

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL A. SUSSMANN,

Defendant.

- - - - - x

Criminal Action No.
1:21-cr-00582-CRC-1
Wednesday, May 18, 2022
9:11 a.m.

MORNING SESSION

TRANSCRIPT OF JURY TRIAL
HELD BEFORE THE HONORABLE CHRISTOPHER R. COOPER
UNITED STATES DISTRICT JUDGE

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P R O C E E D I N G S

THE COURTROOM DEPUTY: Your Honor, we're back on the record for Criminal Case 21-582, *United States of America vs. Michael Sussmann*.

MR. DeFILIPPIS: Good morning, Your Honor; Andrew DeFilippis for the government. With me at counsel table are Brittain Shaw, Jonathan Algor, and Kori Arsenault.

THE COURT: Okay. Good morning, everybody.

MR. BERKOWITZ: Good morning, Your Honor; Sean Berkowitz, Michael Bosworth, Catherine Yao, and Natalie Rao on behalf of Mr. Sussman, who is present in court.

THE COURT: Okay. Good morning, everyone.

Please extend the Court's condolences, as well as that of staff, to Mr. Keilty. I understand there was an unfortunate occurrence.

MR. DeFILIPPIS: Yes, Your Honor. Thank you very much. We will -- and after speaking with the defense, we'd just ask, without objection from the defense, that the jury be informed that he's away, may come back, and that they should infer nothing from his lack of presence in the courtroom.

THE COURT: Okay. And can I say personal emergency or family emergency?

MR. DeFILIPPIS: I think that's fine, Your Honor.

THE COURT: Okay.

1 All right. On the question of Mr. Mook's
2 testimony, the Court will accommodate the defense's request
3 to call him out of turn. I think we should be a little
4 flexible on the timing. I had left Friday open
5 conditionally just to see where we were. You know, it may
6 be that Friday morning might be an opportune time, and we
7 can take Friday afternoon off. It seems like we've been
8 making decent progress, but we'll see how things go.

9 And I'll take my cues from you. I can be
10 available. But if it makes sense to try to get Mr. Mook in
11 on Friday morning and take off Friday afternoon, that might
12 be the best time to do it.

13 Just for the record, you know, he was on both
14 parties' witness lists initially. He's given prior
15 testimony. The government obviously knows what he is likely
16 to testify to. So -- and we can, I think, get him in and
17 instruct the jury as to what's going on so as not to be too
18 disruptive to the government's case. And, obviously, I
19 would like to let him go to Italy.

20 So for all those reasons, the Court will grant the
21 defense's request.

22 MR. BERKOWITZ: We appreciate it, and we'll let
23 him know. And for the record, I think it's Spain, but --

24 THE COURT: Spain. I'd take either.

25 MR. BERKOWITZ: You and me both.

1 THE COURT: All right. On the Steele evidence.

2 I've reviewed the chronology of Mr. Steele's
3 interactions with Mr. Sussman and with Fusion with respect
4 to the Alfa-Bank allegations in the summer of 2016. I've
5 also reviewed the witness statement that he submitted in the
6 London litigation, as well as testimony, which I presume is
7 deposition testimony -- or is that trial? -- deposition
8 testimony from the proceeding, and the Court is prepared to
9 rule as follows:

10 The, you know, evidence of Mr. Steele's meetings
11 with Mr. Sussman and with Fusion in July and his apparent
12 subsequent tasking by Fusion to conduct research on Alfa-
13 Bank, which I gather ultimately became the memorandum of the
14 dossier styled CR112, evidence of those meetings and
15 subsequent tasking can come in. They are relevant to
16 Mr. Sussmann's activities for the campaign and his attorney-
17 client relationship, as far as it went, with the campaign as
18 it relates to Alfa-Bank. And Steele's tasking by Fusion
19 after the meeting is relevant to the government's theory
20 that Fusion and the campaign were trying to disseminate
21 opposition research, and that that provided a motivation for
22 Mr. Sussman to conceal who his client may have been.

23 The record on Mr. Steele's provision of CR112 to
24 the FBI is anything but clear from the materials that I've
25 reviewed. And obviously, there may be other materials out

1 there. But based on the materials from the London
2 litigation, it appears that that report was one of many that
3 Mr. Steele recalled giving to the Bureau over a course of
4 months in the summer of 2016.

5 It is unclear from the materials why he may have
6 given CR112 to the FBI. Steele testified that he gave
7 various reports to the FBI on his own at its request as part
8 of what appears to be an independent relationship and not at
9 the request of Fusion.

10 It is also unclear when he gave that report, if he
11 gave that report to the FBI. While he said in his witness
12 statement that he recalls providing it to someone at the FBI
13 a few days after giving it to Fusion in September 2016,
14 there are FBI reports cited in his testimony indicating that
15 the FBI did not receive the report until much later in the
16 fall, and that Mr. Steele may have been mistaken in his
17 recollection, which he acknowledged that he could be.

18 It is even unclear whether the FBI received that
19 report from Steele or not. There's other evidence cited in
20 the deposition testimony indicating that the FBI did not
21 actually get the report from Steele but rather through a
22 journalist or from a journalist through Mr. Baker.

23 So with all of that ambiguity in the materials
24 that the Court, at least, has been provided, and without
25 Mr. Steele here to testify, I've simply not seen anything to

1 support an inference that Mr. Steele provided that
2 particular report to the FBI in concert with some alleged
3 opposition research effort. And so, if the only thing that
4 would suggest such to the jury is this Priestap note, which
5 I don't think I've seen, I think the jury would only be left
6 in a position to speculate as to any connection between the
7 provision of CR112 and this broader effort that the
8 government has alleged.

9 So unless the government gives me more to go on, I
10 will exclude evidence about the provision of that report to
11 the FBI. All right?

12 All right. Are our jurors here? We have a
13 straggler or two still?

14 THE COURTROOM DEPUTY: There was one straggler, so
15 let me check.

16 THE COURT: Okay. We have one straggler, so let's
17 see where they are.

18 (Pause)

19 THE COURT: And who's first up?

20 MR. DeFILIPPIS: Your Honor, first up will be
21 Debbie Fine, and Mr. Algor will be examining Ms. Fine.

22 THE COURT: Okay.

23 (Pause)

24 THE COURTROOM DEPUTY: Everybody's here.

25 THE COURT: Okay. We're lining them up.

1 (Jury enters courtroom)

2 THE COURT: Okay. Good morning, ladies and
3 gentlemen. I hope you had a nice evening.

4 Please be seated, everyone.

5 All right. We're ready to get started.

6 You will notice that Mr. Keilty is not at counsel
7 table for the government this morning. He has been called
8 away for a family matter, and the parties just wanted to
9 have me advise you of that. All right?

10 Mr. Algor.

11 MR. ALGOR: Your Honor, the government calls
12 Deborah Fine.

13 THE COURT: Very well.

14 Good morning, ma'am. Step right up.

15 All right. Welcome. If you're comfortable
16 slipping off your mask, please do so, and raise your right
17 hand to be sworn in by the courtroom deputy.

