through September 2016, and determined that there had been a total of 134,142 email messages sent between May and August 2016, with the majority sent on May 24 and June 23.<sup>1655</sup> The recipients included a wide range of commercial email services, including Google and Yahoo, as well as corporate email accounts for multiple corporations.<sup>1656</sup>

Similarly, the FBI experts told us that the collection of passive DNS data used to support the claims made in the white paper was also significantly incomplete.<sup>1657</sup> They explained that, given the documented email transmissions from IP address 66.216.133.29 during the covered period, the representative sampling of passive DNS would have necessarily included a much larger volume and distribution of queries from source IP addresses across the internet. In light of this fact, they stated that the passive DNS data that Joffe and his cyber researchers compiled and that Sussmann passed onto the FBI was significantly incomplete, as it included no A-record (hostname to IP address) resolutions corresponding to the outgoing messages from the IP address.<sup>1658</sup> Without further information from those who compiled the white paper data,<sup>1659</sup> the FBI experts stated that it is impossible to determine whether the absence of additional A record resolutions is due to the visibility afforded by the passive DNS operator, the result of the specific queries that the compiling analyst used to query the dataset, or intentional filtering applied by the analyst after retrieval.<sup>1660</sup>

The FBI experts also examined the white paper's claim that a particular "Spectrum Health IP address is a TOR exit node used exclusively by Alfa Bank, *i.e.*, Alfa Bank communications enter a TOR node somewhere in the world and those communications exit, presumably untraceable, at Spectrum Health."<sup>1661</sup> However, the FBI experts assisting us noted that TOR publishes a comprehensive list of exit nodes dating back to February 22, 2010.<sup>1662</sup> The FBI examined this data for dates between February 22, 2010 and September 1, 2021. No instances of IP addresses in the range of 167.73.x.x (assigned to Spectrum Health) were ever indexed as TOR exit nodes.<sup>1663</sup>

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<sup>1655</sup> *Id.*

<sup>1656</sup> *Id.*

<sup>1657</sup> *Id.* at 11.

<sup>1658</sup> *Id.*

<sup>1659</sup> The data used for the white paper came from Joffe's companies Packet Forensics and Tech Company-1. As noted above, Joffe declined to be interviewed by the Office, as did Tech Company-2 Executive-1. The 851 records of resolutions on the USB drive were an exact match for a file of resolutions sent from University-1 Researcher-2 to University-1 Researcher-1 on July 29, 2016, which was referred to as "[first name of Tech Company-2 Executive-1]'s data." *Id.* at 7.

<sup>1660</sup> *Id.*

<sup>1661</sup> *FBI Technical Analysis Report* at 12-13.

<sup>1662</sup> <https://collector.torproject.org/archive/exit-lists/>.

<sup>1663</sup> *Id.*

The FBI experts who examined this issue for us stated that historical TOR exit node data conclusively disproves this white paper's allegation in its entirety.<sup>1664</sup> Moreover, the FBI experts further explained that the construction of the TOR network makes the arrangement described in the white paper impossible. Indeed, they added that even if true or possible, using the TOR network in the manner alleged in the white paper would result in worse anonymization and security than simply using TOR in its default configuration.<sup>1665</sup> Rather than allowing for clandestine communication, the setup described in the white paper would create a static proxy with a known endpoint that could be more easily traced with traffic to the relatively small number of guard nodes, and which would allow for the identification of the true source IP much more easily than using a randomly selected exit node for each connection as the TOR system is designed to do.<sup>1666</sup> In simpler terms, the FBI experts told us that using a TOR exit node in the manner described by the white paper would make a secret communication channel much easier to find, not harder. And, they further noted that although it is entirely likely that one or more users, at some time, connected to both Spectrum Health and Alfa Bank using TOR, and may have even come through the same exit node, this possibility in no way indicates any kind of correlation because of the deliberately random nature of TOR routing.<sup>1667</sup>

We also tasked the same FBI experts to review the white paper on Yotaphones that Sussmann provided to another government agency on behalf of Joffe.<sup>1668</sup> This white paper stated that there was "an unusual Russian phone" that was "operating on Trump Organization networks and in the Executive Office of the President."<sup>1669</sup> Its claims were based primarily on DNS resolution requests for the domains "client.yota.ru" and "wimax-client.yota.ru" from July 23, 2016 through January 15, 2017 from Trump-affiliated networks, coupled with the assertion that such YotaPhone resolution request activity was rare in the United States.<sup>1670</sup>

However, the FBI experts examined historical DNS query data for the yota.ru domains for the same time period as that analyzed in the white paper. Indeed, they examined data that the white paper researchers also had access to.<sup>1671</sup> In doing so, the FBI experts determined that, contrary to the claims set forth in the white paper, the DNS query data actually indicated that resolution requests for these domains were not at all rare from U.S.-based IP addresses, as compared with other countries.<sup>1672</sup> These experts further

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<sup>1664</sup> *FBI Technical Analysis Report* at 12-13.

<sup>1665</sup> *Id.* at 13.

<sup>1666</sup> *Id.*

<sup>1667</sup> *Id.*

<sup>1668</sup> SC-00001940, Network Analysis of Yota-Related Resolution Events.

<sup>1669</sup> *Id.*

<sup>1670</sup> *Id.* at 2.

<sup>1671</sup> FBI Cyber Technical Operations Unit, *Trump/Alfa/Spectrum/Yota Observations and Assessment* (undated; unpaginated).

<sup>1672</sup> *Id.*

observed that the DNS query data used to support the white paper claims was deliberately filtered to select only those organizations in the United States with ties to Trump.<sup>1673</sup>

In sum, as a result of our investigation, the FBI experts advised us that actual data and information on YotaPhone resolution requests directly undermined or refuted several conclusions and inferences included in the Yotaphone white paper.<sup>1674</sup>

## **2. Prosecution decisions**

We identified evidence that certain individuals and entities promoted the Alfa Bank and Yotaphone allegations to the Intelligence Community. We examined the validity of the allegations, conducted technical analyses, and assessed the data and information that was provided to the FBI and CIA. We examined this evidence in considering whether the activities by these individuals and entities, as well as government officials, violated any criminal statutes. In particular, the investigation examined whether these individuals and entities either on their own provided, or conspired with others to provide, false or misleading information to the Intelligence Community.

*First*, and as noted above, we identified certain statements that Sussmann made to the FBI and the CIA that the investigation revealed were false. Given the seriousness of the false statement and its effect on the FBI's investigation, a federal Grand Jury found probable cause to believe that Sussmann had lied to the FBI and charged him with making a false statement to the Bureau, in violation of 18 U.S.C. § 1001.<sup>1675</sup> Ultimately, after a two-week trial, a jury acquitted Sussmann of the false statement charge.

We also considered whether any criminal actions were taken by other persons or entities in furtherance of Sussmann's false statement to the FBI. The evidence gathered in the investigation did not establish that any such actions were taken.

*Second*, our investigation uncovered evidence of actions taken by individuals and entities with ties to the Clinton campaign to promote the Alfa Bank and Yotaphone allegations to the Intelligence Community and Congress. We evaluated whether any of these individuals made a false statement within the meaning of 18 U.S.C. § 1001 and whether admissible evidence would be sufficient to obtain a conviction for such an offense. We also considered whether actions taken by certain persons could have implicated federal election laws. We concluded that the evidence was not sufficient to obtain and sustain a criminal conviction.

