

March 1, 2017 and March 16, 2017, there had been no corroboration of what Danchenko alleged about the Steele reporting during his three-day interview with the FBI.¹³⁸¹

Moreover, Auten told the Office that to the best of his recollection, when they checked with another U.S. intelligence agency on matters relating to the Steele reporting, they received no corroborating information back.¹³⁸² As one long-time counterintelligence expert at that agency told the Office, the Dossier contained unverified allegations from sub-sources who allegedly provided the information, information that the government could not obtain despite its vast intelligence resources and paying millions of dollars for intelligence. Indeed, after the Steele Dossier was leaked and became public, that expert's reaction was to ask the FBI, "You didn't use that, right?"¹³⁸³

One Crossfire Hurricane investigator said out loud what others may have been thinking: The initial FISA application targeting Page was being done in the hope that the returns would "self-corroborate." Here, the pressure from FBI leadership to commence surveillance of Page coupled with the FBI's previous unsuccessful attempt to advance the application against Page provided the Crossfire Hurricane investigators with ample motive to include the unvetted Steele Reports in the FISA application.

Although the evidence assembled by the Office may have been sufficient to meet a negligence standard, in order to prove a criminal violation of Page's civil rights, the government would be required to prove, beyond a reasonable doubt, that one or more persons acted *intentionally* to violate his rights. What in our judgement would be the admissible evidence in such a prosecution did not meet that standard.

In addition, in order to prove a false statement charge under 18 U.S.C. S 1001, such a prosecution would have to rest largely on not what was a provable, affirmative false statement, but rather on material omissions (e.g., Page's relationship with another government agency, Page's exculpatory statements to a long-term FBI CHS, and the like). Given the claimed inability of the principal actors to recall the details of critical conversations, and the lack of evidence as to who was responsible for information that was included or withheld in the FISA applications, the standard of proof beyond a reasonable doubt could not be met. Accordingly, the Office did not seek criminal charges against any FBI or Department personnel in relation to the inclusion of the Steele Reports in the four Page FISA applications presented to the FISC.

f. Igor Danchenko

In November 2021, a grand jury sitting in the Eastern District of Virginia returned an indictment ("Indictment") charging Igor Danchenko with five counts of making false statements

statements [in the dossier] that could be proven by emails or other documentation. Danchenko, however, could not provide any corroborating information to support this information because, according to Danchenko, the information stemmed from casual conversations); OSC Report of Interview of Analyst-1 on July 14, 2020 at 19 ("the dossier could not be corroborated" and "no substantive facts in the dossier were corroborated").

¹³⁸¹ OSC Report of Interview of Kevin Helson on July 14, 2020 at 5.

¹³⁸² OSC Report of Interview of Brian Auten on July 26, 2021 at 26.

¹³⁸³ OSC Report of Interview of CIA Employee-1 on July 17, 2019 at 3.

to the FBI. The false statements, which were made during Danchenko's time as an FBI CHS, related to his role as Steele's primary sub-source for the Reports.

First, the Indictment alleged that Danchenko stated falsely that he had never communicated with Charles Dolan about any allegations contained in the Steele Reports. As discussed above, the documentary evidence clearly showed that Dolan was the source for at least one allegation in the Steele Reports. Specifically, that information concerned Manafort's resignation as Trump's campaign manager, an allegation Dolan told Danchenko that he sourced from a "GOP friend" but that he told our investigators was something he made up.¹³⁸⁴ The allegations regarding Dolan formed the basis of Count One of the Indictment.

Second, the Indictment alleged that Danchenko falsely stated that, in or about late July 2016, he received an anonymous phone call from an individual whom Danchenko believed to be Sergei Millian. Danchenko also falsely stated that, during this phone call, (i) the person he believed to be Millian informed him, in part, about information that the Steele Reports later described as demonstrating a well-developed "conspiracy of cooperation" between the Trump campaign and Russian officials, and (ii) Danchenko and Millian agreed to meet in New York. The available evidence was sufficient to prove beyond a reasonable doubt that Danchenko fabricated these facts regarding Millian. The allegations regarding Millian formed the bases for Counts Two through Five of the Indictment.

Following a one-week trial, and before the case went to the jury, the Court dismissed Count One of the Indictment pursuant to Federal Rule of Criminal Procedure 29. The Court held that Danchenko's statement to the FBI regarding Dolan, *i.e.*, that he [Danchenko] never "talked to [Dolan] about anything that showed up in the dossier" was "literally true" because, in fact, the information about Manafort was exchanged over email rather than in an actual verbal conversation. The Court denied Danchenko's Rule 29 motion to dismiss related to the remaining counts of the Indictment. Following two days of deliberations, the jury concluded that the case had not been proven beyond a reasonable doubt.

In determining whether to bring criminal charges against Danchenko, the Office expected to be able to introduce additional evidence against Danchenko that supported the charged crimes. Thus, prior to trial, the Office moved *in limine* to introduce certain evidence as direct evidence of the charged crimes. Alternatively, the Office moved to admit the evidence as "other act" evidence pursuant to Federal Rule of Evidence 404(b) to prove Danchenko's motive, intent, plan and absence of mistake or accident. In particular, the Office sought permission to introduce evidence of:

(1) Danchenko's uncharged false statements to the FBI regarding his purported receipt of information reflecting Trump's alleged salacious sexual activity at the Ritz Carlton Hotel in Moscow. In particular, the Office planned to call as a witness the German-national general manager of the Ritz Carlton, identified in the Steele Report 2016/080 as "Source E." The Office expected the general manager would testify that he (i) had no recollection of speaking with Danchenko in June 2016 or at any time, (ii) had no knowledge of the allegations set forth in the Steele Report before their appearance in

¹³⁸⁴ OSC Report of Interview of Charles Dolan on September 7, 2021 at 1.

the media, and (iii) never discussed such allegations with Danchenko or any staff member at the hotel;

(2) Danchenko's uncharged false statements to the FBI reflecting the fact that he never informed friends, associates, and/or sources that he worked for Orbis or Steele and that "you [the FBI] are the first people he's told." In fact, the evidence revealed that Danchenko on multiple occasions communicated and emailed with, among others, Dolan regarding his work for Steele and Orbis, thus potentially opening the door to the receipt and dissemination of Russian disinformation; and

(3) Danchenko's email to a former employer in which Danchenko advised the employer, when necessary, to fabricate sources of information. Specifically, on February 24, 2016, just months before Danchenko began collecting information for the Steele Reports, the employer asked Danchenko to review a report that the employer's company had prepared. Danchenko emailed the employer with certain recommendations to improve the report. One of those recommendations was the following:

Emphasize sources. Make them bold of CAPITALISED [*sic*].
The more sources the better. If you lack them, use oneself as a source ("[Location redacted]-Washington-based businessman" or whatever) to save the situation and make it look a bit better.¹³⁸⁵

Danchenko's advice that he attach multiple sources to information and obscure one's own role as a source for information was consistent with Danchenko's alleged false statements in which he denied or fabricated the roles of sources in the Steele Reports.

The Court ruled, however, that the evidence described above was inadmissible at trial. The prosecution was forced to then proceed without the benefit of what it believed in good faith was powerful, admissible evidence under Rule 404(b) of the Federal Rules of Evidence.

g. The legality of Danchenko's visa arrangement

The Office consulted with attorneys and investigators from the Department of Homeland Security, United States Citizenship and Immigration Services ("USCIS") to determine if Danchenko's U.S. visa was obtained through fraudulent pretenses, given, in the Office's view, the unusual circumstances in which an individual lists a U.S.-based employer as the sponsor of the visa application (Danchenko Employer-1), but is in actuality employed by a foreign entity (Orbis) and merely paid by the sponsoring entity for work done on behalf of the foreign employer. The USCIS informed the Office that this arrangement was legal.

The Office also reviewed the evidence of Danchenko's circuitous payment stream to determine if Orbis, Danchenko Employer-1, or other entities engaged in money laundering in violation of 18 U.S.C. § 1956. Given the apparent legality of Danchenko's visa arrangement, however, the Office determined that no specified unlawful activity could be proven.

¹³⁸⁵ SC IDC_00102430 (Email from Danchenko to Former Danchenko Employer-1 Executive-1 dated 02/24/2016) (capitalization in original).

h. The FBI's handling of the prior counterespionage investigation of Danchenko

The failure of the FBI to assess properly the prior counterespionage investigation of Danchenko is incomprehensible. The investigation related to Danchenko's pitching a person he thought perhaps was going into the Obama administration for classified information. Although the conduct of certain FBI employees was, at best, negligent with respect to the prior investigation of Danchenko and his subsequent use as a CHS, we did not find any evidence that FBI personnel acted with specific intent – which the statute requires – to permit knowingly false information received from Danchenko to continue to be used in FISA applications. Prosecution, therefore, was not supported by the available evidence.

i. The recordings of Page, Papadopoulos and others

The Office carefully reviewed and analyzed the evidence related to, among other things, (i) the FBI's handling of the recordings made by CHSs and UCEs, (ii) the conduct of the CHSs and UCEs in making those recordings, and (iii) the FBI's failure to include key exculpatory material from those recordings in the Page FISA applications. As discussed more fully below, in determining whether the actions of individuals and entities warranted criminal prosecution, the Office adhered to the previously delineated Principles of Federal Prosecution.

i. *CHS-1's recordings of Page*

As discussed throughout this report, one of the key allegations contained in the Steele reporting, and which would later underpin the Page FISA applications, was the existence of “a well-developed conspiracy of co-operation” between the Trump campaign and Russian leadership. This alleged conspiracy purportedly was managed by campaign manager Paul Manafort using Page, and others, as intermediaries with the Russians.¹³⁸⁶ On its face, this was a shocking and serious allegation of collusion between the Trump campaign and the Russian government. However, as discussed in detail above, during the first recorded meeting between Page and CHS-1, Page never once indicated that he maintained a relationship with Manafort – despite several efforts by CHS-1 to establish such a relationship. In fact, Page explicitly denied ever having met or spoken with Manafort. While Page said he had sent a couple of emails to Manafort during his time on the campaign,¹³⁸⁷ he noted that Manafort did not respond to any of these emails. These assertions made by Page could have easily been corroborated through basic investigative steps and legal process, but were never undertaken.

Moreover, as discussed above, the Page FISA applications also relied on uncorroborated allegations from the Steele Reports that Page had met with Igor Sechin and Igor Divyekin in July 2016 to discuss the removal of certain sanctions against the Russian government. In his recorded meetings with CHS-1, however, Page denied meeting with Sechin or Divyekin and further denied even knowing who Divyekin was. Following the release of the *Yahoo! News* article on September 23, 2016 containing these same allegations, Page made similar denials in his letter to Director Comey and volunteered to be interviewed by the FBI regarding the accusations.

¹³⁸⁶ SCO-105084 (Documents Known to the FBI Comprising the “Steele Dossier”) at 9, “Company Intelligence Report 2016/095” (capitalization in original).

¹³⁸⁷ As previously noted, on one of the emails Manafort was included on the TO: line and he was cc'd on two others.