18 (Witness sworn)

19 THE COURT: Okay. Please have a seat.

20 DEBORAH FINE, Sworn

21 DIRECT EXAMINATION

22 BY MR. ALGOR:

23 Q. Good morning, Ms. Fine. I know we haven't met. My name
24 is Jonathan Algor. I'm a lawyer for the government. I'm
25 going to ask you some questions this morning.

1 A. Good morning.

2 Q. Before we do that, can you please state and spell your
3 name for the record.

4 A. Sure. My name is Deborah Fine, D-E-B-O-R-A-H, F-I-N-E,
5 although you can call me Debbie.

6 Q. And where do you currently work?

7 A. I work at the Open Society Institute.

8 Q. And what is the Open Society Institute?

9 A. It's a private foundation that works to advance
10 democracy and human rights.

11 Q. And what is your role at the Open Society Institute?

12 A. Currently I'm in an interim position. I'm acting
13 general counsel.

14 When they hire a permanent general counsel, I'll
15 go back to my permanent position, which is deputy general
16 counsel.

17 Q. And what are your responsibilities in that role?

18 A. Which one?

19 Q. In your current role.

20 A. In the current role. Well, I undertake -- I have many
21 varied responsibilities. They're all for the purpose of
22 providing advice to my client, yes.

23 Q. And so you're a lawyer; is that correct?

24 A. I am a lawyer.

25 Q. Okay. And prior to working at Open Society Institute,

1 where did you work?

2 A. I worked at the Hillary Clinton for President Campaign.

3 Q. And when did you first start working for the campaign?

4 A. I think it was May of 2016.

5 Q. May of 2016.

6 A. Sorry.

7 Q. Okay. And what was your role at that time for the
8 campaign?

9 A. I was one of several deputy general counsels.

10 Q. And can you explain to the jury what the leadership
11 structure of the campaign was.

12 A. Of the whole campaign?

13 Q. Yes.

14 A. No. I'm sorry.

15 Q. Who would you answer to at the campaign?

16 A. Oh, I answered to Marc Elias, the general counsel.

17 Q. And so he was the general counsel at the campaign?

18 A. Correct.

19 Q. And was Mr. Elias associated with any other
20 organizations at that time?

21 A. He was a partner at Perkins Coie, the law firm. I don't
22 know if at that time he was officially affiliated with them,
23 but I believe so.

24 Q. Okay. And as part of your role as deputy general
25 counsel of the campaign, what were your responsibilities in

1 a day-to-day fashion?

2 A. I generally conducted or oversaw other attorneys
3 conducting legal research.

4 Q. Okay. And without getting into any of the specifics,
5 what areas of legal research were you working on?

6 A. There were three primary areas: Trump-related
7 litigation, state and local election law, and email hacking.

8 Q. And what was Mr. Elias's role with HFA, with the
9 campaign?

10 A. He was the general counsel.

11 Q. And throughout the campaign and your time with it, how
12 often would you communicate with Mr. Elias?

13 A. We communicated on a fairly regular basis. I can't
14 attach a number to it.

15 Q. Would it be daily? Weekly?

16 A. Closer to daily.

17 Q. And when you were working for the campaign, where were
18 you based out of?

19 A. Brooklyn, the headquarters.

20 Q. In New York?

21 A. Yes, Brooklyn, New York, sorry.

22 Q. Ms. Fine, what is opposition research?

23 A. I don't know that I'm the best person to explain what
24 opposition research is.

25 Q. Do you not know what opposition research is?

1 A. I know generally that it's research that is conducted to
2 learn more about the opposition in a political campaign.

3 Q. You mentioned some areas that you were focused on as
4 part of the research that you conducted for that campaign;
5 is that correct?

6 A. Yes.

7 Q. And as part of that, was that also opposition research
8 against the opposing candidate?

9 A. I would say that it's research, and what it was used
10 for, what its purpose was for, is -- I don't think I can
11 talk about that because of the privilege.

12 Q. Okay. I'm not asking for anything specific related to
13 your legal communications, but the research that was
14 conducted was against the opponent. Correct?

15 A. It was about the opponent. I can say that. It's Trump-
16 related.

17 Q. And so it's fair to say that the campaign conducted
18 opposition research against Mr. Trump in 2016?

19 A. That's my understanding.

20 Q. And as part of your work, that was part of that.
21 Correct?

22 A. I conducted research to support the campaign. I'm not
23 comfortable saying what exactly it was used for.

24 Q. Okay. As part of the campaign, did there come a time
25 when it engaged any research firms?

1 A. Yes.

2 Q. Okay. And how did you come to learn that?

3 A. I don't remember exactly how I came to learn it. I did
4 ultimately work with them, and so at some point I came to
5 know that.

6 Q. Okay. And you said "them." Who is "them"?

7 A. Fusion GPS.

8 Q. Okay. And, generally speaking, what type of firm was
9 Fusion GPS, as you understood it?

10 A. As I understand it, it's a research and investigatory
11 company.

12 Q. And in your interactions with Fusion GPS, was that part
13 of the campaign's work as well?

14 A. That was part of my work for the campaign, yes.

15 Q. Okay. And was that in relation to Fusion GPS's work on
16 Trump/Russia-related matters?

17 A. They did work with me on Trump-related litigation. That
18 was the research that we did together. I don't know what
19 else they worked on.

20 Q. Okay. So generally speaking, what, as far as you were
21 aware, was Fusion GPS working on for the campaign?

22 A. Trump-related litigation.

23 Q. Okay.

24 A. Researching it, learning when it happened, what it was,
25 that sort of thing.

1 Q. And how often would you communicate with members of
2 Fusion GPS during your time with the campaign?

3 A. I would say that that varied throughout the time --
4 throughout my time at the campaign, and I don't remember
5 specifically. I would say, on average, several times
6 weekly.

7 Q. And as far as you know, who from the campaign was aware
8 that Fusion GPS was doing research on behalf of the
9 campaign?

10 A. I only know that Marc Elias knew that.

11 Q. And so it's fair to say that only -- that as far as
12 you're aware, it's only you and Marc Elias who were aware of
13 this research?

14 A. We were the only two people that I knew that knew of it,
15 but I only know what I know.

16 Q. And why was it limited to just you and Mr. Elias?

17 A. I don't know.

18 Q. And you were never told why it was kept to just you and
19 Mr. Elias?

20 A. No. I operated -- I didn't share information with
21 anybody that I didn't need to. Just as I would for any
22 client, I would use the same care. So I just didn't talk
23 about it.

24 Q. And you mentioned earlier that you obviously engaged
25 with other Fusion GPS employees; is that correct?

1 A. Yes.

2 Q. Okay. And who were they?

3 A. I do not remember their last names, but Peter and Glenn
4 are who I remember.

5 Q. If I can show you what's been marked as Government
6 Exhibit 304.

7 And, Ms. Fine, do you recognize this?

8 A. It's an appointment.

9 Q. And do you see on the "To" line your name with the
10 email?

11 A. I do.

12 MR. ALGOR: All right. Your Honor, we move to
13 admit Government Exhibit 304.

14 MR. BOSWORTH: No objection.

15 THE COURT: So moved.

16 Q. Okay. And, Ms. Fine, what is this document, generally
17 speaking?

18 A. It's a calendar invite for check-ins.

19 Q. And on the "Sent" line, can you read that date?

20 A. Uh-huh. It says June 6, 2016.

21 Q. Okay. And can you read the subject line, please.

22 A. Sure. The subject line is "Daily Check In."

23 Q. Okay. And you mentioned earlier that you started with
24 the campaign in about May of 2016; is that correct?

25 A. I think towards the end, yes.

1 Q. And do you recall starting to have those fairly
2 regularly interactions with Fusion GPS in the early summer
3 months? Is that fair?