We examined as well whether the actions and conduct of Sussmann and various other persons in advancing the Alfa Bank and Yotaphone allegations established a conspiracy to defraud the United States, in violation of 18 U.S.C. § 371. Ultimately, we concluded that our evidence was not sufficient to obtain and sustain a criminal conviction. We did not obtain admissible evidence likely to meet the government's burden to prove beyond a reasonable doubt that the individuals acted "willfully," *i.e.*, with general knowledge of the illegality of their conduct. We faced significant obstacles in obtaining

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<sup>1673</sup> *Id.*

<sup>1674</sup> *Id.*

<sup>1675</sup> *Sussmann Indictment* at 27.

evidence because many of the individuals and entities involved invoked multiple privileges, including the attorney-client and Fifth Amendment privileges.

*Third*, we examined the FBI's actions in response to the Alfa Bank and Yotaphone allegations. We assessed whether any FBI or other federal official conspired with any other persons in promoting the Alfa Bank allegations to damage the Trump campaign or benefit the Clinton campaign. Our investigation did not find any evidence that any FBI official or employee knowingly and intentionally participated in some type of conspiracy with others to promote the Alfa Bank allegations or cause the FBI to open an investigation. Certain FBI officials, however, declined to be interviewed on the matter, and others professed a lack of recollection of it.

*Finally*, we considered the conduct of third parties and other government officials regarding actions taken following the election that involved the continued promotion of the Alfa Bank and Yotaphone allegations to law enforcement and other government bodies. We did not, however, develop sufficient evidence to charge false statements or conspiracy crimes in connection with any intentional misrepresentations in this regard because it was unclear, in numerous instances, when particular data searches involving the alleged activity at the EOP were run, and when specific data files came into possession of the relevant persons (*i.e.*, whether such data was searched or identified before or after materials were received by the CIA or Congress). In addition, because of the protections of attorney-client privilege and other impediments, we were unable to determine with precision or certainty who authored each of the relevant white papers. Accordingly, we did not charge any individuals<sup>1676</sup> with knowingly providing false information to the government in connection with the Alfa Bank and Yotaphone allegations.

## **V. OBSERVATIONS**

In making the observations that follow, we are mindful of the benefits hindsight provides and the hazards of possibly being unfair to individuals who were called upon to make decisions under real pressure and in unprecedented circumstances. That said, the objective facts show that the FBI's handling of important aspects of the Crossfire Hurricane matter were seriously deficient. Some FBI employees who were interviewed by our investigators advised that they had significant reservations about aspects of Crossfire Hurricane and tried to convey their misgivings to their superiors. Others had doubts about the investigation, but did not voice their concerns. In some cases, nothing was said because of a sense that there had to be more compelling information in the possession of those closest to the decision-making center of the case than had been made known to them. And there were still other current and former employees who maintained that they did the best they could to take reasonable investigative steps and acted within the FBI's various policies, procedures and guidelines.

As the more complete record now shows, there are specific areas of Crossfire Hurricane activity in which the FBI badly underperformed and failed, not only in its duties to the public, but also in preventing the severe reputational harm that has befallen the FBI as a consequence of Crossfire Hurricane. Importantly, had the Crossfire Hurricane actors faithfully followed their own principles regarding objectivity and integrity, there were clear opportunities to have avoided

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<sup>1676</sup> As noted above, the Office charged Sussmann with lying to the FBI when he stated that he was not bringing the Alfa Bank allegations on behalf of any client.

the mistakes and to have prevented the damage resulting from their embrace of seriously flawed information that they failed to analyze and assess properly.

As described in section IV, both the OIG and the FBI's Inspection Division have reviewed aspects of the Crossfire Hurricane investigation into possible collusion between Russia and the Trump campaign and the FISA applications targeting Carter Page. The OIG also conducted a more limited audit of the accuracy of 29 FISA applications that were not connected to Crossfire Hurricane.

In 2020, the Department and the FBI provided the Privacy and Civil Liberties Oversight Board ("PCLOB") 19 of the 29 applications reviewed by the OIG. The PCLOB is an independent agency within the Executive Branch that was established by the 9/11 Commission Act of 2007. The Board's primary mission is to ensure that federal efforts to prevent terrorism are balanced with protecting privacy and civil liberties. The 19 applications were directed at counterterrorism targets and Adam Klein, the former Chairman of the PCLOB, reviewed the 19 applications.<sup>1677</sup>

Following the OIG's review and audit, both the Attorney General and the FISC directed that a number of changes be made. Outside commentators have also recommended numerous changes. In the FISA reform proposals put forth by various individuals and groups, there is division between those that would make all, or many, FISA surveillances more difficult or prohibit certain types of surveillances altogether and those that focus more specifically on the issues raised by the Page applications.

In making our observations, the Office considered but did not include proposals that would curtail the scope or reach of FISA or the FBI's investigative activities. We are concerned about the impact of such proposals in a time of aggressive and hostile terrorist groups and foreign powers. The FBI's priorities include protecting the United States against national security threats.<sup>1678</sup> Inevitably, that involves pursuing some targets and investigations that end up yielding few results. The OIG review of the September 11th attacks noted that "the FBI . . . failed to use the FISA statute fully" and that, in its investigation of Zacarias Moussaoui, a potential "19<sup>th</sup> hijacker," the deficiencies "included a narrow and conservative interpretation of FISA."<sup>1679</sup> More recently, for reasons that may include the COVID pandemic, the impact of the Page FISA applications, or changes in government priorities, the number of FISC orders using certain FISA authorities reportedly has declined sharply -- from 1184 to 430 -- over a recent four-year period.<sup>1680</sup>

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<sup>1677</sup> See Adam Klein, PCLOB, Chairman's White Paper: *Oversight of the Foreign Intelligence Surveillance Act* (June 2021) (hereinafter "Klein, *White Paper*").

<sup>1678</sup> See <https://www.fbi.gov/about/mission>. Cf. *Sensitive Investigations Memorandum* at 1 ("[T]he Department must respond swiftly and decisively when faced with credible threats to our democratic processes").

<sup>1679</sup> OIG, U.S. Department of Justice, *A Review of the FBI's Handling of Intelligence Information Related to the September 11 Attacks* at 363, 378 (Nov. 2004).

<sup>1680</sup> George Croner, *New Statistics Confirm the Continuing Decline in the Use of National Surveillance Authorities*, Lawfare (May 24, 2022) (describing use of various FISA authorities

Former Assistant Attorney General David Kris has said that, in amending FISA, “you’re doing surgery on a very complicated thing.” He went on to say, “[t]hat may sound trivial, but it’s actually very important for national security.”<sup>1681</sup> Moreover, if amendments are not approached from a long-term perspective:

I worry that in the not-too-distant-future we may find ourselves on the other end of the familiar national-security pendulum swing, reviewing a new inspector general or other report -- this time criticizing the Justice Department . . . for the proliferation of red tape or other restrictions, and the failure to stop an attack or other grave, hostile acts committed against our national security.<sup>1682</sup>

Senator Graham expressed the same thought succinctly: “I’d hate to lose the ability of the FISA court to operate at a time probably when we need it the most.”<sup>1683</sup>

Thus, we first discuss below the prior review that the OIG conducted of the FBI’s handling of the Robert Hanssen investigation, focusing on problems that appeared both in that investigation and Crossfire Hurricane. We then turn to measures to assist in the full and complete consideration of politically sensitive investigations and make FISA applications more understandable and complete for the officials and judges who review and approve them. We conclude with a discussion of bias and improper motivation and suggest one possible FBI reform for consideration by the Department. We do not try to review all the many changes that have already been made but rather seek to build on them.