Despite these recorded exculpatory statements made by Page and the denials contained in his letter to Comey, the FBI submitted its initial Page FISA application on October 21, 2016 containing the uncorroborated Steele Report allegations discussed above. The application inaccurately stated that “Page did not provide any specific details to refute, dispel, or clarify the media reporting [and] he made vague statements that minimized his activities.” In fact, the only fair reading of Page’s statements to CHS-1 regarding Manafort is that Page explicitly denied meeting or speaking with Manafort about any subject, to say nothing of the allegations regarding collusion with the Russian government. In the same vein, the only fair reading of Page’s statements to CHS-1 regarding Sechin and Divyekin is that Page explicitly denied meeting with either individual, and, in fact, had never even heard of Divyekin. These multiple, explicit denials to CHS-1 were not included in the initial Page FISA application or subsequent renewals. Further, during the pendency of the Page FISA renewals, the FBI obtained additional information that should have cast further doubt on the allegations contained in the applications, including, but not limited to (i) Page’s denials of the allegations during a series of interviews with the FBI in March 2017, and (ii) the FBI’s interview of Steele’s primary subsource (Igor Danchenko), which as discussed more fully below, cast further doubt on the nature of any alleged relationship between the Trump campaign and the Russian government.

The Crossfire Hurricane investigators did not correct the errors, omissions, and misrepresentations that were contained in the initial Page FISA application and subsequent renewals. When interviewed by the Office, one of the Crossfire Hurricane investigators stated, without further explanation, that he assessed Page’s statements to CHS-1 to be “evasive.” Similarly, when interviewed by the OIG, the investigator stated that Page “minimized, he kind of vacillated on some things. So, that’s our, that was our, my assessment of what he said.” Again, a fair reading of the transcripts of the recorded meetings between Page and CHS-1 reveal that Page was, if nothing else, explicit in his denials regarding Manafort, Sechin, and Divyekin. Based on a review of all the evidence, the Office concluded that the Crossfire Hurricane investigators, while aware of Page’s explicit denials regarding the allegations, appear to have chosen to cloak those explicit denials in unsupported assessments to not endanger the viability of the Page FISA applications.

While the evidence assembled by the Office may have been sufficient to meet a negligence standard, in order to prove a criminal violation of Page’s civil rights, the Government would be required to prove beyond a reasonable doubt that one or more persons acted *intentionally* to violate those rights. What in our judgement would be the admissible evidence in such a prosecution did not meet that standard.

In addition, in order to prove a false statement or perjury charge, such a prosecution would have to rest largely on not what was a provable, affirmative false statement, but rather on material omissions (e.g. Page’s exculpatory statements to CHS-1). Given, among other things, (i) the reliance by the investigators on their professional assessments, (ii) the claimed inability to recall the details of important conversations, (iii) the lack of evidence as to who was responsible for information that was included or withheld in the FISA applications, and (iv) the inability to prove intent, the Office concluded that the standard of proof beyond a reasonable doubt could not be met. Accordingly, the Office did not seek criminal charges against any FBI or Department personnel in relation to the Page exculpatory material being withheld from the Page FISA applications.

ii. *Recordings of George Papadopoulos*

The FBI also recorded meetings between Papadopoulos and FBI CHSs and UCEs. During the course of these meetings, Papadopoulos denied Russian assistance to the Trump campaign, notwithstanding repeated attempts by CHS-1 to link the WikiLeaks disclosures of DNC emails to the campaign – an assertion set forth in the Page FISA applications. In fact, when asked directly by CHS-1 if the campaign had advance knowledge about the WikiLeaks disclosures, Papadopoulos replied “no.” Papadopoulos stated that the campaign “would [not] advocate for this type of activity because at the end of the day, it’s, ah, illegal . . . and compromises the U.S. national security.” Papadopoulos also stated that this type of activity is “espionage . . . treason.” Papadopoulos also made repeated denials about the campaign’s involvement with the WikiLeaks disclosures to a second CHS. These highly probative statements, some of which were made before the initial Page FISA application, were not included in that application or any subsequent renewals. Perhaps more importantly, these statements did not cause anyone in the FBI to question the initial predication for Crossfire Hurricane, namely Papadopoulos’s alleged statements to the Australian diplomats regarding Russia’s offer of assistance to the Trump campaign.

Similar to the Page exculpatory statements, the Crossfire Hurricane investigators chose not to credit Papadopoulos’s statements and assessed them to be “weird,” “rote,” “canned,” “rehearsed,” and, without citing any evidence, the product of legal coaching.¹³⁸⁸ Indeed, when interviewed by the Office, one Crossfire Hurricane investigator repeated that assessment noting that Papadopoulos’s statements were “curious,” rehearsed, and therefore not authentic. Likewise, when interviewed by the Office, another investigator recalled briefing FBI executives about the Papadopoulos statements, including McCabe, and noted that the statements were deemed to be scripted to give a false impression.

For the same reasons stated with respect to Page, the evidence assembled by the Office in relation to the exclusion of the Papadopoulos statements in the Page FISA application may have been sufficient to meet a negligence standard but was insufficient to bring criminal charges against any FBI or Department personnel.

iii. *The conduct of CHS-1*

As discussed above, on December 15, 2016, CHS-1 and Page had the third of what would eventually be four recorded meetings. In that meeting, CHS-1 and Page discussed, among other things, the potential formation of a London-based think tank focusing on Russia’s relations with the West. Although the two discussed Secretary of State nominee Rex Tillerson’s relationship with Igor Sechin and also briefly discussed a *Washington Post* column mentioning Page’s purported relationship with Sechin, the subject of Page meeting Sechin and Igor Divyekin was not raised during this meeting. Nevertheless, a few days later, CHS-1 informed Case Agent-1 that Page, in fact, had told CHS-1 that he had met with Sechin on his most recent trip to Russia. According to Case Agent-1, CHS-1 purported to recall this information after reading about Sechin in the newspaper. A review of the transcript of this meeting and careful listening to the entire recording revealed no such statements made by Page,¹³⁸⁹ and reviewing the transcript or

¹³⁸⁸ Redacted OIG Review at 332-333.

¹³⁸⁹ Transcript of conversation between Carter Page and CHS-1 on 12/15/2016.

listening to the recorded conversation appears to have been a basic step that Case Agent-1 did not take. The Office examined whether CHS-1 made an intentional false statement to the FBI when he provided this information, but was unable to establish that CHS-1 intentionally lied to the FBI.

j. Certification of the FISA applications

The Office also assessed whether there were any criminal violations in the certifications made by senior government officials as part of the Page FISA applications.¹³⁹⁰ The certification addresses the foreign intelligence purpose of the application, such as a purpose of obtaining information “necessary . . . to protect against . . . clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power” or “information with respect to a foreign power or foreign territory that . . . is necessary to . . . the national defense or security of the United States . . . or the conduct of the foreign affairs of the United States.”¹³⁹¹ The official must also certify that the foreign intelligence sought cannot be obtained by normal investigative techniques, and explain the basis for that certification.¹³⁹² The certification of a FISA application does not cover the accuracy of the information in the application itself; that is addressed by a sworn statement from an FBI Agent.¹³⁹³

The certifications met the requirements of FISA. Our investigation did not reveal that any certifier lacked a reasonable basis for believing that the assertions as to the purpose of the application were true. The examples and explanations provided in the certifications strongly supported the assertions that a significant purpose of the applications was to obtain foreign intelligence information.

The certifiers also certified that the foreign intelligence sought could not be obtained by normal investigative techniques. The certifications listed other techniques that might be used to investigate Page. Again, our investigation did not find that any certifier lacked a reasonable basis for believing that the assertions about the use of investigative techniques were true. The certifications explained the basis for the statements logically and in a manner that was relevant to the Page applications.

E. The Alfa Bank and Yotaphone Allegations

1. *Factual background – Alfa Bank*

a. Introduction

The Office’s investigation identified evidence that certain individuals and entities sought to support the Clinton campaign by promoting allegations to law enforcement and the Intelligence Community related to Trump and his campaign. The Office considered

¹³⁹⁰ *In re Carter W. Page*, No. 16-1182, at 63; *In re Carter W. Page*, No. 17-52, at 76; *In re Carter W. Page*, No. 17-375, at 88; *In re Carter W. Page*, No. 17-679 at 98.

¹³⁹¹ See 50 U.S.C. § 1801(e)(2). The certification requirements are discussed above in Section III.C.3.

¹³⁹² 50 U.S.C. §§ 1804(a)(6)(C) and (a)(6)(E)(ii).

¹³⁹³ See *supra* §§ III.C.1; III.C.3.

whether the activities of these individuals or entities, as well as government officials, violated any federal criminal statutes. In particular, we examined the validity of the allegations and whether these individuals or entities conspired with the Clinton campaign to provide false or misleading information to law enforcement and the Intelligence Community.

First, the Office identified certain statements that Michael Sussmann made to the FBI and the CIA that the investigation revealed were false. Sussmann was a partner at Perkins Coie, the law firm that served as counsel to the Clinton campaign. A grand jury in the U.S. District Court for the District of Columbia found probable cause to believe that Sussmann lied to an FBI official and returned a one-count indictment charging him with making a materially false statement, in violation of 18 U.S.C. § 1001.¹³⁹⁴

As set forth in the Indictment, on September 19, 2016 – less than two months before the 2016 election – Sussmann met with FBI General Counsel Baker. Sussmann provided Baker with data and white papers that allegedly demonstrated a covert communications channel between the Trump Organization and Alfa Bank, a Russia-based bank. The Indictment alleged that Sussmann lied in that meeting, falsely stating to Baker that he was not providing information to the FBI on behalf of any client. Instead, the Office’s investigation revealed that Sussmann had assembled and conveyed the allegations to the FBI on behalf of two clients, Rodney Joffe, an executive at Tech Company-1¹³⁹⁵ and the Clinton campaign. After a two-week trial, a jury found that the case against Sussmann had not been proven beyond a reasonable doubt.

Second, as explained further below, the Office’s investigation uncovered evidence of numerous actions by individuals and entities with ties to the Clinton campaign to promote the Alfa Bank allegations to the Intelligence Community and the government. The Office also uncovered evidence that individuals and entities with ties to the Clinton campaign promoted allegations 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 considered the validity of the allegations and evaluated whether the conduct of these individuals or entities constituted a federal offense and whether admissible evidence would be sufficient to obtain a conviction for such an offense. Ultimately, the Office concluded that our evidence was not sufficient to obtain and sustain a criminal conviction.

The Office also examined the FBI’s actions in relation to the Alfa Bank and Yotaphone allegations. In doing so, the investigation assessed whether any FBI or other federal employee conspired with others to promote the allegations in order to benefit the Clinton campaign in a manner that would constitute a federal offense. The Office’s investigation did not establish sufficient evidence that any FBI official or employee

¹³⁹⁴ See *Sussmann Indictment*.