4 A. Yes. Yes, towards the beginning of my engagement.

5 Q. And on the "To" line, just starting with -- you
6 mentioned a few names earlier.

7 A. Uh-huh.

8 Q. Does this refresh who those individuals were?

9 A. Yes.

10 Q. Okay. And can you read off those two names, please?

11 A. Sure. Glenn Simpson and Peter Fritsch.

12 Q. And at the top, what's that name?

13 A. Marc Elias.

14 Q. Starting with Glenn Simpson and Peter Fritsch, are those
15 the individuals from Fusion GPS that you would regularly
16 interact with?

17 A. Yes.

18 Q. Now, at the line starting with "Recurrence," do you see
19 that?

20 A. Yes, I do.

21 Q. And what does that say?

22 A. It says, "Weekly."

23 Q. And does that jog your memory at all about how often you
24 would have these calls?

25 A. Not really. I know they were intended to be regular

1 check-in calls. I don't remember exactly how often they did
2 occur.

3 I have a general memory that they did not occur
4 daily.

5 Q. And without getting into the substance of those
6 conversations, generally what were the subjects and areas
7 that you would speak with the Fusion GPS folks about?

8 A. The Trump-related litigation that I mentioned earlier.

9 MR. ALGOR: Okay. And if we can take that down
10 and show to the witness Government Exhibit 320.

11 THE WITNESS: Excuse me, I'm sorry, is there any
12 water?

13 I'm sorry.

14 THE COURT: No. It's quite all right.

15 MR. ALGOR: Your Honor, may I approach?

16 THE COURT: You may.

17 We usually have a pitcher and cups, but because of
18 COVID we don't so...

19 And, Ms. Fine, just to clarify for the jury,
20 when you say "Trump litigation," do you mean lawsuits that
21 Mr. Trump or his organization had been involved in up to
22 that point?

23 THE WITNESS: I do; either Trump, a Trump-related
24 company or organization, or even a family member.

25 THE COURT: Okay. Thank you.

1 THE WITNESS: Whether they were -- whatever party
2 they were.

3 THE COURT: Whether they were bringing the lawsuit
4 or had been sued by somebody else?

5 THE WITNESS: Correct.

6 THE COURT: Thank you.

7 BY MR. ALGOR:

8 Q. Okay. And just let me know when you're ready.

9 A. I'm ready. Thank you.

10 Q. Okay. So just showing to you Government Exhibit 320, do
11 you recognize this document?

12 A. I understand it to be similar to the last one. That was
13 another -- it was a calendar invitation. This says
14 "Notification," so...

15 MR. ALGOR: Your Honor, we'd move to admit
16 Government Exhibit 320.

17 MR. BOSWORTH: No objection.

18 THE COURT: So moved.

19 Q. Okay. So, Ms. Fine, just starting with the "When:
20 August 12, 2016," do you see that?

21 A. I do.

22 Q. Do you recall having a daily check-in on this date and
23 time?

24 A. I do not. I do not remember which specific days.

25 I do have, as I said, a general memory of the

1 calls happening on a fairly regular basis for a period of
2 time, but I don't remember which days.

3 Q. And going down to the "Who" lines, it has that first
4 bullet. Do you see that?

5 A. The one that's my name?

6 Q. Yes. And it says "Organizer."

7 A. Okay.

8 Q. Do you have any understanding of what that means?

9 A. I believe it means that the calendar invitation
10 originated with me, which means that I sent it to the other
11 potential participants.

12 Q. And then the other participants on there, can you just
13 read off who those are?

14 A. Sure. It's Glenn Simpson, Marc Elias, and Peter
15 Fritsch.

16 MR. ALGOR: Okay. We can take that down, and then
17 show to the witness Government Exhibit 326.

18 Q. Okay. And, Ms. Fine, do you recognize this document as
19 well?

20 A. I recognize it in the way that I have the other ones.
21 It is -- I see what it is. I don't remember it
22 specifically.

23 MR. ALGOR: So, Your Honor, we'd move to admit
24 Government Exhibit 326.

25 MR. BOSWORTH: No objection.

1 THE COURT: So moved.

2 Q. And, Ms. Fine, just showing you this document, again,
3 you have no recollection of having a daily check-in on
4 August 17th; is that correct?

5 A. I'm sorry, but I don't.

6 MR. ALGOR: Okay. All right. We can take that
7 down.

8 Q. You testified earlier that you were aware of research by
9 Fusion GPS on behalf of the Clinton Campaign; is that
10 correct?

11 A. Correct.

12 Q. And what, if anything, were you aware regarding Fusion
13 GPS's research in relation to Alfa-Bank?

14 A. I wasn't aware of research related to Alfa-Bank.

15 Q. Ms. Fine, to what extent did Fusion GPS have discretion
16 to communicate with third parties without the Clinton
17 Campaign's approval?

18 A. I actually don't know what the specific directions may
19 have been from Marc.

20 Q. Okay. And so you never gave any instructions regarding
21 anything related to the Trump litigation?

22 A. I may have asked for material related to a case. Do you
23 have this? Can you get this? A deposition, perhaps. Just
24 that kind of direction.

25 Q. Are you aware of any discretion that Fusion GPS had to

1 communicate with the media on behalf of the campaign?

2 A. I am not.

3 Q. Do you have any understanding of Fusion GPS's discretion
4 to pursue research leads on behalf of the campaign?

5 A. Can you -- I'm sorry. Can you repeat that, please?

6 Q. Sure. So were you daily telling Fusion GPS what was
7 necessary as part of the research, or were they free to go
8 and conduct research on their own?

9 A. I personally didn't direct them to do specifically
10 everything they were doing. I don't know what their
11 instructions were from Marc.

12 Q. Okay.

13 A. If that's helpful.

14 Q. And when you worked -- and so is it fair to say when you
15 worked with Fusion GPS you didn't give them specific steps
16 that they needed to take as part of their research efforts?

17 A. Not other than what I mentioned before about asking for
18 specific supporting materials about Trump-related
19 litigation.

20 Q. Ms. Fine, did there ever come a time when you would
21 print documents for Mr. Elias as part of your role?

22 A. Not generally, but I'm aware that I did.

23 MR. ALGOR: Okay. And if we could show the
24 witness Government Exhibit 495.

25 Q. And so just starting at the top, do you recognize this

1 document?

2 A. I recognize that it's an email from me to Marc on
3 October 31st regarding "Can you print this."

4 MR. ALGOR: And, Your Honor, we'd move to admit
5 Government Exhibit 495.

6 MR. BOSWORTH: No objection.

7 THE COURT: So moved.

8 Q. And without getting into anything specific with the
9 communications with Mr. Elias, in terms of the subject
10 matter, did this document relate to the Alfa-Bank
11 allegations?