**A. The OIG’s Prior Evaluation of Systemic Problems in the FBI’s Counterintelligence Program (Robert Hanssen)**

Robert Hanssen was “the most damaging spy in FBI history.”<sup>1684</sup> For more than 20 years while he was assigned to the FBI’s counterintelligence program, Hanssen betrayed the United States and gave the KGB enormous amounts of highly sensitive information, including the identities of dozens of human sources, some of whom were subsequently executed by the Soviet Union.<sup>1685</sup> The OIG conducted an extensive review of the FBI’s failure to deter and detect Hanssen as a mole and concluded that Hanssen did not escape detection “because he was a ‘master spy’” or “was extraordinarily clever and crafty” but rather because of “longstanding

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from 2018 to 2021, and in earlier years), <https://www.lawfareblog.com/new-statistics-confirm-continuing-decline-use-national-surveillance-authorities>.

<sup>1681</sup> Bryan Tau and Dustin Volz, *Secretive Surveillance Court Rebukes FBI Over Handling of Wiretapping of Trump Aide*, Wall St. J., Dec. 17, 2019 (quoting Kris).

<sup>1682</sup> David Kris, *Further Thoughts on the Crossfire Hurricane Report*, Lawfare, Dec. 23, 2019, at 13-15 (hereinafter “Kris, *Further Thoughts*”).

<sup>1683</sup> Charlie Savage, *We Just Got a Rare Look at National Security Surveillance. It Was Ugly*, N.Y. Times (Dec. 11, 2019), <https://www.nytimes.com/2019/12/11/us/politics/fisa-surveillance-fbi.html?searchResultPosition=10>.

<sup>1684</sup> OIG, U.S. Department of Justice, *A Review of the FBI’s Performance in Deterring, Detecting, and Investigating the Espionage Activities of Robert Philip Hanssen* at 6 (Aug. 14, 2003) (hereinafter “*Hanssen 2003 Review*”).

<sup>1685</sup> *Id.*

systemic problems in the FBI's counterintelligence program."<sup>1686</sup> For many years, the FBI focused on a specific CIA employee as the potential mole.<sup>1687</sup> Although its initial focus may have been reasonable, as time went on:

The FBI should have seriously questioned its conclusion that the CIA suspect was a KGB spy and considered opening different lines of investigation. The squad responsible for the case, however, was so committed to the belief that the CIA suspect was a mole that it lost a measure of objectivity . . . . [W]hile FBI management pressed for the investigation to be completed, it did not question the factual premises underlying it."<sup>1688</sup>

One of the OIG's recommendations for the FBI's counterintelligence program in the Hanssen matter was that "supervisors must guard against excessively deferring to line personnel . . . and . . . must ensure that the Department . . . is properly briefed on the strengths and weaknesses of potential espionage prosecutions."<sup>1689</sup> A more cooperative relationship between the Counterintelligence Division and the Department, the OIG explained later, would make it "more likely case agents' analytical and investigative judgments in counterespionage cases will be adequately scrutinized."<sup>1690</sup> Other recommendations similarly concerned greater involvement for Department attorneys, including "a larger oversight role in ensuring the accuracy and fairness of factual assertions in FISA applications and . . . direct access to the case agent and the source information relied on in the application."<sup>1691</sup>

When considering Crossfire Hurricane, some of the OIG's recommendations continue to be relevant, particularly by analogy. Numerous reports clearly state that Russia was trying to influence the 2016 presidential election.<sup>1692</sup> This was also the prevailing view of the media and

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<sup>1686</sup> *Id.* at 10.

<sup>1687</sup> *Id.* at 12.

<sup>1688</sup> *Id.* at 12-13.

<sup>1689</sup> *Id.* at 18.

<sup>1690</sup> OIG, U.S. Department of Justice, *A Review of the FBI's Progress in Responding to the Recommendations in the Office of Inspector General Report on Robert Hanssen* at 28 (Sept. 2007) (hereinafter "*Hanssen Progress Review*").

<sup>1691</sup> *Hanssen 2003 Review* at 16.

<sup>1692</sup> See, e.g., 1 *Mueller Report* at 4 (Russia's Internet Research Agency carried out "a social media campaign designed to provoke and amplify political and social discord in the United States," and the campaign evolved "to a targeted operation that by early 2016 favored candidate Trump and disparaged candidate Clinton"); *Joint Statement from the Department of Homeland Security and Office of the Director of National Intelligence on Election Security* (Oct. 7, 2016) (The Intelligence Community "is confident that the Russian Government directed the recent compromises of e-mails from US persons and institutions, including from US political organizations").

it was widely accepted throughout open source reporting at the time that Russia was to blame for the unlawful intrusion into the DNC servers.<sup>1693</sup>

One of the chief errors from the start of Crossfire Hurricane was the poor analysis the FBI brought to bear on the critical pieces of information that it had gathered, as well as an over-reliance on flawed or incomplete human intelligence that only later was found to be plainly unreliable. In July 2016, the FBI received the most damaging of the Steele Reports but, mysteriously and unfortunately, these reports do not appear to have made their way to the Counterintelligence Division for analysis until after mid-September.<sup>1694</sup> Later in July, Australia provided the information from Papadopoulos to U.S. authorities.<sup>1695</sup> The FBI then appears to have formulated a hypothesis that the Trump campaign, or someone associated with it, was working with the Russians. Neither the *Crossfire Hurricane Opening EC* nor those responsible for the investigation in the Counterintelligence Division or upper management, however, appear to have recognized the crucial need to analyze and then assess the actual ambiguities in Papadopoulos's statements to the Australian diplomats. Instead, the FBI immediately opened a full investigation, an investigation that clearly had the ability to affect an approaching presidential election. Indeed, executive management of the FBI and its Counterintelligence Division appear to have taken the Paragraph Five information at face value in opening the matter as evidenced by the *Opening EC* citing the Paragraph Five information as essentially the sole basis for opening a full investigation on unnamed members of an ongoing presidential campaign. Then, when the Steele reporting finally was received by Crossfire Hurricane personnel in September 2016, it was immediately exploited, with no verification of its sensational allegations, and used in support of its initial request for FISA authority. The Steele reporting would eventually fall apart, but not before it had been continuously adopted by the FBI as supportive of its underlying theory regarding collusion.

The Intelligence Community's *Analytic Standards* say that analysts "must perform their functions with objectivity" and "employ reasoning techniques and practical mechanisms that reveal and mitigate bias."<sup>1696</sup> In the Hanssen investigation, the squad "responsible for the case . . . was so committed to the belief that the CIA suspect was a mole that it lost a measure of objectivity and failed to give adequate consideration to other

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<sup>1693</sup> See, e.g., David E. Sanger & Nick Corasaniti, *DNC Says Russian Hackers Penetrated Its Files, Including Dossier on Donald Trump*, N.Y. Times (June 14, 2016), <https://www.nytimes.com/2016/06/15/us/politics/russian-hackers-dnc-trump.html>; Ellen Nakashima, *Russian Government Hackers Penetrated DNC, Stole Opposition Research on Trump*, Wash. Post (June 14, 2016), <https://www.washingtonpost.com/world/national-security/Russian-government-hackers-penetrated-dnc-stole-opposition-research-on-trump/2016/06/14/>; Daniel Strauss, *Russian Government Hackers Broke into DNC Servers, Stole Trump Oppo*, Politico (June 14, 2016), <https://www.politico.com/story/2016/06/Russian-government-hackers-broke-into-dnc-servers-stole-trump-oppo-224315>.