¹³⁹⁵ *Sussmann* Tr. 05/17/2022 PM at 506:12-17. Tech Company-1 is a U.S. based company that provides internet-related services and products to both commercial and government clients. *Sussmann* Tr. 05/17/2022 PM at 502:2-506:8; OSC Report of Interview of University-1 Researcher-1 on 07/22/2021 at 4; OSC Report of Interview of Tech Company-1 Employee-1 on 02/02/2021 at 1-4.

knowingly and intentionally participated in a conspiracy with others to promote the allegations, to falsify government records, to obstruct justice, or to cause the FBI to open an investigation into them as part of such a conspiracy.

b. Sussmann's attorney-client relationship with the Clinton campaign and Joffe

As part of its investigation, the Office obtained billing records from Perkins Coie related to the firm's representation of various individuals and entities, including the Clinton campaign, Tech Company-1, and Rodney Joffe. The records reflect that Sussmann repeatedly billed the Clinton campaign for his work on the Alfa Bank allegations. In compiling and disseminating these allegations, Sussmann and Joffe also met and communicated with Marc Elias, another partner at Perkins Coie, who was then serving as General Counsel to the Clinton campaign.¹³⁹⁶

By way of background, in April 2015, the Clinton campaign engaged Perkins Coie and Elias to provide "legal counseling and representation of [the Clinton campaign] in connection to its legal affairs, including the Federal Election Commission and other regulatory requirements and general organizational and compliance matters."¹³⁹⁷ A few months later, the DNC and the Democratic Congressional Campaign Committee engaged Perkins Coie to provide legal advice in connection with the "Federal Election Commission and other regulatory requirements and general organizational and compliance matters."¹³⁹⁸

After these engagements, in the spring of 2016, Perkins Coie engaged Fusion GPS on behalf of the Clinton campaign. Fusion GPS was a Washington, D.C.-based consulting firm that provided research and strategic intelligence services to clients, including corporations and law firms. As set forth in the letter memorializing that engagement, the purpose was for Fusion to support Perkins Coie's legal advice to clients on "defamation, libel and similar laws in which accuracy is an essential legal element."¹³⁹⁹ Elias explained that Perkins Coie hired Fusion for research and investigative services to assist Elias and Perkins Coie in representing the Clinton campaign.¹⁴⁰⁰ As part of those services, Fusion provided research and other services that were used to, among other things, promote the Alfa Bank allegations to the media and the FBI.

c. The Alfa Bank allegations

i. *Actions by Sussmann, Perkins Coie, and Joffe to promote the allegations*

The Office's investigation revealed that beginning in late July or early August 2016, Sussmann, Joffe, and agents of the Clinton campaign together assembled and disseminated the Alfa Bank allegations and other derogatory information about Trump and his associates to the media and then to the FBI. Generally speaking, the Alfa Bank allegations pertained to

¹³⁹⁶ Joffe and Elias declined to be voluntarily interviewed by the Office.

¹³⁹⁷ *Sussmann* Government Exhibit 301 at 1.

¹³⁹⁸ SCO-021710 (Letter from Perkins Coie Attorney-1 to DNC Official-1 re: Legal Representation dated October 7, 2015) at 1.

¹³⁹⁹ *Sussmann* Government Exhibit 302 at 1.

¹⁴⁰⁰ *Sussmann* Tr. 05/18/2022 AM at 630:10-634:10.

assertions that a “secret” email server located in Pennsylvania was configured to allow email communications between Alfa Bank and the Trump Organization through a “TOR exit node” (*i.e.*, a node used for anonymized internet traffic) at Spectrum Health, a U.S.-based healthcare company located in Michigan.

Beginning in the summer of 2016, Joffe worked with Sussmann, Fusion GPS, a number of cyber researchers, and employees at multiple internet companies to assemble data and white papers. In connection with these efforts, Joffe used his access to non-public or proprietary internet data. Joffe also enlisted the assistance of researchers at a U.S.-based university (“University-1”) who were receiving and analyzing large amounts of internet data in connection with a pending federal government cybersecurity research contract. Joffe tasked these researchers to mine internet data to establish a connection between Trump and Russia.

In particular, in late July and early August, Joffe commenced a project in coordination with Sussmann and Perkins Coie to support an “inference” and “narrative” tying Trump to Russia. For example, records show that on three days in August 2016, Joffe had meetings or conference calls with Sussmann and Elias.¹⁴⁰¹ At about the same time, Joffe began tasking his own employees and associates to mine and assemble internet data that would support such an inference or narrative.¹⁴⁰² Joffe expressly stated in emails that a purpose of this effort was to please certain “VIPs,”¹⁴⁰³ apparently referring to Sussmann, Elias, and the Clinton campaign.

Among others whom Joffe called was an executive of another technology company (“Tech Company-3 Executive-1”). Joffe had an ownership interest in Tech Company-3. Joffe instructed Tech Company-3 Executive-1 to search data maintained by his company and another affiliated company¹⁴⁰⁴ for information concerning the online activities of Trump and his associates.¹⁴⁰⁵ Joffe told Tech Company-3 Executive-1 that he was working with a person at a firm in Washington, D.C. with close ties to the Clinton campaign and the

¹⁴⁰¹ *Sussmann* Government Exhibits 319, 327, 331-332, 553.4.

¹⁴⁰² SC-00000473 (Email from Joffe to University-1 Researcher-1 & University-1 Researcher-2 dated 08/03/2016); SC-00000732 (Email from University-1 Researcher-1 to Tech Company-1 Employee-1 & Joffe dated 08/20/2016); SC-00000570 (Email from Tech Company-2 Executive-1 to Joffe, University-1 Researcher-1 & University-1 Researcher-2 dated 08/20/2016); SC-00000016 (Email from University-1 Researcher-1 to University-1 Researcher-2, Joffe & Tech Company-2 Executive-1 dated 08/21/2016); SC-00000665 (Email from Joffe to University-1 Researcher-1, University-1 Researcher-2 & Tech Company-2 Executive-1 dated 08/21/2016).

¹⁴⁰³ SC-00000573 (Email from Joffe to Tech Company-2 Executive-1, University-1 Researcher-1 & University-1 Researcher-2 dated 08/20/2016).

¹⁴⁰⁴ The affiliated company was Packet Forensics, a company that, among other things, places or gains access to sensors on the internet’s infrastructure that allow it to collect large quantities of internet domain name system (“DNS”) traffic from around the globe, which it then sells. *Sussmann* Tr. 05/24/2022 PM at 1981:7-14, 1985:19-1987:13.

¹⁴⁰⁵ OSC Report of Interview of Tech Company-3 Executive-1 on Aug. 12, 2021 at 2-4; *Sussmann* Tr. 05/24/2022 PM at 1990:3-1991:6, 1994:2-1997:1.

Democratic Party. Joffe also provided to Tech Company-3 Executive-1 a document containing the physical addresses, email addresses, Internet Protocol (“IP”) addresses, email domains, and other personal information associated with various Trump associates, including information about some spouses and family members (the “Trump Associates List”).¹⁴⁰⁶

Tech Company-3 Executive-1 was highly uncomfortable with this task.¹⁴⁰⁷ Still, according to Tech Company-3 Executive-1, he and others complied with the instructions because Joffe was a powerful figure at these companies.¹⁴⁰⁸ The companies thereafter embarked on a data analysis and opposition research project concerning Trump and his associates, which they codenamed “Crimson Rhino.”¹⁴⁰⁹ As part of the research project, Tech Company-3 Executive-1 and his associates drafted a report that they provided to Joffe. The report’s “preliminary result” was that the researchers “observed no connection that clearly indicated direct communications between said individuals and Russia that would imply money transfers from Russia to the United States within the last 90 days.”¹⁴¹⁰

Joffe also tasked others, including an employee of Tech Company-1 (“Tech Company-1 Employee-1”), to use resources at his companies to conduct opposition research about Trump.¹⁴¹¹ According to Tech Company-1 Employee-1, one of the services that Tech Company-1 provided was access to domain name system (“DNS”) information.¹⁴¹² As part of these services, Tech Company-1 stored approximately 150 billion DNS transactions per day, which was approximately five terabytes of data.¹⁴¹³ Although Tech Company-1 Employee-1 acknowledged that Tech Company-1 did not conduct political research as part of its business operations,¹⁴¹⁴ during the 2016 campaign, Joffe asked Tech Company-1 Employee-1 to run searches of Tech Company-1’s DNS data logs related to the Alfa Bank allegations.¹⁴¹⁵ According to Tech Company-1 Employee-1, this included creating scripts to pull data related to various domains and IP addresses, including the domain trump-

¹⁴⁰⁶ *Sussman* Tr. 5/24/2022 PM at 1996:9-11; SC-00083453. The List included Carter Page, Sergei Millian, Paul Manafort, Richard Burt, Roger Stone, and Peter Petrina.

¹⁴⁰⁷ *Sussmann* Tr. 05/24/2022 PM at 1996:9-1997:12.

¹⁴⁰⁸ OSC Report of Interview of Tech Company-3 Executive-1 on Aug. 12, 2021 part 2 at 1.

¹⁴⁰⁹ *Sussmann* Tr. 05/24/2022 PM at 1997:3-1998:12.

¹⁴¹⁰ SC-00083451 (Crimson Rhino paper) at 1.

¹⁴¹¹ OSC Report of Interview of Tech Company-1 Employee-1 on Feb. 2, 2021 at 4-5.

¹⁴¹² DNS is a naming system for devices connected to the internet that translates recognizable domain names, *E.g.*, <http://www.google.com>, to numerical IP addresses, *E.g.*, 123.456.7.89. *Sussmann* Tr. 05/17/2022 AM at 325:4-24. “A DNS look-up tells you that one computer looked up the IP address for a particular domain name.” *Sussmann* Tr. 05/17/2022 AM at 339:17-18.

¹⁴¹³ *Sussmann* Tr. 05/17/2022 PM at 504:11-20.

¹⁴¹⁴ *Id.* at 506:9-11.

¹⁴¹⁵ *Id.* at 508:4-19.

email.com and various domains that included the phrase “alfa” in them.¹⁴¹⁶ Tech Company-1 Employee-1 could not recall conducting any other searches of Tech Company-1’s DNS data for political projects or related in any way to specific political organizations, but Tech Company-1 Employee-1 never asked Joffe about the purpose of the project or whether these searches were on behalf a political campaign.¹⁴¹⁷ Tech Company-1 Employee-1 has stated, in sum and substance, that he did not ask because he did not want to know.¹⁴¹⁸

Joffe similarly tasked Tech Company-2 Executive-1¹⁴¹⁹ and other researchers with conducting opposition research regarding Trump. For instance, Joffe emailed these researchers the same Trump Associates List that he had provided to Tech Company-3 Executive-1.¹⁴²⁰ Among those whom Joffe and Tech Company-2 Executive-1 enlisted were researchers at University-1 who were assigned to a then-pending federal cybersecurity contract with the Defense Advanced Research Projects Agency (“DARPA”). At the time, Joffe was negotiating an agreement between Tech Company-1 and University-1 to sell large amounts of internet data to the university for use under the DARPA contract. The intended purpose of this agreement, and of University-1’s sensitive work with DARPA, was to gather and analyze internet metadata to detect malicious cyberattacks.¹⁴²¹ Both Joffe and Tech Company-2 Executive-1 worked with two of these University-1 researchers, University-1 Researcher-1 and University-1 Researcher-2, to mine internet data to conduct opposition research.