12 A. I'm aware that it related to an article related to Alfa-
13 Bank because I saw that just prior to the trial. But I
14 don't remember it from then.

15 Q. Okay. And specifically, did it relate to a *Slate*
16 article that was published on October 31, 2016?

17 A. My understanding is that it did. Again, I don't
18 remember that specifically myself.

19 MR. ALGOR: We can take that down.

20 Q. Ms. Fine, in your time with the campaign, did you ever
21 share opposition research with the media?

22 A. I did not. I do not recall ever sharing research with
23 the media.

24 Q. And with regards to the opposition research about, you
25 know, which you've testified, who did you understand was the

1 campaign's legal advisor?

2 A. The legal advisor with regard to...?

3 Q. Opposition research.

4 A. I'm just aware that I provided some research. Marc
5 likely provided some research. To my awareness, there
6 wasn't somebody with that designated title.

7 MR. ALGOR: No further questions, Your Honor.

8 MR. BOSWORTH: I don't know how I lost a piece of
9 paper.

10 THE COURT: Take your time.

11 MR. BOSWORTH: Sorry. I just wanted to build
12 suspense.

13 CROSS-EXAMINATION

14 BY MR. BOSWORTH:

15 Q. Good morning, Ms. Fine.

16 A. Good morning.

17 Q. We've never met before, correct?

18 A. Correct.

19 Q. The testimony that you were giving just a moment ago
20 relates to the work that you did while you were at the
21 Hillary Clinton Campaign, right?

22 A. Correct.

23 Q. And that was in 2016?

24 A. Yes.

25 Q. Long time ago?

1 A. I'm sorry, I didn't hear that.

2 Q. Virtually six years ago, correct?

3 A. Oh, yes.

4 Q. And you testified at various times that you didn't
5 remember this or you didn't remember that, and that's
6 presumably because some time has passed since that work?

7 A. Yes. I think that's true.

8 Q. The Clinton Campaign was also known as Hillary For
9 America; is that right?

10 A. Yes, HFA.

11 Q. HFA. So if you saw a document that said HFA and talked
12 about the Clinton Campaign, that would refer to the Hillary
13 Clinton Campaign?

14 A. That's what I would think it was referring to.

15 THE COURT: Ms. Fine, if you could move a little
16 bit closer to that mic and keep your voice up to make sure
17 the jury hears you.

18 THE WITNESS: Oh, sure. Is this better?

19 THE COURT: That's better.

20 THE WITNESS: Okay.

21 Q. And you were asked -- and the judge asked you a little
22 bit -- about some of the work you did on Trump-related
23 litigation.

24 A. Yes, sorry.

25 Q. Great. And that was litigation that Mr. Trump or his

1 business entities or his family was involved in, you said?

2 A. Correct.

3 Q. And I assume a good portion of that was litigation
4 brought by Mr. Trump or his organizations?

5 A. Actually, a lot of it was slip -- public cases about
6 slip-and-falls and contractors not getting paid and things
7 like that.

8 Q. Got it. But was some of that litigation that Mr. Trump
9 or the parties or his businesses were the plaintiffs, the
10 ones bringing the lawsuits?

11 A. I believe so.

12 Q. You were also asked about the work that you did for
13 Fusion GPS, correct? You were asked about that?

14 A. I was, sorry.

15 Q. No, that's okay.

16 And I just -- I know one document that wasn't
17 published was Government Exhibit 302, which I just want you
18 to take a look at.

19 A. Okay.

20 Q. Do you know what that document is?

21 A. I have never seen it before. I can sort of read it.

22 Q. Okay. Well, if you've never seen it before, then we can
23 move on.

24 A. Okay.

25 Q. You were also asked about opposition research, right?

1 A. Correct.

2 Q. Part of your job as a lawyer, was it not, was to make
3 sure that the campaign wouldn't get sued?

4 A. Correct.

5 Q. And you wouldn't want to get sued, for example, for
6 saying something that was false about Donald Trump or his
7 campaign, correct?

8 A. That's exactly right.

9 Q. Okay. And so the opposition research that you were --
10 or that the campaign was involved in was research into stuff
11 that you wanted to be true, correct?

12 A. That I wanted to verify was true.

13 Q. Okay.

14 A. Yes.

15 Q. In other words, you were doing research so that you
16 could develop information or find information that was
17 true that was negative and about the Trump campaign or about
18 Mr. Trump, right?

19 A. That's correct.

20 Q. The point was not to create false information about
21 Mr. Trump or his campaign, correct?

22 A. Correct.

23 Q. If the campaign, for example, went out with a whole
24 bunch of false information, that's exactly the kind of thing
25 that could lead you to get sued, right?

1 A. That would be what I would try to prevent.

2 Q. Right. And that's why you were paid to do your job
3 there, correct?

4 A. Yes.

5 Q. Okay. You were asked a little bit about the work that
6 Fusion did and who was aware of it and who wasn't. I just
7 want to be clear. You said you were aware of it, correct?

8 A. I was aware that they were working for the campaign to
9 support Marc Elias. I was aware of what I was doing with
10 them. That's correct.

11 Q. Okay. So you were aware of what you just said.

12 A. Yes.

13 Q. You also said Mr. Elias was aware of Fusion's work, to
14 your knowledge.

15 A. Yes. To my knowledge, he generally was directing that
16 work.

17 Q. Okay. And you said you didn't know who else might have
18 been aware of that work, correct?

19 A. That's correct. I do not know.

20 Q. Okay. It wasn't, as one of the questions suggested,
21 something that was kept to you. Was there a deliberate
22 effort, to your knowledge, to limit Fusion's work to you and
23 Marc Elias?

24 A. Not to my knowledge.

25 Q. You have no idea if Mr. Elias was talking to other

1 people at the campaign, for example?

2 A. I don't know. He regularly spoke with other people at
3 the campaign, and I was generally not present.

4 Q. Okay. Are you aware of someone named John Podesta?

5 A. I am.

6 Q. What role did he play at the campaign, if any?

7 A. He was the chair.

8 Q. And do you know who Robby Mook is?

9 A. I do.

10 Q. And what was his role at the campaign?

11 A. He was the manager.

12 Q. And do you know who Jake Sullivan is?

13 A. I do.

14 Q. And what role did he play at the campaign?

15 A. A senior role related to foreign policy, is what I
16 recall.

17 Q. And do you know who Jennifer Palmieri is?

18 A. I do.

19 Q. And what role did she play at the campaign?

20 A. She was a senior worker on communications-related
21 issues.

22 Q. And sitting here today, you have no idea whether
23 Mr. Elias spoke to any of them about the work that Fusion
24 did?

25 A. I do not know.

1 Q. One way or the other?

2 A. Not one way or the other.

3 Q. But, to your knowledge, Fusion's work was not kept
4 secret?

5 A. No. I -- no. I operated on the assumption that, like
6 most of the work that I did for clients, it's on a need-to-
7 know basis, so I just -- I didn't share it, and I wasn't
8 told not to share it. And I don't know whether or not Marc
9 Elias shared it with anyone.