<sup>1694</sup> See *supra* § IV.D.1.b.iii.

<sup>1695</sup> See *supra* § IV.A.3.

<sup>1696</sup> Intelligence Community Directive 203, *Analytic Standards* at 2 (Jan. 2, 2015). See *supra* § III.B.3.

possibilities.<sup>1697</sup> The *SSCI Russia Report* observed that the FBI's analysts should endeavor "to check assumptions underpinning FBI operations, to apply the rigor of intelligence analysis to assessments and confidential human sources, and to create a culture where questioning previously held assumptions is acceptable and encouraged."<sup>1698</sup> The Office concurs with this recommendation.

Apart from analytic integrity, in seeking FISA authority in Crossfire Hurricane, investigators withheld key pieces of information from the OI attorneys. The OI attorneys are responsible for ensuring the accuracy and fairness of the information presented to the FISC, an impossible task without being provided with relevant information. Both the OIG's review and this review highlight the omissions, errors, and misstatements by FBI personnel, including the withholding of significant exculpatory statements, that should not have occurred had the Crossfire Hurricane investigators considered and treated the Department lawyers as full partners. Rather, Crossfire Hurricane reflects a struggle by OI to obtain straightforward answers about Steele's possible bias and leaks to the media and Page's relationship with another government agency. Nor was OI told about the significant differences between the Steele Reports and the statements Danchenko made to the FBI.

In the follow-on *Hanssen Progress Review*, the OIG quoted a Department official as saying that the Department "still has the occasional fight with the FBI to get full access to information, particularly information pertinent to the reliability of sources relied on in the FISA applications."<sup>1699</sup> The Crossfire Hurricane investigation shows that regrettably these struggles for accuracy and transparency were still occurring in 2016. Moreover, it is certainly to be hoped that, with the new post-Page requirements of the *Sensitive Investigations Memorandum*, the new guidelines governing the FBI's use of human sources, and other significant policy changes, there will not be a recurrence of the serious errors identified by the OIG, the Inspection Division, and our investigation. Absent continual reinforcement by FBI leadership of the need for integrity, accuracy, and objectivity in following these requirements, however, such is not a certainty.

## **B. FBI Investigations**

### ***1. The New York counterintelligence investigation***

When the NYFO opened a counterintelligence investigation of Page in April 2016, at a time when he was a foreign policy adviser to the Trump campaign, the investigation likely should have been treated as a sensitive investigative matter because of Page's role in the campaign. The Attorney General has since addressed this issue in a desirable, though slightly different, way. The Attorney General must approve any investigation of a "senior presidential campaign staff member or advisor." A footnote explains that "this includes any person who has been publicly announced by a campaign as a staffer or member of an official campaign advisory committee or group."<sup>1700</sup>

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<sup>1697</sup> *Hanssen 2003 Review* at 12.

<sup>1698</sup> *SSCI Russia Report*, pt. V, at 936.

<sup>1699</sup> *Hanssen Progress Review* at 9.

<sup>1700</sup> *Sensitive Investigations Memorandum* at 2 & n.3.

## 2. *Predication of Crossfire Hurricane*

The FBI opened the Crossfire Hurricane investigation as a full investigation “to determine whether individual(s) associated with the Trump campaign are witting of and/or coordinating activities with the Government of Russia.”<sup>1701</sup> As described in section III, the standard for opening a full investigation is “an articulable factual basis for the investigation that reasonably indicates that . . . [a]n activity constituting a federal crime or a threat to the national security . . . *is or may be* occurring . . . and the investigation may obtain information relating to the activity.”<sup>1702</sup>

The information that the FBI learned in July 2016 was that a Trump campaign advisor had suggested to the Australian diplomats that the campaign “had received some kind of suggestion from Russia that it could assist” the campaign. The *OIG Review* found that the FBI met the requirements of the *AGG-Dom* because the “articulable factual basis” standard for opening the investigation is a “low” one and the information from Australia, at least when considered along with what was known about Russia’s efforts to interfere with the 2016 U.S. elections, met that standard.<sup>1703</sup> We are not confident, however, that this is the case. Our investigation gathered evidence that showed that a number of those closest to the investigation believed that the standard arguably had not been met. For example, both Supervisory Special Agent-1 and UK ALAT-1 described the predication for the investigation as “thin.”<sup>1704</sup> Even Strzok, who both drafted and approved the *Opening EC*, said that “there’s nothing to this, but we have to run it to ground.”<sup>1705</sup> Strzok’s view would seem to dictate the opening of the matter as an assessment or, at most, as a preliminary investigation. In any event, there are a number of other reasons to be concerned about the predication of Crossfire Hurricane.

Apart from the need to meet the standard in the *AGG-Dom* for opening a full investigation, Executive Order 12333 requires the use of “the least intrusive collection techniques feasible.” FBI policy says that “when First Amendment rights are at stake” – which they clearly were in a major-party political campaign – “the choice and use of investigative methods should be focused in a manner that minimizes potential infringement of those rights.”<sup>1706</sup> Moreover, the FBI will “[a]pply best judgment” necessary to achieve an objective.<sup>1707</sup> To assist FBI agents with their judgments, decision-making and the need to employ the least intrusive means, the *DIOG* includes precautions when opening and conducting investigations in order to, among other things, encourage careful evaluation of

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<sup>1701</sup> *Crossfire Hurricane Opening EC* at 3-4.

<sup>1702</sup> *AGG-Dom* §§ II.B.3.a; II.B.4.b.i (emphasis added).

<sup>1703</sup> *Redacted OIG Review* at 351-52.

<sup>1704</sup> FBI-AAA-EC-00000365 (Lync exchange between Supervisory Special Agent-1 and UK ALAT-1 dated 08/11/2016).

<sup>1705</sup> OSC Report of Interview of UK ALAT-1 on June 4, 2019 at 2.

<sup>1706</sup> *DIOG* § 4.4.4.

<sup>1707</sup> *Id.* § 4.1.1.1(F) (bolding omitted)

facts and circumstances, as well as to assess risk, before proceeding with any investigative activity.

In implementing these standards, the FBI could have taken one or more of the following sensible steps:

- Under the least intrusive standard, rather than opening an investigation with a broad scope (“to determine whether individual(s) associated with the Trump campaign are witting of and/or coordinating activities with the Government of Russia”), the FBI should have focused, at least at the beginning, on Papadopoulos, the alleged source of the information from Australia. On the other hand, the Paragraph Five information was not only connected to Papadopoulos, but also to the campaign as an alleged recipient of “some kind of suggestion from Russia.”
- Under the FBI’s guidelines, the investigation could have been opened more appropriately as an assessment or preliminary investigation. FBI investigations opened as preliminary investigations, short of full investigations, include time limits and a narrower range of authorized techniques to mitigate risk and avoid unnecessary intrusion. If necessary and appropriate, a lower level of investigative activity may be escalated under the guidelines by converting to a full investigation with supervisory approval.
- In the subsequent investigation of Page under the Crossfire Hurricane umbrella, the FBI could have used additional, less intrusive techniques before seeking authority to conduct electronic surveillance under FISA. The paucity of information collected on key aspects of Page’s activities would support such an approach.