As part of these efforts, Sussmann and Elias began facilitating collaboration and information sharing by Joffe, Fusion GPS, and the Clinton campaign. For example, email records reflect that in August 2016, Sussmann began exchanging emails with personnel from Fusion and Elias containing the subject line, “connecting you all by email.”¹⁴²² (The contents of these emails have been withheld pursuant to asserted attorney-client privilege.)¹⁴²³

¹⁴¹⁶ *Id.* at 511:21-517:17; *Sussmann* Government Exhibits 111, 1600, 1602.

¹⁴¹⁷ *Sussmann* Tr. 05/17/2022 PM at 514:14-17, 519:3-10.

¹⁴¹⁸ *Id.* at 509:5-9, 519:3-10.

¹⁴¹⁹ Tech Company-2 Executive-1 was the president and CEO of another company funded by Joffe. *Sussmann* Tr. 05/24/2022 PM at 1985:8-9; OSC Report of Interview of Tech Company-3 Executive-1 on Aug. 16, 2021 at 2. Tech Company-2 Executive-1 declined to be interviewed by the Office.

¹⁴²⁰ SC-00000578 (Email from Joffe to Tech Company-2 Executive-1, University-1 Researcher-1 & University-1 Researcher-2 dated 08/20/2016).

¹⁴²¹ OSC Report of Interviews of University-1 Researcher-2 in July, August 2021 at 1.

¹⁴²² SC-00108364 (Email from Sussmann to Simpson, Fritsch & Elias dated 08/11/2016).

¹⁴²³ Perkins Coie Privilege Log dated 09/07/2021, sheet 2 at lines 1-5. In the *Sussmann* case, Fusion GPS withheld over 1500 documents, claiming they were covered by attorney-client privilege as they were purportedly prepared to assist Perkins Coie in providing legal advice to law firm’s clients, the Clinton campaign and Fusion GPS, in the event that then-candidate Trump sued them for defamation. Before trial, the government challenged their privilege claims and

Later that month, Joffe also began communicating with Fusion GPS personnel.¹⁴²⁴ Email records offered at the *Sussmann* trial and described in further detail below reflect that, in the ensuing months, Fusion GPS employees communicated with news reporters regarding the Alfa Bank allegations and urged them to publish articles about them.

Sussmann took additional steps to integrate the Alfa Bank-related allegations into the Clinton campaign's opposition research efforts. For example, in the summer of 2016, Sussmann met in Perkins Coie's offices with Fusion personnel and with Christopher Steele, whose Dossier-related activities are described above.¹⁴²⁵ Fusion had at the time retained Steele to conduct opposition research.¹⁴²⁶ Sussmann and Steele have each testified separately about the meeting and their accounts differ as to what occurred. Although Sussmann testified before Congress that the purpose of the meeting was to "vet" Steele for the Clinton campaign given Sussmann's knowledge of national security matters, Sussmann never acknowledged discussing the Alfa Bank allegations with Steele and has maintained that the contents of their meeting are privileged.¹⁴²⁷ In contrast, Steele testified under oath in a British legal proceeding that, during the meeting, Sussmann told him about the Alfa Bank allegations.¹⁴²⁸ Steele further testified that, after the meeting, Fusion personnel tasked Steele to research and produce intelligence reports about Alfa Bank, which he did.¹⁴²⁹

successfully moved the Court to inspect a sampling of approximately 38 documents *in camera*. After reviewing the materials and receiving briefing not only from the government and Sussmann's counsel but also from Fusion GPS's counsel, counsel for the DNC and counsel for the Clinton campaign, the Court determined that 22 of 38 emails were improperly withheld as privileged. Specifically, the Court rejected their privilege claims because the emails at issue "solely related to disseminating the information they [Fusion GPS] and others had gathered." *United States v. Sussmann*, 21-CR-582, 5/12/2022 Order at 6-7.

¹⁴²⁴ *Sussmann* Government Exhibit 602 (Email from Joffe to Laura Seago & Sussmann dated 08/30/2016). Fusion GPS similarly withheld the contents of such communications as subject to attorney-client privilege. Fusion GPS Supplemental Privilege Log dated 03/22/2021.

¹⁴²⁵ U.S. House of Representatives Permanent Select Committee on Intelligence Interview of Michael Sussmann, (Dec. 18, 2017) at 74-75; *Steele Transcript* (Mar. 18, 2020) at 1:18-2:3. See *supra* § IV.D.1.b.

¹⁴²⁶ U.S. House of Representatives Permanent Select Cmte. on Intelligence Interview of Glenn Simpson, (Nov. 14, 2017) at 13, 19, 22-25.

¹⁴²⁷ U.S. House of Representatives Permanent Select Cmte. on Intelligence Interview of Michael Sussmann, (Dec. 18, 2017) at 75-76.

¹⁴²⁸ *Steele Transcript* (Mar. 18, 2020) at 1:23-2:3.

¹⁴²⁹ *Steele Transcript* (Mar. 18, 2020) at 1:18-2:6; SCO-105084 (Documents Known to the FBI Comprising the "Steele Dossier") at 23-24 (Company Intelligence Report 2016/112).

According to government records and public information, Steele also later provided the substance of the Alfa Bank allegations to State Department personnel, and Fusion GPS and Steele provided such information to Bruce Ohr, an official at the Department.¹⁴³⁰

Emails, billing records, and testimonial evidence offered at trial show that during approximately the same time period – and *before* approaching the FBI about these matters – Sussmann provided the Alfa Bank allegations to Eric Lichtblau, a reporter for the *New York Times*.¹⁴³¹

Law firm records reflect that after providing the Alfa Bank allegations to the media, Sussmann apprised Elias of his efforts who, in turn, appears to have communicated with the Clinton campaign’s senior leadership concerning these issues.¹⁴³²

Emails and billing records further show that, during the same time period, Sussmann and Joffe worked together to draft a white paper, which summarized the Alfa Bank allegations and which Sussmann provided to the FBI during his September 19th meeting with James Baker. Sussmann billed significant time drafting this paper to the Clinton campaign.¹⁴³³ In addition, and as described in further detail below, Joffe also solicited input on this white paper from the University-1 researchers.

Sussmann incorporated at least one of the aforementioned researchers into his efforts to disseminate the Alfa Bank allegations to the media for the benefit of the Clinton campaign. For example, emails reflect that on September 17, 2016 – two days before his meeting with the FBI – Sussmann emailed University-1 Researcher-2, stating that “[w]e have a mutual acquaintance,”¹⁴³⁴ in context apparently referring to Joffe. Soon thereafter, Sussmann spoke with University-1 Researcher-2.¹⁴³⁵ During their conversation, Sussmann told University-1 Researcher-2 that the data underlying the Alfa Bank allegations had been lawfully collected, thus reflecting Sussmann’s apparent knowledge concerning the data’s origins.¹⁴³⁶ University-1 Researcher-2 also said that Joffe asked him to speak with the media about the Alfa Bank allegations, which he subsequently did.¹⁴³⁷

¹⁴³⁰ *Steele Transcript* (Mar. 18, 2020) at 74:23-75:22; SCO-015117 (Notes from Meeting with Chris Steele dated 10/11/2016); SCO-015110 (Emails between Winer and Kavalec dated 10/12&13/2016); SCO-075792 (FBI Interview of Bruce Ohr on 12/12/2016).

¹⁴³¹ *E.g.*, *Sussmann* Government Exhibit 553.16 (M. Sussmann billing entry to HFA dated 09/06/16); SCO-092700 (Michael Sussmann Verizon record) at 10; SCO-092711 (Michael Sussmann Verizon record) at 3; *see also* *Sussmann* Tr. 05/18/2022 PM at 725:6-726:25, 747:12-749:14; 05/19/2022 AM at 844:24-845:10, 865:25-866:10, 903:8-14.

¹⁴³² SC-00004312 (Email from Elias dated 10/09/16) at 1, 3.

¹⁴³³ *E.g.*, *Sussmann* Government Exhibits 553.6, 553.12, 553.16, 553.22.

¹⁴³⁴ SC-00004278 (Emails between University-1 Researcher-2 & Sussmann dated 09/17/16).

¹⁴³⁵ SCO-092711 (*Sussmann* Verizon record) at 5.

¹⁴³⁶ OSC Report of Interviews of University-1 Researcher-2 in July, August 2021 at 3, 5.

¹⁴³⁷ *Id.* at 5.

ii. *Actions by Tech Company-2 Executive-1 and others and additional actions by Joffe*

The Office gathered emails and communications between Joffe, employees of various internet companies, and the other researchers regarding the use of internet data related to the Trump campaign. Among the internet data Joffe and his associates obtained was DNS internet traffic pertaining to (i) Spectrum Health, (ii) Trump Tower, (iii) Trump's Central Park West apartment building, and (iv) the Executive Office of the President ("EOP").

For example, Tech Company-2 Executive-1 referenced the Trump Associates that Joffe had provided:

*Regarding this whole project, my opinion is that from DNS all we could gain even in the best case is an *inference*.*

I have not the slightest doubt that illegal money and relationships exist between pro-Russian and pro-Trump, meaning actual people very close to Trump if not himself. . . .

But even if we found what Rodney asks us to find in DNS we don't see the money flow, and we don't see the content of some message saying "send me the money here" etc.

I could fill out a sales form on two websites, faking the other company's email address in each form, and cause them to appear to communicate with each other in DNS. (And other ways I can think of and I feel sure [University-1 Researcher-2] can think of.)

*IF Rodney can take the *inference* we gain through this team exercise . . . and cause someone to apply more useful tools of more useful observation or study or questioning ... then work to develop even an inference may be worthwhile.*

That is how I understood the task. Because Rodney didn't tell me more context or specific things. What [Cyber Researcher-1] has been digging up is going to wind up being significant. It's just not the case that you can rest assured that Hil[l]ary's opposition research and whatever professional govts and investigative journalists are also digging . . . they just don't all come up with the same things or interpret them the same way. But if you find any benefit in what [he] has done or is doing, you need to say so, to encourage [him]. Because we are both killing ourselves here, every day for weeks.

. . . .

*Trump/ advisor domains I've been using. These include ALL from Rodney's PDF [the Trump Associates List] plus more from [Cyber Researcher-1]'s work*¹⁴³⁸

¹⁴³⁸ SC-00000570 (Email from Tech Company-2 Executive-1 to Joffe, University-1 Researcher-1 & University-1 Researcher-2 dated 08/20/2016) (emphases added) (capitalizations in original).