10 Q. Okay. You were shown Government Exhibit 495, I believe.

11 A. I don't --

12 MR. BOSWORTH: Can you pull that up?

13 Q. And just looking at the header there, can you just read
14 the "Subject" line so everyone's aware on it.

15 A. Uh-huh. It says, "Re: Can you print this?"

16 Q. And you were asked whether this related to an article
17 that was published that day?

18 A. I was asked if it -- well, I don't know if I was
19 specifically asked that, to be honest.

20 Q. Oh. You were asked whether it related to an article
21 about the Alfa-Bank allegations.

22 A. I know that's what I said. I'm not sure -- I honestly
23 can't remember exactly what the question was, but yes, that
24 is true.

25 Q. Right. So this, to your knowledge, did relate to an

1 article about the Alfa-Bank allegations?

2 A. Yes.

3 Q. Okay. And what's the date of this email?

4 A. October 31, 2016.

5 Q. Okay. Great.

6 You were also asked about daily calls that you had
7 or that you were shown calendar entries for regarding Fusion
8 GPS. Do you remember those questions?

9 A. I do.

10 Q. Okay. And for those questions -- for those calls,
11 was -- did the topic of Alfa-Bank ever come up in any of
12 those calls?

13 A. Not the calls that I was on. Not that I recall.

14 Q. Did allegations involving communications between the
15 Trump organization and a Russian bank come up in any of
16 those calls?

17 A. Not that I recall.

18 Q. Did Michael Sussmann come up in any of those calls?

19 A. I have no memory of him coming up.

20 Q. Did you hear about any effort to bring allegations
21 involving Russian banks to *The New York Times* in any of
22 those calls?

23 A. I did not.

24 Q. Did the topic of bringing allegations to the FBI come up
25 in any of those calls?

1 A. No, they did not.

2 Q. Did bringing allegations to any law enforcement
3 organization come up during any of those calls?

4 A. No.

5 Q. Okay. And those calls -- you said you can't remember
6 which ones you were on and which ones you weren't.

7 At any time, let's say, prior to October 31st, you
8 know, when you were asked to print something, did you have
9 any knowledge of any allegations about communications
10 between Alfa-Bank and the Trump organization?

11 A. I did not.

12 Q. Did you have any knowledge of Michael Sussmann trying
13 to get a story published in *The New York Times* about
14 anything?

15 A. I did not.

16 Q. Did you have any knowledge about the campaign trying to
17 bring information to the FBI?

18 A. No, I did not.

19 Q. And is that the sort of thing you'd remember?

20 A. Yes. It sounds pretty notable and unusual, so I would
21 remember discussions about going to law enforcement of any
22 type, I think.

23 Q. And did you have any knowledge that Mr. Sussman did go
24 to the FBI?

25 A. I do not.

1 Q. Did you --

2 A. Well --

3 Q. Please.

4 A. I did not at that time. I am aware from newspaper
5 coverage that that --

6 Q. Okay.

7 A. -- is being discussed.

8 Q. Meaning this case, why we're here?

9 A. Yes.

10 Q. Okay. But just to be clear, at any time prior to, you
11 know, Mr. Sussmann's charge in this case, did you have any
12 knowledge that he went to the FBI at all?

13 A. No, I did not.

14 Q. And you didn't authorize him to go to the FBI?

15 A. Nope. I had no such authority.

16 Q. You didn't direct him to go to the FBI?

17 A. I did not.

18 Q. You don't know anyone else who authorized him to go to
19 the FBI?

20 A. I do not.

21 Q. You don't know anyone else who directed him to go to the
22 FBI?

23 A. I do not.

24 MR. BOSWORTH: Okay. Thank you very much.

25 MR. ALGOR: Very brief, Your Honor.

REDIRECT EXAMINATION

BY MR. ALGOR:

Q. Ms. Fine, you were just asked, during cross-examination, about your calls with Fusion GPS. Do you recall that?

A. I do.

Q. Okay. Do you recall anyone else participating in those calls besides yourself, Mr. Simpson, Mr. Fritsch, and Mr. Elias?

A. I don't recall anybody else participating in those calls.

Q. And you mentioned some of the areas that you focused on as part of -- that you worked on with Fusion GPS; is that correct?

A. I did.

Q. Did you work on all of Fusion's work related to Trump/Russia?

A. No, I did not. That was not a primary focus of what I did. What I focused on with Fusion was Trump-related litigation, which was largely not related to Russia.

It may have come up at some point as a -- you know, as part of an ad hoc question, but I don't remember doing work on Trump/Russia.

Q. And you understood, though, that Fusion GPS was doing work regarding Trump/Russia for the campaign?

A. I know that Fusion GPS was doing research and

1 investigatory work, but I only knew directly what I was
2 working on with them.

3 Q. And that was because it was being communicated from
4 Fusion through Mr. Elias; is that correct?

5 A. I assume so, yes. It wasn't me.

6 MR. ALGOR: Nothing further, Your Honor.

7 THE COURT: Okay. Ms. Fine, thank you very
8 much for your testimony. You are excused. Please don't
9 discuss your testimony with anyone until the trial is over,
10 okay?

11 THE WITNESS: Okay. I won't.

12 THE COURT: Have a good day.

13 MR. DeFILIPPIS: Your Honor, the government's next
14 witness is Laura Seago.

15 THE COURT: Good morning, ma'am. Feel free to
16 slip your mask off and remain standing and raise your right
17 hand to be sworn by the courtroom deputy.

18 (Witness sworn)

19 THE COURT: Okay. Please have a seat, and make
20 yourself comfortable.

21 We usually have a water jug there. If you'd like
22 water, I'm sure one of these gentlemen would be happy to get
23 it for you, okay?

24 THE WITNESS: I'm all right. Thank you.

25 THE COURT: All right.

1 LAURA A. SEAGO, Sworn

2 DIRECT EXAMINATION

3 BY MR. DeFILIPPIS:

4 Q. Good morning, Ms. Seago. How are you?

5 A. Good morning. I'm fine, thank you.

6 Q. If you would just state and spell your name for the
7 record and the court reporter.

8 A. Sure. It's Laura Allison Seago, L-A-U-R-A,
9 A-L-L-I-S-O-N, S-E-A-G-O.

10 Q. Ms. Seago, did you and I prepare for your testimony in
11 any way today?

12 A. No.

13 Q. Where do you work?

14 A. Open Source Research.

15 Q. And what is Open Source Research?

16 A. It's a small research consultancy here in Washington.

17 Q. Now, where did you work during the 2016 time period?

18 A. Fusion GPS.

19 Q. What is Fusion GPS?

20 A. It's also a small research consultancy here in
21 Washington.

22 Q. And is there a relationship or -- is there a
23 relationship between Open Source Research and Fusion GPS?

24 A. Yes. Open Source Research is owned by two of the former
25 partners of Fusion GPS, Tom Catan and Jason Felch.

1 Peter Fritsch and Glenn Simpson were involved in
2 the formation of Open Source Research, but my understanding
3 is that they've since been bought out.