Regardless of an investigator’s preference for any of these steps, there are now additional requirements that apply to the opening of an investigation like Crossfire Hurricane. The *Sensitive Investigations Memorandum* requires the Attorney General to approve the opening of such an investigation. That an investigation like Crossfire Hurricane should require a concurring decision by the Department, rather than any one component or entity, seems appropriate. We also believe that the proposal described below in E for an identified Department official to challenge all stages of a politically sensitive investigation would be another valuable way of addressing concerns about the opening, continuation and intrusiveness of an investigation like Crossfire Hurricane.

### ***3. Opening of individual investigations***

The FBI opened full investigations of Papadopoulos, Page, Flynn, and Manafort in August 2016, as part of Crossfire Hurricane.<sup>1708</sup> Again, in addition to the requirements of the *AGG-Dom* and the *DIOG*, the approval requirements in the *Sensitive Investigations Memorandum* now would apply to these. The proposal in Section V.E would also potentially apply to them.

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<sup>1708</sup> See *supra* § IV.A.1.e; *Redacted OIG Review* at 59-60.

#### 4. *Compartmentation*

Unlike most FBI investigations, which are managed from FBI field offices, Crossfire Hurricane was managed from FBI Headquarters. The information it collected was not shared with or available to others in the FBI, including, as described above, the Directorate of Intelligence. The *OIG Review* says that:

[B]ecause the information being investigated related to an ongoing presidential election campaign, the Crossfire Hurricane case file was designated as “prohibited” meaning that access to the file was restricted and viewable to only those individuals assigned to work on the investigation. Agents and analysts . . . used covert investigative techniques to ensure information about the investigation remained known only to the team and FBI and Department officials.<sup>1709</sup>

Moreover, at least at times, even those participating in the investigation had limited information available. Supervisory Special Agent-3, who was tasked to supervise the Crossfire Hurricane investigators as a successor to Supervisory Special Agent-1, stated:

Contributing to the difficulties . . . was how compartmentalized the . . . investigation was, specifically the lack of information sharing between the intelligence analysts and the operational component . . . . Even as the team lead, I only had access to limited information, and from the start of my [temporary duty], I did not have a clear picture of everything going on in the investigation . . . . I was managing the day to day operations of the case without having complete information.<sup>1710</sup>

The investigation’s compartmentation, and its unusual structure as a Headquarters investigation, may have limited the amount of oversight that it received. In the past, NSA’s collection of the international communications of U.S. citizens and groups was also highly compartmented. A Senate committee chaired by Senator Frank Church investigated this activity. It reported:

In 1969, NSA formalized the watch list program under the codename MINARET. The program applied not only to alleged foreign influence on domestic dissent, but also to American groups and individuals whose activities “may result in civil disturbances or otherwise subvert the national security of the U.S.” At the same time, *NSA instructed its personnel to “restrict the knowledge” that NSA was collecting such information and to keep its name off the disseminated “product.”*<sup>1711</sup>

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<sup>1709</sup> See *Redacted OIG Review* at 58-59.

<sup>1710</sup> *FBI Inspection Division Report* at 290.

<sup>1711</sup> S. Rep. No. 94-755, bk. 3, at 739 (1976) (emphasis added and footnotes omitted).

The report found that “NSA placed more restrictive security controls on MINARET material than it placed on other highly classified foreign intercepts in order to conceal its involvement in activities which were beyond its regular mission.”<sup>1712</sup>

In possible contrast to the FBI, the CIA may not have compartmented some of the information that it had. The Office learned at one point from Director Brennan that “[t]here was no effort at the CIA to restrict information because it was potentially embarrassing for Hillary Clinton. . . . Obama just wanted the right people involved.”<sup>1713</sup>

In combination, an unusually compartmented investigation bearing on politics will always involve risk, especially when it is the subject of significant media attention. In any event, in opening and conducting a sensitive investigation, the FBI should consider ways to balance the need for secrecy against the need to have a full and informed evaluation of the case. Leaks can cause great harm, but so can a failure to understand the information collected or to take appropriate investigative steps.

### ***5. Interaction with the Trump campaign***

On August 11, 2016, the FBI met with CHS-1 who, as described earlier, was a longstanding FBI source. CHS-1 had decided not to join the Trump campaign but told the FBI that he/she was willing to refrain from notifying the campaign about this decision.<sup>1714</sup> The Crossfire Hurricane investigators were pleased or relieved that the source did not want to join the campaign.<sup>1715</sup> But as to whether the FBI encouraged or directed the source to avoid notifying the campaign, the *OIG Review* is less clear. Not notifying the campaign, of course, could in and of itself affect the campaign’s staffing decisions or other activities.

On September 1, 2016, CHS-1 met with a high-level Trump campaign official who was not a subject of the Crossfire Hurricane investigation. This meeting was consensually monitored. The *OIG* notes that “FBI and Department policy did not require that the FBI obtain Department approval to consensually monitor this conversation.”<sup>1716</sup>

Also in September 2016, CHS-1 met with Papadopoulos. The *OIG Review* says that, “[t]he OGC Unit Chief told the *OIG* that because the operation targeted Papadopoulos individually and wasn’t directed at anything related to the campaign, she thought that it was appropriate.”<sup>1717</sup> If the purpose of CHS-1’s meeting with Papadopoulos was not to find out if the

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<sup>1712</sup> *Id.* at 749.

<sup>1713</sup> OSC Report of Interview of John Brennan on Aug. 21, 2020 at 9 (capitalizations omitted).

<sup>1714</sup> *See Redacted OIG Review* at 315.

<sup>1715</sup> *Id.* at 315-16.

<sup>1716</sup> *Id.* at 327.

<sup>1717</sup> *Id.* at 330; *see also FBI Inspection Division Report* at 178

campaign or anyone on its behalf was conspiring or colluding with Russia, it is hard to know what the purpose was.

## 6. *Defensive briefings*

The *OIG Review* discusses the FBI's decision not to give candidate Trump or his campaign a defensive briefing concerning the allegations that the Crossfire Hurricane team was investigating. The *Review* does not discuss whether the decision was consistent with other decisions that the FBI has made about defensive briefings for political candidates. There are of course numerous investigations over the years that involve presidential and congressional candidates or campaigns, including allegations of foreign contributions, improper foreign influence, or other activities.<sup>1718</sup> Each one has unique facts. In 2020, the Department declassified some documents related to a 2015 investigation of possible illegal campaign contributions. In that instance, the FBI provided a defensive briefing to the Clinton campaign.<sup>1719</sup> Some have argued that the decisions to provide a defensive briefing in that investigation but not in the Crossfire Hurricane investigation were inconsistent.<sup>1720</sup> President Obama may also have thought that a defensive briefing for the Trump campaign was desirable, but his views may not have related to Crossfire Hurricane.<sup>1721</sup>

As described in section III, the FBI has now established a board, the FIDBB, to address defensive briefings; the Attorney General has directed the FBI to promulgate procedures on this subject; and the Attorney General has imposed additional, specific requirements in connection with politically sensitive FISA applications. These requirements, particularly the last one, require a serious consideration of the need for a defensive briefing, and we support them.