The above email reflects the fact that Joffe's tasking likely triggered or affected the research efforts that ultimately culminated in Sussmann's meeting with Baker. Joffe's response states that the "task is indeed broad" and that the ability to "provide evidence of *anything* that shows an attempt to behave badly" would make "the VIPs . . . happy." According to Joffe, the "VIPs" were looking for a "true story that could be used as the basis for a closer examination," and any interactions between Trump and Alfa Bank "would be jackpot."¹⁴³⁹

Joffe proceeded to disseminate the Alfa Bank allegations despite having previously expressed and received from others expressions of serious doubts and differing views about their strength, and purposefully crafted a written analysis to conceal the weaknesses of the allegations. For example, on August 21, 2016, Joffe urged the researchers to push forward with additional research concerning Trump, which he stated would "give the base of a very useful narrative." Later in the same email, Joffe expressed his own belief that the "trump-email.com" domain was "a red herring," noting that the host for that domain "is a legitimate valid [customer relationship management] company." Joffe therefore concluded that "we can ignore it, together with others that seem to be part of the marketing world."¹⁴⁴⁰

On August 22, 2016, University-1 Researcher-1 expressed his view that Joffe's research project was flawed, stating that:

Lets [sic] for a moment think of the best case scenario, where we are able to show (somehow) that DNS (MX¹⁴⁴¹ or otherwise) communication exists between Trump and R[ussia]. *How do we plan to defend against the criticism that this is not spoofed UDP traffic we are observing?* There is no answer to that. Lets [sic] assume again that they are not smart enough to refute our "best case" scenario. Rodney, you do realize that we will have to expose every trick we have in our bag to even make a very weak association? Letsv [sic] all reflect upon that for a moment. [S]orry folks, but unless we get combine netflow and DNS traffic collected at critical points between suspect organizations, *we cannot technically make any claims that would fly public scrutiny.* This is not a typical attribution problem when the two parties (defenders vs. attackers) are clearly separated. In this case we will have not only the Trump folks trying to sho[o]t this down, but all the privacy freaks trying to come up with a crazy conspiracy theory on how we obtain the data. Sorry to say this, we are nowhere close coming [sic] with a plan to attack this problem that will fly in the public domain. *The only thing that drive [sic] us at this point is that we just do not like [Trump]. This will not fly in eyes of*

¹⁴³⁹ SC-00000573 (Email from Joffe to Tech Company-2 Executive-1, University-1 Researcher-1 & University-1 Researcher-2 dated 08/20/2016).

¹⁴⁴⁰ SC-00000665 (Email from Joffe to University-1 Researcher-1, University-1 Researcher-2 & Tech Company-2 Executive-1 dated 08/21/2016).

¹⁴⁴¹ "Mail server." *Sussmann* Government Exhibit 247 at 2.

*public scrutiny. Folks, I am afraid we have tunnel vision. Time to regroup?*¹⁴⁴²

On September 14, 2016, Joffe solicited the views of the researchers on the white paper, and asked these DNS experts to consider the paper not using their expertise, but conducting the reviews as if they were *not* experts:

Please read as if you had no prior knowledge or involvement, and you were handed this document as a security expert (NOT a dns expert) and were asked: ‘Is this plausible as an explanation?’ NOT to be able to say that this is, without doubt, fact, but to merely be plausible. Do NOT spend more than a short while on this (If you spend more than an hour you have failed the assignment). Hopefully less. :)¹⁴⁴³

University-1 Researcher-1 replied, endorsing Joffe’s approach: “A DNS expert would poke several holes to this hypothesis (primarily around visibility, about which very smartly you do not talk about). That being said, I do not think even the top security (non-DNS) researchers can refute your statements. Nice!”¹⁴⁴⁴ University-1 Researcher-1 explained to our investigators that he endorsed Joffe’s approach of downplaying the paper’s weaknesses because Joffe was important to the success of the then-pending DARPA contract with University-1, and University-1 Researcher-1 therefore felt pressure to please Joffe.¹⁴⁴⁵ Apart from this email, however, University-1 Researcher-1 consistently maintained that the Alfa Bank data did not support any definitive conclusions.¹⁴⁴⁶

The following morning, University-1 Researcher-2 responded to Joffe by disputing one of the paper’s key findings, stating that, “Tor exit nodes, by definition route traffic for all users, since they do not know the origin of the traffic. To say that the Tor exit is exclusively used by Alfa Bank goes too far.”¹⁴⁴⁷ Tech Company-2 Executive-1 responded to Joffe, stating, in part, that the paper’s conclusion was “plausible” in the “narrow scope” defined by Joffe, and noting in part that: “if the whitepaper intends to say that there are communications between at least Alfa [Bank] and Trump, which are being intentionally hidden by Alfa [Bank] and Trump, I absolutely believe that is the case.”¹⁴⁴⁸ University-1

¹⁴⁴² SC-00000021 (Email from University-1 Researcher-1 to Tech Company-2 Executive-1, Joffe & University-1 Researcher-2 dated 08/22/2016) (emphasis added).

¹⁴⁴³ SC-00000023 (Email from Joffe to University-1 Researcher-1, University-1 Researcher-2 & Tech Company-2 Executive-1 dated 09/14/16) (capitalization in original).

¹⁴⁴⁴ SC-00000028 (Email from University-1 Researcher-1 to Joffe, University-1 Researcher-2 & Tech Company-2 Executive-1 dated 09/14/16).

¹⁴⁴⁵ OSC Report of Interview of University-1 Researcher-1 on July 22, 2021 at 1-2.

¹⁴⁴⁶ *Id.* at 1; 2-3; 4.

¹⁴⁴⁷ SC-00000758 (Email from University-1 Researcher-2 to Joffe, University-1 Researcher-1 & Tech Company-2 Executive-1 dated 09/16/2016).

¹⁴⁴⁸ SC-00000760 (Email from Tech Company-2 Executive-1 to Joffe, University-1 Researcher-1 & University-1 Researcher-2 dated 09/15/16).

Researcher-2 replied on the same date, stating that he believed that there was “a threshold of probable cause” for criminal and other federal violations.¹⁴⁴⁹

On September 16, 2016, Tech Company-2 Executive-1 emailed these researchers, discussing, among other things, the draft white paper’s allegation that there was a TOR exit node at Spectrum Health that Alfa Bank had used to communicate with the Trump organization. Tech Company-2 Executive-1 initially noted that University-1 Researcher-2 had given his “adversaries every courtesy” and that “[i]f everyone in America were as measured, fair and careful, what concerns could we ever have?”¹⁴⁵⁰ Tech Company-2 Executive-1 continued that she had no reason to think that Alfa Bank has a VPN somehow through mail1.trump-email.com. “That would suggest we are dealing with masterminds of the internet.” Tech Company-2 Executive-1 added that she firmly believed that there were communications between the Trump organization and Alfa Bank and that she did not

care in the least whether I’m right or wrong about VPN from Alfa Bank, [TOR] from Alfa Bank, or just SMTP artifact pointing to a 3-way connection. Rodney has carefully crafted a message that could work to accomplish the goals. Weakening that message in any way would in my opinion be a mistake.¹⁴⁵¹

Notably, TOR publishes a comprehensive list of exit nodes dating back to February 22, 2010. FBI experts we engaged 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. The FBI experts advised that historical TOR exit node data conclusively disproves this white paper allegation in its entirety and furthermore the construction of the TOR network makes the described arrangement impossible. Even if true or indeed possible, using the TOR network in the alleged manner would result in worse anonymization and security than simply using TOR in its default configuration. The experts explained that it would instead amount to a static proxy with a known endpoint that could be more easily correlated with traffic to the relatively small number of guard nodes allowing the identification of the true source IP much more easily than using a randomly selected exit node for each connection as the system is designed to do. 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, but this in no way indicates any kind of correlation given the deliberately random nature of TOR routing.¹⁴⁵²

¹⁴⁴⁹ SC-00000761 (Email from University-1 Researcher-2 to Tech Company-2 Executive-1, Joffe & University-1 Researcher-1 dated 09/15/16).

¹⁴⁵⁰ SC-00000031 (Email from Tech Company-2 Executive-1 to University-1 Researcher-2, Joffe & University-1 Researcher-1 dated 09/16/16).

¹⁴⁵¹ *Id.*

¹⁴⁵² *FBI Technical Analysis Report* 12-13.

iii. *Sussmann's meeting with the FBI*

The night before he met with Baker, Sussmann sent the following text message to Baker's personal cellphone: "Jim – it's Michael Sussmann. I have something time-sensitive (and sensitive) I need to discuss. Do you have availability for a short meeting tomorrow? *I'm coming on my own – not on behalf of a client or company – want to help the Bureau.* Thanks."¹⁴⁵³ Baker responded: "Ok. I will find a time. What might work for you?"¹⁴⁵⁴ To which Sussmann replied: "Any time but lunchtime – you name it."¹⁴⁵⁵

The next day, Sussmann met with Baker at FBI Headquarters. According to Baker, the meeting occurred in Baker's office and lasted approximately 30 minutes.¹⁴⁵⁶ No one else was present. Baker explained that Sussmann said during the meeting that he had information regarding a "surreptitious communications channel" between Alfa Bank and the Trump organization and that he stated, "I'm not here on behalf of any particular client."¹⁴⁵⁷ Baker said that he was "100 percent confident" that Sussmann made this statement during the meeting.¹⁴⁵⁸ Because Baker considered Sussmann a friend and colleague, Baker believed that the statement was truthful. Baker also stated that Sussmann provided him with thumb drives containing data and "white papers" that explained the covert channel. Baker also noted that Sussmann said that major news organizations were aware of the Alfa Bank allegations and were intent on publishing about the issue relatively soon.¹⁴⁵⁹ As a result, Baker considered this to be an urgent matter because, if a news organization were to publish the allegations, any secret communications channel would likely disappear.¹⁴⁶⁰

Thus, soon after he met with Sussmann, Baker spoke with Assistant Director for Counterintelligence Priestap and Deputy General Counsel Anderson, who handled counterintelligence and cyber matters. Baker believed that Priestap and Anderson needed to be aware of the allegations because they involved a Russian bank purportedly making an effort to communicate with the Trump organization. This "seemed to [Baker], on its face, to be a potential national security threat."¹⁴⁶¹ Baker relayed to Priestap and Anderson the details of his meeting, including Sussmann's specific representation that he was not there on behalf of any client and a general explanation of the Alfa Bank allegations. Both Priestap

¹⁴⁵³ *Sussmann* Government Exhibit 1500 (James Baker iPhone screenshots) at 4 (emphasis added).

¹⁴⁵⁴ *Id.*

¹⁴⁵⁵ *Id.*

¹⁴⁵⁶ *Sussmann* Tr. 05/19/2022 AM at 840:23-841:19.

¹⁴⁵⁷ *Id.* at 842:9-14.

¹⁴⁵⁸ *Id.*

¹⁴⁵⁹ *Id.* at 845:4-10, 847:21-24.

¹⁴⁶⁰ *Id.* at 848:3-16.

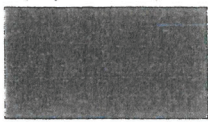
¹⁴⁶¹ *Id.* at 854:6-12.

and Anderson took contemporaneous notes. Priestap wrote in his FBI notebook¹⁴⁶² that Sussmann "said not doing this for any client":

① + Todd Hannon (or Hannon)
 Richest Sussmann - Atty: Perkins, Co. & Co. - said not doing this for any client
 • Represents D.C., Mellon Foundation, etc.
 • Former DoJ Officials
 • Been approached by prominent cyber people (Academic or corp. people)
 • NTTs, Wash. Post, etc. - w/ FBI - on Friday -
 • Secret Trump Org. survey that has had common w/ Alfa Bank Moscow (connected to known) at a hospital in U.S. used as a comm. mode (Tor) (S. Health in MC?)
 • Another article to me out later (2-3-4 weeks) about Trump Org. contacting foreign nations
 • CID has a Tor expert

Foreign Power contacting Trump Org.