4 Q. Okay. And when did you start working at Fusion GPS?

5 A. July of 2015.

6 Q. Generally speaking, what do you understand Fusion GPS
7 does day-to-day?

8 A. It does research. We gathered open source documents and
9 data and analyzed them for clients.

10 THE COURT: Ma'am, when you say "open source," can
11 you explain to the jury what that means.

12 THE WITNESS: Certainly. I mean records that are
13 in the public domain. Things that you might get via public
14 records requests, via public databases, or via the Internet.

15 THE COURT: Thank you.

16 BY MR. DeFILIPPIS:

17 Q. Who did you report to directly at Fusion GPS in the '16
18 time period?

19 A. I reported to all of the partners in D.C.: Tom Catan,
20 Peter Fritsch, Glenn Simpson.

21 Q. And about how many people were working there at the
22 time? Do you remember?

23 A. At the time it was probably seven or eight. I don't
24 recall the exact number. Maybe it was as many as ten.

25 Q. And where was your office? Was it here in D.C. or...?

1 A. Yes. It was in Dupont Circle.

2 Q. Now, do you recall at some point in the summer of 2016
3 or the spring whether Fusion started doing research relating
4 to the 2016 presidential election?

5 A. Yes, I do.

6 Q. And tell us generally, what was the nature of that
7 research and how did you first get involved with it?

8 A. We were researching Donald Trump, his businesses and his
9 associates, gathering documents and data related to his
10 business associations.

11 Q. From your vantage point, how did that work come about?

12 A. You know, I don't know. I wasn't involved in speaking
13 with clients much at all at the time. I was quite new to
14 the firm.

15 So I was told that first we were working for anti-
16 Trump Republicans in the fall of 2015 and early 2016, and
17 then I know at some point we changed to Democratic clients.

18 Q. And were you working on that project throughout; in
19 other words, from the beginning of that research?

20 A. I wasn't heavily involved prior to 2016, and I was never
21 the primary analyst on that case, but I did pitch in here
22 and there throughout.

23 Q. And as far as you knew or could see, about how many
24 people did Fusion devote to that research? Estimate.

25 A. That's difficult to say. Maybe five or six. There was

1 only one person who was on it full time.

2 Q. And who was that?

3 A. Jake Berkowitz.

4 Q. Now, what, if anything, was your understanding in, say,
5 the summer and fall of 2016 as to who the client for that
6 work was?

7 A. At the time I knew the clients were Democrats. I didn't
8 know specifically which entities those were.

9 Q. And who was your point of contact when you dealt with
10 the, quote, client? Was it someone with the Democrats, or
11 was there someone in between?

12 A. I only dealt with the client once, but my understanding
13 is that Marc Elias of Perkins Coie was the primary client
14 contact.

15 Q. Did you have an understanding at that time of what his
16 position was vis-a-vis the clients or client?

17 A. My understanding was that he represented the client as
18 their attorney.

19 Q. And he was at the law firm of Perkins Coie?

20 A. Yes.

21 Q. But in all the time you were doing work on that, did you
22 ever learn specifically who the client was?

23 A. Not until well after the election. I think the fall of
24 2017.

25 Q. To your understanding, was there a reason for that?

1 A. It wasn't uncommon for analysts, particularly not the
2 primary analyst on the case, to not know who the ultimate
3 client is when working for a law firm. And I was relatively
4 new to the company, so it wasn't unusual at all.

5 Q. Did you ever ask who it was?

6 A. No. Again, it wasn't unusual. I had no reason to ask.

7 Q. Did you ever wonder?

8 A. Not really. I know it was the Democrats, but that could
9 be a donor. It could be a PAC. I didn't really wonder. I
10 was very busy.

11 Q. Okay. Now, of the people at Fusion GPS, did you get a
12 sense for who did know who the client was?

13 A. I imagine the partners would have known.

14 Q. So Perkins Coie, more broadly, what did you know about
15 them?

16 A. I knew that they were a law firm here in Washington.
17 They also have offices in Seattle.

18 Q. Okay. And other than Mr. Elias, who I think you
19 mentioned, did you know anyone else from Perkins Coie
20 through your work at Fusion GPS?

21 A. I met Mr. Sussmann one time. My understanding is he was
22 also an attorney at Perkins Coie.

23 Q. And what was the circumstance in which you met
24 Mr. Sussmann?

25 A. I met him at a meeting at Perkins Coie in the summer of

1 2016.

2 Q. Who else attended that meeting?

3 A. To the best of my recollection, it was Mr. Elias, my
4 colleague Peter Fritsch from Fusion GPS, Mr. Sussmann, and
5 Mr. Sussmann's client Rodney Joffe.

6 Q. Now, if you can, as best as you can pinpoint it, when
7 did that meeting occur?

8 A. I can't remember the exact date. It would have been
9 July or August of 2016.

10 Q. And how did that meeting come about?

11 A. I don't know. I was asked to attend by Mr. Fritsch.

12 Q. Of the sort of management people at Fusion GPS, who did
13 you deal with most frequently? Was there one person?

14 A. It really depended on the case. I couldn't say who I
15 dealt with most frequently.

16 Q. Okay. In that meeting that you mentioned in July or
17 August of 2016 -- now, of course, we have to be careful when
18 talking about conversations with lawyers, but what was the
19 general purpose of that meeting?

20 A. The general purpose, to the best of my recollection, was
21 to discuss allegations of communications between the Trump
22 organization and Alfa-Bank.

23 Q. And I think you might have testified to this, but were
24 you essentially asked or told to go to the meeting?

25 A. Yes.

1 Q. And were you told to go on short notice? Was it a
2 preplanned meeting?

3 A. I don't recall. I'm sorry.

4 Q. And when you got to the meeting, you saw Mr. Joffe
5 there, did you say?

6 A. My recollection is that Mr. Elias and Mr. Fritsch
7 discussed a few business matters, and then Mr. Joffe and
8 Mr. Sussmann entered later together.

9 Q. Okay. And what, if any, understanding did you have as
10 to whether there was a lawyer/client relationship between
11 Mr. Joffe and Mr. Sussmann?

12 A. I remember having that general impression. I don't
13 remember what, if anything, was said about that
14 relationship.

15 Q. And to what extent did you understand that this meeting
16 related to the work that you and Fusion were doing for I
17 think what you termed the Democrats? Was it related to that
18 work?

19 A. My general understanding is we were researching Donald
20 Trump. At the time we had been researching Donald Trump's
21 connections to Russia, and so it was related inasmuch as it
22 was another connection between the Trump organization and
23 Russia.

24 Q. Okay. And just to be clear, had you ever met Mr. Joffe
25 before?

1 A. No.

2 Q. And had you ever met Mr. Sussmann before?

3 A. No.

4 Q. Had you met Mr. Elias before?

5 A. Not that I can recall.

6 Q. Okay. Recognizing it was a long time ago, about how
7 long did that meeting last?

8 A. Oh, I really don't remember. I'm sorry. Six years
9 later, it's difficult to say.

10 Q. And, again, recognizing that conversations with
11 attorneys can be privileged, is there anything else you're
12 comfortable saying about the substance of that meeting or
13 what it was that came out of the meeting?