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<sup>1718</sup> See, e.g., Michael Finnegan, *Fundraiser for Trump and Obama Sentenced to 12 Years in Prison for Foreign Money Scams*, L.A. Times, Feb. 18, 2021 (describing “more than \$950,000 in unlawful donations to political committees of Obama, Clinton, McCain and many others, nearly all of it from undisclosed foreign donors”); *Former Associate of Rudy Giuliani Convicted over Illegal Campaign Contributions*, The Guardian, Oct. 22, 2021 (describing conviction involving campaign contributions on behalf of Russian financier); Zach Montellaro & Myah Ward, *Campaign Finance Watchdog Issues Massive Fine for Foreign National's Trump Super PAC Donation*, Politico, April 8, 2022 (describing fine for contribution made by companies of a Canadian billionaire to a U.S. political committee).

<sup>1719</sup> See *supra* § IV.

<sup>1720</sup> See, e.g., Sen. Lindsey Graham, *Newly Declassified FBI Materials Demonstrate Clear Double Standard for Clinton, Trump Campaigns* (Aug. 23, 2020), <https://www.judiciary.senate.gov/press/rep/releases/newly-declassified-fbi-materials-demonstrate-clear-double-standard-for-clinton-trump-campaigns>.

<sup>1721</sup> The *OIG Review* describes several White House briefings around the time in 2016 when the FBI opened Crossfire Hurricane. Notes of a meeting taken by Deputy FBI Director McCabe, who was not at the meeting itself, indicate that “President Obama stated that the FBI should think about doing defensive briefs,” but McCabe did not believe that the Crossfire Hurricane information from Australia would have been discussed. *Redacted OIG Review* at 76-77 (internal quotations omitted).

## C. FISA Issues

### 1. *Clarity of applications*

In 2020, the FBI and the Department provided 19 complete FISA applications to the PCLOB for review. Adam Klein, the Chairman of the PCLOB, commented that:

The applications present the reader (most notably, the FISA court judge) with a great deal of factual information . . . . This information, however, is sometimes repetitive, and the organization does not necessarily facilitate critical analysis. The applications recite many facts related to the target's potential involvement with terrorism. But each fact's relative importance emerges only after very close reading.

. . . .

Overall, these applications provide a great deal of relevant information and generally aim to highlight potential question marks for the court. However, their clarity and organization could be improved . . . .<sup>1722</sup>

Former Chairman Klein has also written that “[s]teps to improve the clarity of applications . . . would help drafters think rigorously about which facts are essential to probable cause, which are merely supportive and why the surveillance is necessary in the first place.”<sup>1723</sup> Similarly, the FBI’s public strategy says that it will “improve data collection, accessibility, and analysis to better understand, anticipate, and mitigate threats.”<sup>1724</sup> Although the PCLOB did not review the applications for surveillance of Page, as the applications did not involve terrorism, some of the *White Paper*’s observations are relevant.

#### a. Transparency of sourcing information

In the Page applications, much of the probable cause information was based on multiple layers of unverified sub-sourcing. Whenever that is the case, there is a greater possibility for bias or exaggerations to proliferate, even under ideal circumstances. We appreciate and support the effort the Department’s OI Attorneys made, which may have prevented even larger problems, to describe the sourcing for the Page applications. In any application, the description of the sourcing information is of fundamental importance and should be as transparent as possible. It should include the FBI’s insight, or lack thereof, into the

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<sup>1722</sup> Klein, *White Paper* at 12.

<sup>1723</sup> Adam Klein, *What the Inspector General’s Latest FISA Report Can (and Can’t) Tell Us*, Lawfare, Oct. 19, 2021.

<sup>1724</sup> *FBI Strategy, Our Four Guiding Principles*, <https://www.fbi.gov/about/mission/fbi-strategy> (hereinafter “*FBI Strategy*”).

reliability of each layer.<sup>1725</sup> This is even more the case where what is described is the central contention of the application.<sup>1726</sup>

In addition, the source and sub-source information might have been easier to understand, and been seen as having more importance, if it had been described in the text of the application rather than in a footnote. Although former Assistant Attorney General Kris correctly notes that the FISC “reads the footnotes” and that “[t]he government’s disclosures enabled the court to take Steele’s information with a grain of salt,”<sup>1727</sup> we see no reason not to lay out sourcing information as clearly as possible, particularly when it contains subjective assessments.

b. Information from Congress

That a member of Congress is concerned about the activities of a political opponent or someone in another political party or may have written to the Attorney General or the Director of the FBI about those activities, would rarely seem relevant to a discussion of probable cause, unless the member provides specific and credible information that is not available from other sources.<sup>1728</sup>

c. Masking of information

In a FISA application, it is clearly important to protect the identity of sources. This is typically done by giving them a number rather than providing a name. It also may be important to minimize or mask private or derogatory information about someone who is not the target of the application. The broader use of minimized identities, such as describing someone as “Candidate #1” or attributing a news report to “an identified news organization,” may not conceal much and may instead make understanding the application more difficult.<sup>1729</sup> It may also (even unintentionally) encourage a reader to think that because one possible step to ensure legality has been taken others have been too. In fact, whether information is minimized or masked has no effect on whether the information itself is accurate and supports a probable cause finding.

d. Use of news reports

Former NSA General Counsel Stewart Baker has urged the FBI to avoid using media reports in FISA applications. The FBI has little knowledge of the reliability of the sources used by reporters, and reliance on press accounts risks shortcutting the process of establishing probable cause. If the FBI uses a media source, it should disclose the name of

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<sup>1725</sup> Cf. *In re Carter W. Page*, No. 16-1182, at 20 (not addressing reliability of the sub-source information used on that page).

<sup>1726</sup> See *id.* at 10, 20 (providing information from a source that Page was part of “a well-developed conspiracy of co-operation” between the Trump campaign and “Russian leadership”).

<sup>1727</sup> David Kris, *The Irony of the Nunes Memo*, Lawfare, Mar. 1, 2018.

<sup>1728</sup> See *In re Carter W. Page*, No. 16-1182, at 23-24 (discussing a news report and including the apparent views of members of Congress).

<sup>1729</sup> See, e.g., *id.* at 22 (minimizing identities).

the source “and any credible claims of bias that have been leveled against the news outlet.”<sup>1730</sup> It might also disclose what, if any, efforts it has taken to verify the allegations.

e. Need to share important information

In January 2017, the FBI interviewed Igor Danchenko, Steele’s primary sub-source. Danchenko said that Steele “misstated or exaggerated” the sub-source’s statements “in multiple sections of the reporting.”<sup>1731</sup> NSD, but not OI, was present at the interview.<sup>1732</sup> Because the interview involved an important sub-source used in a FISA application, OI should, at a minimum, have been informed of what the sub-source said.