People like:



Similarly, Anderson took the following notes,¹⁴⁶³ which stated, in part, "No specific client but group of cyber academics talked w/ him about research":

9/12/16
 Sussmann - Info. of Baker
 A. Sussmann client - but group of cyber academics talked w/ him about research - article that Friedman - article

Despite their notes, neither Priestap nor Anderson remembered receiving this information from Baker.¹⁴⁶⁴ Baker also recalled that he briefed both Director Comey and Deputy Director Andrew McCabe about the Alfa Bank allegations.¹⁴⁶⁵

¹⁴⁶² Sussmann Government Exhibits 2A, 2B, 2C, 243, 289.

¹⁴⁶³ Sussmann Government Exhibits 3A, 242.

¹⁴⁶⁴ Sussmann Tr. 05/23/2022 AM at 1445:22-1446:1; 05/24/2022 AM at 1786:15-25.

¹⁴⁶⁵ As noted previously, McCabe and Comey declined to be interviewed.

d. The FBI's Alfa Bank investigation

Following his meeting with Sussmann and briefings of FBI leadership, Baker recalled that he gave either Priestap or Strzok the white papers¹⁴⁶⁶ and thumb drives from Sussmann.¹⁴⁶⁷ The materials then made their way quickly to the Cyber Division. At trial, an FBI cyber agent ("Cyber Agent-1") testified that the agent and his supervisor ("Cyber Agent-2") were tasked to take custody of the Alfa Bank materials and to obtain signatures for the accompanying chain of custody form.¹⁴⁶⁸ A review of that form showed that Baker relinquished custody of the materials to Strzok, who then provided the materials to Eric Sporre, the Deputy Assistant Director of the Cyber Division.¹⁴⁶⁹ According to the form, Sporre thereafter transferred custody to Cyber Agent-2.¹⁴⁷⁰ Cyber Agent-1 testified that he was able to get signatures from Baker and Sporre for the form, but Strzok was unavailable and someone else obtained his signature.¹⁴⁷¹

i. *The Cyber Division's review of the Alfa Bank allegations*

Following the receipt of the materials, Cyber Agent-2 tasked Cyber Agent-1 to review the data provided on the thumb drives along with the white papers and identify whether there were any "cyber equities," such as an allegation of hacking.¹⁴⁷² Cyber Agent-2 also tasked Cyber Agent-1 to review the data and compare it to the white paper and provide an assessment as to whether the data supported the white paper's findings.¹⁴⁷³ The white paper that Cyber Agent-1 reviewed, titled "White Paper #1 – Auditable V3,"¹⁴⁷⁴ contained an initial section titled "Findings" that stated:

The Trump Organization is using a very unusually-configured 'secret' email server in Pennsylvania for current and ongoing email communications with Alfa Bank (Moscow), and with Alfa Bank (Moscow) through another

¹⁴⁶⁶ At his meeting with Baker, Sussmann provided three white papers to the FBI. Sussmann, Joffe, and possibly others drafted the first paper. *Sussmann* Government Exhibits 11, 319, 327, 331, 382, 553.6, 553.12, 553.16, 553.22; SC-00004255 (Email from Sussmann dated 09/06/2016); SC-00000023 (Email from Joffe to University-1 Researcher-1, University-1 Researcher-2, Tech Company-2 Executive-1 on 09/14/2016). The investigation determined that University-1 Researcher-2 drafted the second paper. Fusion GPS drafted the third paper. *Sussmann* Government Exhibits 687, 688, 689.

¹⁴⁶⁷ *Sussmann* Tr. 05/19/2022 AM at 878:8-15.

¹⁴⁶⁸ *Sussmann* Tr. 05/17/2022 AM at 365:20-366:7.

¹⁴⁶⁹ *Sussmann* Government Exhibit 282.

¹⁴⁷⁰ *Id.*

¹⁴⁷¹ *Sussmann* Tr. 05/17/2022 AM at 370:6-10.

¹⁴⁷² *Id.* at 371:20-372:4.

¹⁴⁷³ *Id.* at 372:8-24.

¹⁴⁷⁴ *Sussmann* Government Exhibit 217.

unusually-configured server (a ‘TOR exit node’) at Spectrum Health in Michigan.

These servers are configured for direct communications between the Trump organization and Alfa Bank to the exclusion of all other systems.

The only plausible explanation for this server configuration is that it shows the Trump Organization and Alfa Bank to be using multiple sophisticated layers of protection in order to obfuscate their considerable recent email traffic.

The white paper further stated that the “secret” email server domain was “mail1.trump-email.com [was] hosted by a Pennsylvania-based company, Listrak, which is a reasonably well known CRM [customer relationship management] company that provides large-scale distribution of marketing emails (usually sending emails to thousands of recipients hundreds of times a day).”¹⁴⁷⁵

Within a day of receiving the Alfa Bank materials, Cyber Agent-1 and Cyber Agent-2 drafted a report of their analysis.¹⁴⁷⁶ The report’s summary stated that they had “assess[ed] there is no CyD [Cyber Division] equity in this report and that the research conducted in the report reveals some questionable investigative steps taken and conclusions drawn.”¹⁴⁷⁷ The report acknowledged that there was no allegation of hacking and so there was no reason for the Cyber Division to investigate further. The report also said that

it appears abnormal that a presidential candidate, who wanted to conduct secret correspondence with the Russian government (or a Russian bank), would (1) name his secret server ‘mail1.trump-email.com’, (2) use a domain (trump-email.com) registered to his own organization, and then (3) communicate directly to the Russian bank’s IP address (as opposed to using TOR or proxy servers).¹⁴⁷⁸

Cyber Agent-1 testified that both he and Cyber Agent-2 did not agree with the conclusion in the white paper and assessed that (i) the authors of the white paper “jumped to some conclusions that were not supported by the technical data,” (ii) the methodology was questionable, and (iii) the conclusions drawn did not “ring true at all.”¹⁴⁷⁹ In interviews with the Office, both Cyber Agent-1 and Cyber Agent-2 said that they were proud of their work because they had both come to the same conclusion despite their own very different political views.

ii. The opening of the FBI’s investigation

After the Cyber Division’s review, FBI leadership referred the matter to a squad in the Chicago Field Office responsible for investigating Eurasian counterintelligence and

¹⁴⁷⁵ *Id.* at 3.

¹⁴⁷⁶ *Sussmann* Tr. 05/17/2022 AM at 381:13-21.

¹⁴⁷⁷ *Sussmann* Government Exhibit 247.

¹⁴⁷⁸ *Id.* at 3.

¹⁴⁷⁹ *Sussmann* Tr. 05/17/2022 AM at 378:12-379:12.

cyber matters. The investigation was referred to a Chicago Field Office Agent (“Chicago Agent-1”) who had worked on both the FBI’s Mid-Year Examination investigation (the investigation related to Hillary Clinton’s email server) and Crossfire Hurricane. Chicago Agent-1 was joined by a new FBI agent, Chicago Agent-2. Chicago Agent-2 was Chicago Agent-1’s trainee and was the co-case Agent and primary lead for the Alfa Bank investigation. Chicago Agent-1 and Chicago Agent-2 opened a full investigation “into the network communications between a US-based server and the Russian Alfa Bank organization.”¹⁴⁸⁰ A full investigation, as described above in section III.B.2, may be opened if there 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 . . . may be occurring.”¹⁴⁸¹

According to the case agents and other records obtained during the investigation, it was FBI leadership who decided to open a full investigation. Indeed, two days after the meeting between Baker and Sussmann, Supervisory Special Agent-1, the Crossfire Hurricane supervisor, reached out to Chicago Agent-1. Supervisory Special Agent-1 told Chicago Agent-1 that “people on the 7th floor to include Director are fired up about this server.”¹⁴⁸² Supervisory Special Agent-1 further stated that, if the investigation had not been opened, he would have reached out to Chicago Agent-1’s supervisor because “Priestap says it’s not an option – we must do it.”¹⁴⁸³ Chicago Agent-1 responded that the case team was “opening a CI case today.”¹⁴⁸⁴ Still, the team was already skeptical of the allegations. Chicago Agent-1 noted that the team was “leaning towards this being a false server not attributed to the Trump organization” but that they would “run it down.”¹⁴⁸⁵

Chicago Agent-1 and Chicago Agent-2 memorialized the opening of the investigation in an EC.¹⁴⁸⁶ Chicago Agent-1 and Chicago Agent-2 later acknowledged that there were certain errors in this document. Of most importance to the Office was the representation made as to the source of the white papers. The EC stated that “the Department of Justice provided the FBI with a whitepaper that was produced by an anonymous third party.”¹⁴⁸⁷ According to both Chicago Agent-1 and Chicago Agent-2, this

¹⁴⁸⁰ *Sussmann* Government Exhibit 200 (FBI EC from Chicago CG-CY-1, *Opening EC—ALFA BANK* dated 09/23/2016) at 1 (capitalization altered) (hereinafter “*Alfa Bank Opening EC*”).

¹⁴⁸¹ *AGG-Dom* §§ II.B.3.a; II.B.4.b.i.

¹⁴⁸² SCO-006608 (Lync messages between Supervisory Special Agent-1 and Chicago Agent-1 dated 09/21/16).

¹⁴⁸³ *Id.*

¹⁴⁸⁴ *Id.*

¹⁴⁸⁵ *Sussmann* Government Exhibit 249.

¹⁴⁸⁶ *Alfa Bank Opening EC*.

¹⁴⁸⁷ *Id.* at 2 (capitalization altered).

representation was an error, and both recalled that they understood the allegations were presented to the FBI's General Counsel by an anonymous source.¹⁴⁸⁸

iii. The close hold on Sussmann's identity as a source

In evaluating the FBI's early actions related to the Alfa Bank investigation, one issue that the Office identified was the decision by the FBI to put a "close hold" on Sussmann's identity as the source of the allegations and to prevent its disclosure to the Alfa Bank case team. (A close hold is when the FBI's leadership protects specific information, such as the identity of a source, and prevents the "field" or investigative team from learning that information.) The investigation revealed that multiple members of the Alfa Bank case team were "frustrated" and "concerned" that they were prevented from interviewing the source of the allegations. Accordingly, the Office attempted to determine whether Baker or other senior FBI officials may have protected Sussmann's identity improperly to further the Alfa Bank allegations against Trump for political reasons or to mask Sussmann's ties to the DNC and the Clinton campaign.

During Baker's testimony at the Sussmann trial, and although not remembering having done so, Baker speculated that he may have attempted to protect Sussmann's identity and limited disclosure to only a few senior FBI executives.¹⁴⁸⁹ According to Baker, if he did so, it was because he considered Sussmann to be a source who "had in their possession very sensitive information that he was willing to give to [the FBI]."¹⁴⁹⁰ But, again, Baker testified he did not recall whether he had refused to provide this to any specific FBI personnel or who he would have instructed to put a close hold in place. Cyber Agent-1 testified that when he was obtaining Baker's signature on the chain of custody, he could not "distinctly recall what the conversation was" but that he was "frustrated" that Baker did not tell him who had provided the thumb drives.¹⁴⁹¹ Cyber Agent-2 told the Office that he and Cyber Agent-1 considered filing a whistleblower claim about Baker's failure to provide the information but ultimately decided that they would not because the data provided was not formal evidence in a criminal proceeding.¹⁴⁹² The FBI Headquarters Program Manager for the Alfa Bank case team ("Headquarters Supervisory Special Agent-3"), noted that FBI leadership, including Strzok, instructed him not to identify the source to the team.¹⁴⁹³ Headquarters Supervisory Special Agent-3 further explained that he believed that the investigative team did not need to interview the source as a first step and instead should

¹⁴⁸⁸ *Sussmann* Tr. 05/23/2022 PM at 1645:15-1646:19, 1687:15-1688:12; 05/24/2022 AM at 1820:19-1821:24, 1846:12-1847:7.