14 A. Beyond the general subject matter of the connection
15 between the Trump organization and Alfa-Bank, I cannot
16 remember much.

17 Q. Okay. Now, was there follow-up to the meeting? In
18 other words, did you do anything as a result of it?

19 A. I exchanged a few emails with Mr. Joffe after the
20 meeting.

21 Q. Now, let me ask you this. Stepping away from just that
22 meeting, it sounds like at some point you became aware of
23 allegations of a purported communications channel between
24 the Trump organization and Alfa-Bank?

25 A. Yes.

1 Q. And how is it that you became aware of that?

2 A. I became aware of it in that meeting.

3 Q. Got it. So before that meeting, had you heard anything
4 about that topic?

5 A. Not that I can recall.

6 Q. And when you came out of the meeting, did you then start
7 to focus on that as an aspect of your work at Fusion GPS?

8 A. I did look at that matter, yes.

9 Q. And, again, without getting into any conversations with
10 lawyers, what, if any -- what did you do in that regard?

11 A. So all of the work that we did was on behalf of Perkins
12 Coie, and so I want to be very careful not to violate
13 privilege.

14 Q. Yes.

15 A. But I do recall analyzing allegations about the
16 connections between the Trump organization and Alfa-Bank.
17 There were allegations at some point posted to the web, and
18 I did download those files and look at them and attempt to
19 translate the technical claims into something that a lay
20 audience -- my colleagues -- could understand.

21 Q. So you were getting this information from what you
22 called open source. Is that one of the areas where you got
23 this information?

24 A. Yes.

25 Q. And did you -- you said that Mr. Joffe emailed you. Was

1 that for the purpose of exchanging information that
2 Mr. Joffe had obtained?

3 A. Again, the substance of those communications were part
4 of our work for Perkins Coie, so I don't think I can get
5 into those.

6 Q. Okay. After that meeting at Perkins Coie, did you have
7 any other meetings at Perkins Coie on that or any other
8 topic?

9 A. Not that I can remember.

10 Q. Now, did there come a time when you communicated with
11 members of -- let me ask you this: Generally speaking, did
12 Fusion GPS communicate with members of the media as part of
13 its work?

14 A. From time to time, yes.

15 Q. And to what extent was that true in connection with the
16 Trump-related research?

17 A. Yes, we did communicate with the media.

18 Q. What was the purpose of those communications?

19 A. Again, in general terms, when we had research findings
20 that we thought were interesting, we would communicate them
21 to the press.

22 Q. Now, in connection with the Alfa-Bank matter, did you
23 have any communications with the media?

24 A. Yes.

25 Q. About how many?

1 A. I met with one journalist, Frank Foer, about those
2 allegations.

3 Q. Now, how did that meeting come about?

4 A. I was asked to attend by Mr. Fritsch. I don't know how
5 he and Mr. Foer set the meeting up.

6 Q. And what was it about Mr. Foer that made him -- what, if
7 anything, about Mr. Foer made him the person who you
8 wanted -- who the firm wanted you to meet with?

9 A. I don't know.

10 Q. Did you have an understanding one way or the other
11 whether he was working on anything related to the Alfa-Bank
12 issue?

13 A. I don't recall.

14 Q. Do you recall anything about why it is you thought he
15 was someone they wanted you to meet with?

16 A. No. I'm afraid that was above my pay grade.

17 Q. And what was the purpose of the meeting?

18 A. We were discussing the allegations of communication
19 between the Trump organization and Alfa-Bank.

20 Q. And just stepping back. Best guess as to the time
21 period for this meeting?

22 A. It would have been the fall of 2016, before the
23 election. I couldn't say exactly when.

24 Q. And you may have testified to this, I'm sorry. Where
25 did it occur?

1 A. Mr. Foer's home.

2 Q. And who went with you?

3 A. Jake Berkowitz of Fusion and Peter Fritsch, also of
4 Fusion.

5 THE COURT: And just for the benefit of the court
6 reporter, it's F-O-E-R, correct?

7 THE WITNESS: F-O-E-R.

8 Q. And the first name, what did you say the first name was?

9 A. Frank or Franklin.

10 Q. Okay. And, I'm sorry, who attended with you?

11 A. Jake Berkowitz and Peter Fritsch, both of Fusion GPS.

12 Q. And about how long was that meeting? Again, recognizing
13 it's a long time ago.

14 A. I couldn't say. Maybe an hour.

15 Q. And what was discussed? What did you say, and what did
16 they say?

17 A. I really don't remember the specifics six years on. We
18 talked about the allegations between the Trump organization
19 and Alfa-Bank. We talked about highly credible computer
20 scientists who seemed to think that these allegations were
21 credible.

22 Q. And by that, are you referring to Mr. Joffe or somebody
23 else?

24 A. There were others that ended up being cited in
25 Mr. Foer's article. He cited L. Jean Camp and Paul Vixie,

1 who invented the DNS system.

2 Q. And would you say that the system was more in the vein
3 of you providing information to Mr. Foer or Mr. Foer
4 providing information to you?

5 A. Probably the former.

6 Q. Okay. And would that have been data? Would that have
7 been -- what was the format of what you gave him?

8 A. I don't recall. I don't know if we gave him anything.
9 It may have been a verbal briefing.

10 Q. And to what extent was the purpose of this meeting to
11 try and encourage Mr. Foer to publish an article?

12 A. We certainly hoped that he would publish an article.

13 Q. And did you have a sense of whether that was something
14 that was already in the works or something you were trying
15 to convince him to do? Any recollection there?

16 A. My understanding is he was already reporting on the
17 matter.

18 Q. And by "reporting," do you mean he had already published
19 something, or just writing something?

20 A. My understanding was that he was reaching out to sources
21 and investigating.

22 Q. Okay. Now, after that meeting, what, if anything, did
23 you do with regard to the effort to get him to publish an
24 article?

25 A. Nothing that I can recall.

1 Q. Now, around that same time period, what, if anything
2 else, did you do to communicate with people outside Fusion
3 GPS on the Alfa-Bank issue?

4 A. I didn't have any other communications outside of
5 Fusion.

6 Q. So, for example, these computer scientists who you
7 referenced, did you communicate or try to communicate with
8 any of them?

9 A. No, I didn't.

10 Q. Did you -- did others at Fusion GPS communicate or try
11 to communicate with them?

12 A. Not that I'm aware of.

13 Q. So to the extent that Fusion GPS was looking at this
14 issue, what, if anything, did you do to determine whether
15 the allegation was a true one?

16 A. You know, validating the DNS records would have been
17 beyond my capabilities. I was looking at the claims,
18 determined that they seemed credible, and was translating
19 claims into less technical terms for a law audience.

20 Q. Okay. So are you aware of steps that anyone at Fusion
21 GPS took to look into whether the data was, you know,
22 credible, authentic, supported, what was being alleged?

23 A. Again, we looked at the claims, looked at whether they
24 looked like real DNS records. But beyond that, no, that was
25 beyond our capability.