2. *Completeness of applications*

The *OIG Review* concluded that FBI personnel “did not give appropriate attention to facts that cut against probable cause.”<sup>1733</sup> The FBI has addressed this issue by requiring that both an agent and a supervisor must affirm that OI “has been apprised of all information that might reasonably call into question the accuracy of the information in the application *or otherwise raise doubts about the requested probable cause findings or the theory of the case.*”<sup>1734</sup> The FBI has also pledged that it “will adhere to the rule of law through attention to detail.”<sup>1735</sup> Finally, the Attorney General has directed both the FBI and OI to conduct completeness reviews.<sup>1736</sup>

Implementation of the reviews may be difficult. An FBI CHS may have recorded dozens or hundreds of hours of conversations with the target or others engaged in related activities. For example, in the released transcripts of conversations among an FBI CHS, George Papadopoulos, and others, there is clearly a large amount of extraneous information, and it may not always be clear what is being discussed.<sup>1737</sup> Moreover, no one may have listened to all the recordings, or there may not be available transcripts. The FBI may also have a large volume of other raw

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<sup>1730</sup> Baker, *Partisan Taint in the Trump-Russia Investigation*, Lawfare, Sept. 8, 2020 (hereinafter “Baker, *Partisan Taint*”).

<sup>1731</sup> See *Redacted OIG Review* at 187.

<sup>1732</sup> *Id.* at 187 n.336.

<sup>1733</sup> See *Redacted OIG Review* at 413.

<sup>1734</sup> *Wray Declaration* at 3 (emphasis added).

<sup>1735</sup> *FBI Strategy*.

<sup>1736</sup> Attorney General Memorandum, *Augmenting the Internal Compliance Functions of the Federal Bureau of Investigation* at 1-2 (Aug. 31, 2020); *Supplemental Reforms Memorandum* at 3.

<sup>1737</sup> See FBI, U.S. Department of Justice, *Verbatim Transcription*, Task Nos. 628389 and 635144 (completed Dec. 22, 2016 and Jan. 9, 2016), available at <https://www.judiciary.senate.gov/imo/media/doc/2020-05-05%20Submission%20SJC%20SSCI.pdf>; FBI, U.S. Department of Justice, *Verbatim Transcription*, Task No. 620098 (completed Nov. 10, 2016), available at <https://www.judiciary.senate.gov/imo/media/doc/2020-04-24%20Submission%20SJC%20SSCI.pdf>. For links to these and other materials, see <https://www.judiciary.senate.gov/fisa-investigation>.

records related to an investigation. Any of these factors may make it hard to identify information that “raise[s] doubts about the requested probable cause findings or the theory of the case.”

One possible way to implement the new requirement, at least in part, may be by asking on the FISA verification form or elsewhere if the FBI is aware of particular kinds of derogatory information about the target. An example might be whether the FBI has information about financial transactions between the target and others associated with a foreign power. If the FBI is not aware of such information, the government may tell the FISC that the FBI either has no such information or that, if it may have such information, it is choosing not to include it. The FISC could then consider the absence of such incriminating information in its assessment of whether the target is an agent of a foreign power.

Moreover, in the circumstance where the FBI has unreviewed data relating to an investigation, or data that is still being evaluated, OI may want to consider whether the FISA application should disclose that fact to the FISC.

### ***3. Reliance on prior FISA applications***

When the Page FISA applications were renewed, reviewing officials may have placed too much reliance on the prior authorization by the Attorney General and the FISC. Deputy Attorney General Rosenstein noted that at the time when the Page renewal application came to him many different Department officials had approved the prior applications and three different judges had found probable cause.<sup>1738</sup> At least some of the requirements found in the *Supplemental Reforms Memorandum* apply to both initiations and renewals of FISA surveillances.<sup>1739</sup> In addition, some kind of red-teaming, in cases with “partisan risk,” might help here.

### ***4. Timely renewal requests***

Deputy Assistant Attorney General Evans has observed that the FBI should submit a request to renew FISA authority approximately 45 days before its expiration. In practice, “renewal requests often come over from the FBI to OI a week, week and a half, before the expiration.” If the requests came earlier, there would be more time for the “robust back and forth” needed to develop the applications.<sup>1740</sup> Implementing this proposal would require a significant commitment by Department and FBI leadership.

Even if the FBI is not timely in submitting a renewal request, OI may be able to begin acquiring needed information by requesting it from the FBI (or possibly seeking it elsewhere) and asking to meet on a case 45 days before it expires. This may be worth the effort involved for a sensitive and important surveillance.

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<sup>1738</sup> See *Redacted OIG Review* at 227.

<sup>1739</sup> See *Supplemental Reforms Memorandum* ¶ 1 (imposing requirements “[b]efore any application initiating or renewing the targeting” of a U.S. person is submitted to the FISC).

<sup>1740</sup> U.S. Senate Committee on the Judiciary, Interview of Stuart Evans – Redacted Version, at 214 (July 31, 2020).

#### **D. Bias or improper motivation**

The *OIG Review* of Crossfire Hurricane says that “[w]e did not find documentary or testimonial evidence that political bias or improper motivation influenced the FBI’s decision to seek FISA authority on Carter Page.”<sup>1741</sup> It also says that “[w]hile we did not find documentary or testimonial evidence of intentional misconduct on the part of the [FBI personnel], we also did not receive satisfactory explanations for the errors or problems we identified.”<sup>1742</sup> David Kris has catalogued statements in the *OIG Review* like those above and discussed the tension between the statements about the lack of evident bias and the lack of explanation for the problems found.<sup>1743</sup>

In this report we have referred to the possible impact of “confirmation bias” on the Crossfire Hurricane investigation.<sup>1744</sup> Confirmation bias is widely understood as a phenomenon describing how information is processed by individuals and groups. It stands for the general proposition that there is a common human tendency – mostly unintentional – for people to accept information and evidence that is consistent with what they believe to be true, while ignoring or rejecting information that challenges those beliefs. In short, people tend to give more credence to information that supports what they already believe. The effects of confirmation bias can be amplified in groups operating in situations of high stress and under time pressures.<sup>1745</sup>

Throughout the duration of Crossfire Hurricane, facts and circumstances that were inconsistent with the premise that Trump and/or persons associated with the Trump campaign were involved in a collusive or conspiratorial relationship with the Russian government were ignored or simply assessed away. Indeed, as set forth in Sections IVA.2 and 3, from even before the opening of Crossfire Hurricane, some of those most directly involved in the subsequent investigation had (i) expressed their open disdain for Trump, (ii) asked about when they would open an investigation on Trump, and (iii) asserted that they would prevent Trump from becoming President. As discussed throughout this report, our investigation revealed that the stated basis for opening a full investigation “to determine whether individual(s) associated with the Trump campaign [were] witting of and/or coordinating activities with the Government of Russia”<sup>1746</sup> was seriously flawed. Again, the FBI’s failure to critically analyze information that ran counter to the narrative of a Trump/Russia collusive relationship exhibited throughout Crossfire Hurricane is extremely troublesome. The evidence of the FBI’s confirmation bias in

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<sup>1741</sup> See *Redacted OIG Review* at vii; see also *id.* at iii-iv (similar statements about opening of Crossfire Hurricane and related investigations).

<sup>1742</sup> *Id.* at xiii; see also *id.* at 414.

<sup>1743</sup> Kris, *Further Thoughts* at 2-5.

<sup>1744</sup> See, e.g., references at pages 18, 98, 305.

<sup>1745</sup> See generally ScienceDirect, *Confirmation Bias* (quoting Caleb W. Lack & Jacques Rousseau, *Comprehensive Clinical Psychology* § 11.04.4.1.1 (2d ed. 2022); Shahram Heshmat, *What Is Confirmation Bias?* in *Psychology Today* (Apr. 23, 2015), <https://www.psychologytoday.com/us/blog/science-choice/201504/what-is-confirmation-bias>; Bettina J. Cassad & J.E. Luebering, *Confirmation Bias*, in *Encyclopedia Britannica* (Last updated Mar. 31, 2023).