¹⁴⁸⁹ *Sussmann* Tr. 05/19/2022 AM at 879:6-880:13.

¹⁴⁹⁰ *Id.* at 879:16-880:20.

¹⁴⁹¹ *Sussmann* Tr. 05/17/2022 AM at 370:14-19.

¹⁴⁹² OSC Report of Interview of Cyber Agent-2 on Sept. 16, 2019 at 2.

¹⁴⁹³ OSC Report of Interview of Headquarters Supervisory Special Agent-3 on Dec. 15, 2020 at 2-3, 4, 6.

focus on the data and log files to make a determination as to the validity of the allegations.¹⁴⁹⁴

The Office's investigation showed that the Alfa Bank investigative team made multiple requests to learn the identity of the source of the Alfa Bank allegations. Approximately a week after the FBI received the Alfa Bank allegations, Chicago Agent-1 sent Supervisory Special Agent-1 a message requesting that the investigative team interview the source of the white paper.¹⁴⁹⁵ Approximately a week later, Chicago Agent-1 and his supervisor again made requests to FBI leadership to interview the source of the allegations.¹⁴⁹⁶ As Chicago Agent-1 explained, this was important to the case team because the investigation had found that the allegations were unsubstantiated, and the team wanted to confirm their findings.¹⁴⁹⁷ Ultimately, the case team never learned that Sussmann was the source of the allegations nor that he was connected in any way to the DNC and the Clinton campaign.¹⁴⁹⁸

The FBI's investigation ultimately concluded that it was unable to substantiate any of the allegations in the white paper that Sussmann provided to Baker:

FBI Chicago assesses Alfa Bank and Trump Organization related servers almost certainly did not communicate intentionally or covertly, based on the results of an internal examination of Alfa Bank servers by [redacted] and subsequent preventative steps employed by the companies. FBI Chicago has high confidence in this assessment, which is based on a highly reliable sensitive source with excellent access and corroborates FBI investigative activity conducted to date.¹⁴⁹⁹

In coming to that conclusion, the investigators took a number of steps. First, they conducted open-source research on the mail1.trump-email.com domain that was identified in the white paper. They learned that the domain was registered to a company called Central Dynamics ("Cendyn") and that the server was housed at a company named Listrak, located in Pennsylvania.¹⁵⁰⁰ As a result, the FBI reached out to both Cendyn and Listrak to request data and log files from each company and to conduct interviews as well. Both Cendyn and Listrak were compliant with these requests and provided log files and data that was analyzed by FBI analysts on the investigative team. Ultimately, the data and files provided nothing to substantiate the Alfa Bank allegations.¹⁵⁰¹ In addition, the FBI reached out to Mandiant, a

¹⁴⁹⁴ *Id.* at 6-7.

¹⁴⁹⁵ *Sussmann* Government Exhibit 257.

¹⁴⁹⁶ *Sussmann* Government Exhibit 265.

¹⁴⁹⁷ *Sussmann* Tr. 05/24/2022 AM at 1841:7-21.

¹⁴⁹⁸ *Id.* at 1816:19-21.

¹⁴⁹⁹ SCO-006174 (Examination of Alfa-Bank Servers dated 10/03/2016); *Sussmann* Government Exhibit 233.

¹⁵⁰⁰ *Sussmann* Tr. 05/24/2022 AM at 1827:17-21.

¹⁵⁰¹ *Id.* at 1831:7-13.

cybersecurity firm, that was hired by Alfa Bank to conduct an internal investigation and forensic analysis into the allegations.¹⁵⁰² Mandiant provided the FBI with its findings, which too concluded that there was no evidence to support the allegations of a secret communications channel nor any evidence of direct communications between the Alfa Bank servers and Trump Organization servers.¹⁵⁰³

In early October 2016, an Agent detailed to the National Computer Forensics and Training Alliance (“Cyber Agent-3”),¹⁵⁰⁴ contacted the Cyber Division at FBI Headquarters because he had received two IP addresses from an anonymous source who had requested that the information be provided to the FBI.¹⁵⁰⁵ According to Cyber Agent-3, the anonymous source told him that the information related to a *New York Times* story involving the upcoming election.¹⁵⁰⁶ Cyber Agent-3 was then put in contact with Chicago Agent-2. Cyber Agent-3 recalled that Chicago Agent-2 was dismissive of the information and Cyber Agent-3 interpreted Chicago Agent-2’s response as if the investigative team was already aware of the information.¹⁵⁰⁷ Chicago Agent-2 explained that the case team performed open-source checks on these two IP addresses that resulted in identifying one IP address associated with Alfa Bank and one IP address associated with a home address in Moscow.¹⁵⁰⁸

The Office’s investigation revealed that the anonymous source who provided the two IP addresses to Cyber Agent-3 was, in fact, Joffe. The most likely reason Joffe decided to provide the two IP addresses to the FBI via Cyber Agent-3 anonymously was to create the appearance of corroboration. One plausible theory that the Office considered was that Joffe and others were attempting to promote the Alfa Bank allegations in such a way that the allegations appeared to be from multiple independent sources. Indeed, at this time, Joffe himself was an FBI CHS.¹⁵⁰⁹ But in this instance, Joffe decided to provide the Alfa Bank allegations and the two IP addresses to Cyber Agent-3, instead of his FBI handler, with instructions to keep his identity protected.¹⁵¹⁰ Joffe’s unwillingness to voluntarily meet with our investigators left unanswered his actual motive for providing some information to the

¹⁵⁰² *Sussmann* Tr. 05/23/2022 PM at 1660:25-1661:12.

¹⁵⁰³ *Id.* at 1661:18-24; SCO-001891 (FBI Interview of Mandiant representative on 10/13/2016).

¹⁵⁰⁴ The National Computer Forensics and Training Alliance is a nonprofit partnership between the government and private industry to collaborate and cooperate in identifying and disrupting cybercrime. OSC Report of Interview of Cyber Agent-3 on Nov. 18, 2020 at 1.

¹⁵⁰⁵ OSC Report of Interview of Cyber Agent-3 on Feb. 13, 2020 at 1-2.

¹⁵⁰⁶ SCO-011023 (Email from Cyber Agent-3 to Chicago Supervisory Special Agent-1 dated 10/02/2016).

¹⁵⁰⁷ OSC Report of Interview of Cyber Agent-3 on Nov. 18, 2020 at 3-4.

¹⁵⁰⁸ *Sussmann* Tr. 05/23/2022 PM at 1662:6-23.

¹⁵⁰⁹ *Sussmann* Tr. 05/25/2022 AM at 2166:24-2167:3.

¹⁵¹⁰ *Id.* 2167:19-2168:14.

FBI through Sussmann and the two IP addresses through Cyber Agent-3, and in both instances to remain anonymous.¹⁵¹¹

Finally, the Alfa Bank investigators also received information in early October 2016 from a separate CHS regarding the Alfa Bank allegations. Chicago Agent-2 explained that, according to the handler, the CHS had access to the white paper and had made an initial assessment that the allegations were credible but that the data appeared incomplete.¹⁵¹² The CHS also explained that he/she had been contacted by University-1 Researcher-2, one of the white paper authors.¹⁵¹³ In the correspondence from Chicago Agent-2, there is an indication that the FBI was interested in speaking with University-1 Researcher-2,¹⁵¹⁴ however, that meeting never occurred.

In January 2017, the FBI closed the Alfa Bank investigation.¹⁵¹⁵ Ultimately, the FBI was unable to substantiate any of the allegations in the white paper.¹⁵¹⁶

e. Actions by Fusion GPS to promote the Alfa Bank allegations

The Special Counsel's investigation also uncovered numerous communications in which Fusion GPS leadership and other personnel sought to discuss, advance, and disseminate the Alfa Bank allegations.

As noted, in April 2016, Perkins Coie engaged Fusion GPS in connection with the 2016 election.¹⁵¹⁷ As part of Fusion GPS's work on behalf of Perkins Coie and the Clinton campaign, it collected, organized, and promoted opposition research on Trump's ties to Russia.¹⁵¹⁸ Perhaps most notably, as described in Section IV.D.1.b, Fusion GPS retained Steele, who compiled the information and reports that became known as the Steele Dossier. Fusion GPS also drafted one of the white papers that Sussmann provided to Baker at their September 19, 2016 meeting. That white paper provided an overview of the parent

¹⁵¹¹ It is notable, however, that in November 2016, soon after the presidential election, Joffe emailed a colleague, stating, "I was tentatively offered the top [cybersecurity] job by the Democrats when it looked like they'd win." SC-00029962 (Email from Joffe to Tech Company-1 Employee-2 dated 11/17/2016).

¹⁵¹² *Sussmann* Tr. 05/23/2022 PM at 1665:8-16.

¹⁵¹³ *Id.* at 1665:17-1666:4.

¹⁵¹⁴ SCO-007853 (Emails between Chicago Agent-2, Headquarters Supervisory Special Agent-3, Chicago Agent-1, others in October 2016).

¹⁵¹⁵ *Sussmann* Government Exhibit 233.

¹⁵¹⁶ *Id.*

¹⁵¹⁷ *Sussmann* Government Exhibit 302.

¹⁵¹⁸ U.S. House of Representatives Permanent Select Cmte. on Intelligence Interview of Glenn Simpson, (Nov. 14, 2017) at 13, 19, 22-25, 59, 101-102; OSC Report of Interview of John Podesta on Jan. 19, 2022 at 2.

company of Alfa Bank and described ties to Russian government officials and certain U.S. persons and entities.¹⁵¹⁹

Following Sussmann's promotion of the Alfa Bank allegations to the FBI, Fusion GPS continued to promote these allegations to various media personnel. For instance, on October 18, 2016 – two weeks before news stories would first appear about the Alfa Bank allegations – Mark Hosenball of *Reuters* emailed Fusion GPS co-founder Peter Fritsch, stating in part, “anything new Russkie/Donald wise?,” to which Fritsch responded, “do the [expletive] Alfa Bank secret comms story. It’s hugely important. Forget the wikileaks side show.”¹⁵²⁰ The reporter replied that the issue with the story was the inability of his “cyber expert colleagues” to confirm that some of the important data was authentic.¹⁵²¹ Later on that day, Fritsch replied: “It’s everyone’s problem. Call [University-1 Researcher-2] at [University-1].”¹⁵²²

On October 22, 2016, Franklin Foer, a reporter for *Slate* magazine, emailed University-1 Researcher-2 at his University-1 email address asking for assistance on the “Alfa Bank/Trump story”.¹⁵²³ A few days later, Fritsch forwarded to Foer a tweet stating that the U.S. Senate Majority Leader had “talked w/ top NatSec officials who say that [the FBI Director] ‘possesses explosive information’ about Trump’s ties to Russia.”¹⁵²⁴ Fritsch’s email stated: “time to hurry.”¹⁵²⁵ Foer replied “Here’s the first 250 words,” and included in the email a partial draft of an article about Alfa Bank and Trump on which Foer was working for Fritsch’s review.¹⁵²⁶ The reporter published an article shortly thereafter.¹⁵²⁷

On October 31, 2016, media outlets published articles regarding the Alfa Bank allegations and the existence of an FBI investigation.¹⁵²⁸ As previously noted, within hours of these articles, the Clinton campaign issued tweets and public statements concerning the

¹⁵¹⁹ *Sussmann* Government Exhibit 207. The Office has not seen evidence that Fusion was involved in originating the Alfa Bank data or were aware of its origination, but rather only promoted the allegations.