<sup>1746</sup> *Crossfire Hurricane Opening EC* at 3-4.

the matter, includes, at a minimum, the following information that was simply ignored or in some fashion rationalized away:

- The Australian diplomats told Crossfire Hurricane investigators that Papadopoulos never stated that he had any direct contact with the Russians nor did he provide any explicit information about an offer of assistance.
- There was a complete lack of information from the Intelligence Community that corroborated the hypothesis upon which the Crossfire Hurricane investigation was predicated.
- The FBI generally ignored the significant exculpatory information provided by Carter Page, George Papadopoulos, and Trump Senior Foreign Policy Advisor-1 during recorded conversations with FBI CHSs.
- The FBI failed to pursue investigative leads that were inconsistent with their theory of the case (*e.g.*, Page's recorded denials of having any relationship with Paul Manafort, a fact about which there was available evidence).
- The FBI failed to take Page up on the written offer he made to Director Comey to be interviewed about the allegations contained in Michael Isikoff's *Yahoo! News* article and instead opted to seek FISA surveillance of Page.
- The FBI was willing to make use of the completely unvetted and uncorroborated Steele reporting in multiple FISA applications targeting a U.S. citizen, even after the Crossfire Hurricane investigators had determined that there were major conflicts between the reporting of Steele and his primary sub-source, Igor Danchenko – conflicts the FBI incredibly failed to resolve.
- The Crossfire Hurricane investigators did not even ask Steele about his role in providing information to Michael Isikoff as contained in the September 23, 2016 *Yahoo! News* article – information that essentially accused Carter Page of colluding with the Russians. And thereafter the same investigators demonstrated a willingness to contort the plain language of the article to suggest it was not Steele but Steele's employers who had given the information to Isikoff.
- The FBI ignored the fact that at no time before, during or after Crossfire Hurricane were investigators able to corroborate a single substantive allegation in the Steele dossier reporting.
- There was a complete failure on the part of the FBI to even examine – never mind resolve – the serious counterespionage issues surrounding Steele's primary sub-source, Igor Danchenko.
- The FBI leadership essentially disregarded the Clinton Plan intelligence, which it received at almost the exact same time as the Australian Paragraph Five information. This was despite the fact that at precisely the same time as the Clinton Plan intelligence was received (i) the Clinton campaign made public statements tying the

DNC computer hack to Russian attempts to help Trump get elected, (ii) the FBI was receiving the Clinton campaign-funded Steele Reports, and (iii) the Clinton campaign-funded Alfa Bank allegations were being prepared for delivery to the media and the FBI.

- The Crossfire Hurricane investigators essentially ignored information they had received as early as October 2016 regarding Charles Dolan, a longtime Democratic operative with ties to the Clintons who also possessed significant ties to Russian government figures who would appear in the Steele reporting, and never interviewed him.
- The Crossfire Hurricane investigators provided only partial, and in some instances misleading, information to Department attorneys working on the Page FISA applications while withholding other highly relevant information from those attorneys and the FISC that might cast real doubt on their probable cause assertions.

Finally, the results of the OIG's *Audit of 29 Applications* also establish significant problems in the Page FISA applications, problems that point to bias and other factors. Following the *Audit*, the Department and the FBI "notified the FISC that the 29 applications contained a total of 209 errors, 4 of which they deemed to be material."<sup>1747</sup> We note that because the *Audit* did not look for omitted information – a major issue in the Page applications – the results of the *Audit* and the review of the Page applications are not directly comparable. Nonetheless, at least on the surface, the difference is notable: in the four Page applications, there were a total of 17 material errors and omissions,<sup>1748</sup> far more than the four material errors found in the larger group of 29 non-Page applications.

Given the foregoing, and viewing the facts in a light most favorable to the Crossfire Hurricane investigators, it seems highly likely that, at a minimum, confirmation bias played a significant role in the FBI's acceptance of extraordinarily serious allegations derived from uncorroborated information that had not been subjected to the typical exacting analysis employed by the FBI and other members of the Intelligence Community. In short, it is the Office's assessment that the FBI discounted or willfully ignored material information that did not support the narrative of a collusive relationship between Trump and Russia. Similarly, the *FBI Inspection Division Report* says that the investigators "repeatedly ignore[d] or explain[ed] away evidence contrary to the theory the Trump campaign . . . had conspired with Russia. . . . It appeared that . . . there was a pattern of assuming nefarious intent."<sup>1749</sup> An objective and honest assessment of these strands of information should have caused the FBI to question not only the predication for Crossfire Hurricane, but also to reflect on whether the FBI was being manipulated for political or other purposes. Unfortunately, it did not.

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<sup>1747</sup> *Audit of 29 Applications* at ii; see also *id.* at 10-11 (listing the material errors found).

<sup>1748</sup> *Redacted OIG Review* at viii – xiii (describing the errors in the Page FISA applications).

<sup>1749</sup> *FBI Inspection Division Report* at 33 n.15, 37.

#### **E. Possible FBI reform**

One possible way to provide additional scrutiny of politically sensitive investigations would be to identify, in advance, an official who is responsible for challenging the steps taken in the investigation. Stewart Baker proposes having a “career position for a nonpartisan FBI agent or lawyer to challenge the FISA application and every other stage of the investigation.” This would be done in investigations that “pose partisan risk.” In Baker’s view, the Attorney General, through the *Supplemental Reforms Memorandum*, has already taken “a good step in this direction by requiring that politically sensitive surveillance and search applications be reviewed by a special agent from a field office not involved in the investigation.”<sup>1750</sup> Similarly, Adam Klein said that “DOJ and FBI leaders should consider whether a regularized practice of internal redteaming in the most sensitive cases, whether within the FBI or in collaboration with attorneys at the National Security Division, could serve as an effective check on confirmation bias without unduly delaying time-sensitive applications.”<sup>1751</sup>

As a way to ensure full consideration of the issues in applications that may present very difficult – and vitally important – issues, we recommend that the Department seriously consider Baker’s proposal for an official to challenge both a politically sensitive FISA application and other stages of the investigation.<sup>1752</sup> “Nothing,” former Attorney General Levi warned, “can more weaken the quality of life or more imperil the realization of the goals we all hold dear than our failure to make clear by words and deed that our law is not the instrument of partisan purpose.”<sup>1753</sup>

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<sup>1750</sup> Baker, *Partisan Taint*. Baker explains his proposal for the career official in more detail in *Like It or Not, Trump Has a Point: FISA Reform and the Appearance of Partisanship in Intelligence Investigations* at 12-13, Sept. 5, 2020.

<sup>1751</sup> *White Paper* at 24-25.

<sup>1752</sup> Baker also proposes that the career official should “take the lead in reporting on the investigation to majority and minority congressional leadership, not after the fact but as it proceeds.” Baker, *Partisan Taint*. We do not endorse this aspect of the proposal, at least not without further consideration; we are concerned that it could lead to a politically motivated leak of a sensitive investigation.

<sup>1753</sup> Edward H. Levi, *Farewell Remarks* (Jan. 17, 1977), *quoted in* U.S. Department of Justice, *FYs 2022 – 2026 Strategic Plan* at 15.