¹⁵²⁰ *Sussmann* Government Exhibit 652.

¹⁵²¹ The email said: “[T]he problem with the [Alfa Bank] story at this point is that my cyber expert colleagues cannot satisfy themselves about the authenticity of some of the key data, which they say from what they can tell is NOT public data. We are in contact with your experts via different channels but my colleague [] in Silicon Valley still hasn’t got the confidence he says he needs to understand where all the data originated. If you can help more with this pls do. . . .” *Id.*

¹⁵²² *Id.*

¹⁵²³ SC-00018512 (Email from Foer to University-1 Researcher-2 dated 10/22/16).

¹⁵²⁴ *Sussmann* Government Exhibit 666.

¹⁵²⁵ *Id.*

¹⁵²⁶ *Id.*

¹⁵²⁷ *Sussmann* Government Exhibit 54.

¹⁵²⁸ *Sussmann* Government Exhibit 53; *Sussmann* Government Exhibit 54.

purported existence of a secret communications channel involving the Trump Organization and Alfa Bank.¹⁵²⁹

f. Actions by the Clinton campaign to promote the Alfa Bank allegations

On October 31, 2016 – about one week before the election – multiple media outlets reported that the FBI had received and was investigating the allegations concerning a purported secret channel between the Trump Organization and Alfa Bank. For example, *Slate* published an article that discussed at length the allegations that Sussmann provided to the FBI.¹⁵³⁰

Also on that day, the *New York Times* published an article titled *Investigating Donald Trump, F.B.I. Sees No Clear Link to Russia*.¹⁵³¹ The article discussed information in the possession of the FBI about “what cyber experts said appeared to be a mysterious computer back channel between the Trump Organization and the Alfa Bank.”¹⁵³² The article further reported that the FBI had “spent weeks examining computer data showing an odd stream of activity to a Trump Organization server,” and that the newspaper had been provided computer logs that evidenced this activity. The article also noted that at the time of the article, the FBI had not found “any conclusive or direct link” between Trump and the Russian government and that “Hillary Clinton’s supporters . . . pushed for these investigations.”¹⁵³³

As noted above, in the months prior to the publication of these articles, Sussmann had communicated with the media and provided them with the Alfa Bank data and allegations.¹⁵³⁴ Sussmann also kept Elias apprised of his efforts.¹⁵³⁵ Elias, in turn, communicated with the Clinton campaign’s leadership about potential media coverage of these issues.¹⁵³⁶

For example, emails reflect that on September 1, 2016, Sussmann met with the reporter who published the *New York Times* article, Eric Lichtblau.¹⁵³⁷ Sussmann billed his

¹⁵²⁹ Sussmann Government Exhibit 52; @HillaryClinton 10/31/2016 8:36pm Tweet.

¹⁵³⁰ Franklin Foer, *Was a Trump Server Communicating with Russia?*, *Slate* (Oct. 31, 2016).

¹⁵³¹ Eric Lichtblau & Steven Lee Myers, *Investigating Donald Trump, F.B.I. Sees No Clear Link to Russia*, *N.Y. Times* (Oct. 31, 2016).

¹⁵³² *Id.*

¹⁵³³ *Id.*

¹⁵³⁴ See, e.g., Sussmann Government Exhibits 553.16, 553.23, 389.

¹⁵³⁵ E.g., Sussmann Government Exhibits 307, 327, 331, 367, 553.2, 553.16; Sussmann Tr. 05/18/2022 AM at 574:21-575:22.

¹⁵³⁶ Sussmann Government Exhibit 377 at 3.

¹⁵³⁷ Sussmann Government Exhibit 357; Sussmann Government Exhibit 358.

time for the meeting to the Clinton campaign under the broader billing description “confidential meetings regarding confidential project.”¹⁵³⁸

Emails further reflect that on September 12, 2016, just one week prior to Sussmann’s meeting with Baker, Sussmann and Elias communicated about Sussmann’s efforts to share the Alfa Bank allegations with the *New York Times*.¹⁵³⁹

In addition, on September 15, 2016, Elias provided an update to the Clinton campaign regarding the Alfa Bank allegations and the not-yet-published *New York Times* article, sending an email to Jake Sullivan (HFA¹⁵⁴⁰ Chief Policy Advisor), Robby Mook (HFA Campaign Manager), John Podesta (HFA Campaign Chairman), and Jennifer Palmieri (HFA Head of Communications), which he billed to the Clinton campaign as “email correspondence with J. Sullivan, R. Mook, J. Podesta, J. Palmieri re: Alfa Bank Article.”¹⁵⁴¹

On the same day that these articles were published, the Clinton campaign posted a tweet through Hillary Clinton’s Twitter account which stated: “Computer scientists have apparently uncovered a covert server linking the Trump Organization to a Russian-based bank.”¹⁵⁴² The tweet included a statement from Clinton campaign advisor Jake Sullivan which made reference to the media coverage article and stated, in relevant part, that the allegations in the article “could be the most direct link yet between Donald Trump and Moscow[,] that “[t]his secret hotline may be the key to unlocking the mystery of Trump’s ties to Russia[,]” and that “[w]e can only assume that federal authorities will now explore this direct connection between Trump and Russia as part of their existing probe into Russia’s meddling in our elections.”

During the Sussmann trial, both Elias and Mook said that the HFA campaign did not authorize Sussmann to take the Alfa Bank allegations to the FBI. According to Elias and Mook, the campaign did not trust the FBI due to Comey’s announcement related to the FBI’s Midyear Exam investigation, regarding Hillary Clinton’s use of a private e-mail server during her time as Secretary of State.¹⁵⁴³ Mook also explained that top Clinton campaign officials were aware of the Alfa Bank allegations and favored providing the allegations to the media.¹⁵⁴⁴ Mook likewise noted that he had discussed the allegations with Clinton, who approved the dissemination of them to the media.¹⁵⁴⁵ Mook testified that the campaign did so before questions and potential doubts about the accuracy and reliability of the allegations had been resolved and without knowing the exact origins of the data.¹⁵⁴⁶

¹⁵³⁸ SC-00004247 (Email from Sussmann dated 09/04/2016).

¹⁵³⁹ SC-00004312 (Email from Elias dated 10/09/2016).

¹⁵⁴⁰ “Hillary for America.”

¹⁵⁴¹ *Sussmann* Government Exhibit 386; *Sussmann* Government Exhibit 390.

¹⁵⁴² *Sussmann* Government Exhibit 52; @HillaryClinton 10/31/2016 8:36pm Tweet.

¹⁵⁴³ *Sussmann* Tr. 05/18/2022 PM at 758:8-760:1, 05/20/2022 AM at 1256:2-1257:8.

¹⁵⁴⁴ *Sussmann* Tr. 05/20/2022 AM at 1264:25-1267:4.

¹⁵⁴⁵ *Id.* at 1267:5-1267:16.

¹⁵⁴⁶ *Id.* at 1205:22-1206:5, 1267:25-1269:1.

Although the campaign could not substantiate the allegations, they stated that they considered them “concerning” and wanted the media to vet the allegations because of concerns about Trump’s association with Russia.¹⁵⁴⁷ Sullivan and Elias raised Trump’s July 2016 “Russia, if you’re listening” statement as one reason for the Clinton Campaign’s concern about Trump’s ties to Russia.¹⁵⁴⁸

g. Sussmann’s meeting with the CIA

The Office also gathered information related to a post-election meeting that Sussmann had with the CIA. On February 9, 2017, Sussmann provided an updated set of allegations – including the Alfa Bank data and additional allegations relating to Trump – to the CIA. The Office examined Sussmann’s interactions with various CIA employees, including how he was able to secure a meeting with the CIA, what occurred during that meeting, and what materials he provided to the CIA.

The investigation revealed that in December 2016, Sussmann reached out to the CIA General Counsel and requested a meeting related to allegations against Trump.¹⁵⁴⁹ The General Counsel did not take the meeting and suggested to Sussmann that he provide the allegations to the FBI.¹⁵⁵⁰ Sussmann, however, ignored that suggestion and continued to pursue a meeting. On or about January 31, 2017, Sussmann met with a retired CIA employee (“Retired CIA Employee-1”). During the meeting, Sussmann told Retired CIA Employee-1 that he had a client who wanted to provide information to the CIA about Trump.¹⁵⁵¹ Sussmann explained that his client “is an engineer with a number of patents” and was unsure whether his client would reveal his identity to the CIA.¹⁵⁵² Sussmann further noted that his client did not want to provide this information to the FBI because the client did not trust the FBI and did not believe that the FBI had the requisite resources to deal with the allegations.¹⁵⁵³ Retired CIA Employee-1 also recalled Sussmann’s statement that, should the CIA not investigate the allegations, he would provide them to the *New York Times*.¹⁵⁵⁴ Following the meeting, Retired CIA Employee-1 drafted a memorandum describing the meeting and sent it to active CIA officers, who then scheduled a meeting with Sussmann for early February 2017.¹⁵⁵⁵

In the next meeting, Sussmann made a substantially similar statement to the one he had made to Baker regarding the source of the allegations. In particular, Sussmann asserted

¹⁵⁴⁷ *Id.* at 1268:4-1269:1; OSC Report of Interview of Jake Sullivan on Nov. 12, 2021 at 2-3.

¹⁵⁴⁸ *Sussmann* Tr. 05/18/2022 PM at 745:2-746:21; OSC Report of Interview of Jake Sullivan on Nov. 12, 2021 at 1-2.

¹⁵⁴⁹ SC-00004549 (Email from Sussmann dated 12/14/2016).

¹⁵⁵⁰ SC-00004559 (Email to Sussmann dated 12/20/2016).

¹⁵⁵¹ *Sussmann* Tr. 05/20/2022 PM at 1333:3-1334:9; *Sussmann* Government Exhibit 809.

¹⁵⁵² *Sussmann* Tr. 05/20/2022 PM at 1333:3-1334:9; *Sussmann* Government Exhibit 809.

¹⁵⁵³ *Sussmann* Tr. 05/20/2022 PM at 1334:15-1335:10; *Sussmann* Government Exhibit 809.

¹⁵⁵⁴ *Sussmann* Tr. 05/20/2022 PM at 1335:22-1336:10; *Sussmann* Government Exhibit 809.

¹⁵⁵⁵ *Sussmann* Government Exhibit 809; SC-00081639 (Email dated 02/08/2017).