1 Q. Okay. So you said you looked at whether they were DNS
2 records. Did you know where they came from?

3 A. The claims posted to the web? No.

4 Q. Okay. And how about the DNS records? Did you have a --
5 who gathered the DNS?

6 A. I don't know.

7 Q. Was that something that Fusion wanted to find out or...?

8 A. I wasn't tasked with that. I don't know if others did.

9 Q. Okay. And do you know anyone else who was tasked with
10 trying to figure out where this came from?

11 A. No.

12 Q. Okay. Let me show you what's been premarked Government
13 Exhibit 344. And that will show up on your screen.

14 Does it appear that this is an email from
15 Mr. Joffe to you?

16 A. Yes.

17 Q. And is that your Fusion GPS email address? It's
18 lseago@fusiongps.com?

19 A. Yes, it is.

20 MR. DeFILIPPIS: Okay. Your Honor, the government
21 offers Government Exhibit 344.

22 MR. BERKOWITZ: No objection.

23 THE COURT: So moved.

24 MR. BERKOWITZ: And no objection to all the
25 exhibits you shared with us earlier, so I don't have to keep

1 getting up and saying that.

2 THE COURT: Okay.

3 MR. DeFILIPPIS: Okay.

4 BY MR. DeFILIPPIS:

5 Q. Ms. Seago, so this email is from who again, I'm sorry?

6 A. It's from Mr. Joffe.

7 Q. And there's an email from Mr. Joffe,

8 rjoffe@centergate.com. Do you have any knowledge one way or
9 the other what Centergate.com is?

10 A. I'm afraid I don't.

11 Q. Okay. And the date of this email?

12 A. August 29, 2016.

13 Q. So based on your earlier testimony, would it be your
14 understanding that the meeting you testified about would
15 have been before this email?

16 A. I think so.

17 MR. BERKOWITZ: Objection; form. Just which
18 meeting? Or foundation.

19 THE COURT: Rephrase.

20 MR. DeFILIPPIS: That's fine, Your Honor.

21 Q. You testified earlier about a meeting you had at
22 Fusion -- I'm sorry -- at Perkins Coie with Mr. Joffe,
23 Mr. Sussmann, Mr. Elias, Mr. Fritsch -- and was Mr. Simpson
24 there? I'm sorry, I forgot.

25 A. Not that I can recall.

1 Q. Okay. So what is your best recollection as to whether
2 this email occurred before or after that meeting?

3 A. My best recollection is that this email occurred after.

4 Q. And in the "To" line of the communication is also
5 Mr. Sussmann; is that right?

6 A. Yes, that appears to be the case.

7 Q. And then what is the subject line of the email?

8 A. "Privileged Client/Attorney Communication - New York 1."

9 Q. Now, again, without getting into the contents of this
10 email, did the subject matter relate to the Alfa-Bank
11 allegations that you were referencing earlier?

12 A. I don't recall.

13 Q. Okay. Did you interact with Mr. Joffe on anything other
14 than the Alfa-Bank-related allegations?

15 A. Not that I can remember.

16 Q. Okay. And then if we have you look at Government
17 Exhibit 602, another email from Mr. Joffe?

18 A. That's what this appears to be, yes.

19 MR. DeFILIPPIS: And, Your Honor, without
20 objection from the defense, we offer Government's
21 Exhibit 602.

22 THE COURT: So moved.

23 Q. Now, this email looks similar to the last one; is that
24 right?

25 A. Yes.

1 Q. And just the last one, I think its time stamp was 11:15
2 p.m. on August 29th. This looks like it's 3:15 a.m. on
3 August 30th. So middle of the night?

4 A. Yes, if the time stamps are correct.

5 Q. Okay. And do you think you were awake when you got this
6 email?

7 A. I doubt it.

8 Q. Okay. And this one has an attachment. Could you just
9 read the first couple of phrases of the attachment there?

10 A. Sure. "PGP_MIME Versions Identification.Dat; OpenPGP
11 encrypted message.asc."

12 Q. Okay. Again, without getting into the substance of
13 anything attorney-related, any sense of what the attachments
14 are?

15 A. I don't recall.

16 Q. Okay. And the "Subject" line of this email?

17 A. "Privileged Client/Attorney Communication - New York 1."

18 Q. Okay. And then next we have Government Exhibit 603,
19 which we'll put on your screen.

20 Does this appear to be an email from you to
21 Mr. Joffe?

22 A. It does.

23 MR. DeFILIPPIS: And, Your Honor, the government
24 offers 603.

25 THE COURT: So moved.

1 Q. What is the date of this email from you to Mr. Joffe?

2 A. Tuesday, August 30, 2016.

3 Q. And does this look like it's a reply to one of the prior
4 emails?

5 A. It says "Re:" so I assume it is a reply.

6 Q. And the time?

7 A. 11:50 a.m.

8 Q. And, again, while you don't -- do you not recall the
9 specific subject matter of this email?

10 A. I'm afraid I don't.

11 Q. Okay. Next we'll put up on your screen Government
12 Exhibit 604. Another email from you to Mr. Joffe, correct?

13 A. Yes.

14 MR. DeFILIPPIS: The government offers Government
15 Exhibit 604.

16 THE COURT: 604 is admitted.

17 Q. Ms. Seago, does this appear to be part of the same chain
18 as the prior email exchanges?

19 A. It has the same "Subject" line and says "Re," so that is
20 what it appears to be. I have no independent recollection
21 of this email.

22 Q. And what, if any, connection in your mind did the Alfa-
23 Bank issue have to New York? I ask because "New York" is in
24 the "Subject" line. Any sense?

25 A. I don't know.

1 Q. And the attachment on this email, any sense of what that
2 was?

3 A. I don't know.

4 Q. Okay. And then finally on this same chain we have
5 Government Exhibit 605. That will appear on your screen.

6 Is this another email from Mr. Joffe to you?

7 A. Yes. It appears to be.

8 MR. DeFILIPPIS: Your Honor, the government offers
9 Government Exhibit 605.

10 THE COURT: So moved.

11 Q. What is the date and time of this email from Mr. Joffe
12 to you?

13 A. Wednesday, August 31, 2016, 9:12 p.m.

14 Q. And who's copied on this email?

15 A. Mr. Sussmann.

16 Q. And the subject line?

17 A. "Privileged Client/Attorney Communication - New York 2."

18 Q. In looking at this email with the "New York 2" notation,
19 does the existence of "New York 1" and "New York 2" in
20 emails from Mr. Joffe jog any recollection as to what this
21 might be?

22 A. I'm afraid it doesn't.

23 Q. Okay. What, if anything, do you remember about your
24 interactions or communications with Mr. Joffe?

25 A. I recall that we met the one time at Perkins Coie and

1 that we exchanged a handful of emails. It was not very
2 extensive communication.

3 Q. And to the extent that you exchanged the emails we just
4 went through, which you don't have a recollection of, did
5 you understand those to be part of the broader Trump
6 research that Fusion GPS was doing for its client and
7 Perkins Coie?

8 A. Yes.

9 Q. All right. Now I'm going to show you what's been marked
10 Government Exhibit 648. Does this appear to be an email
11 from Peter Fritsch to you in mid-October?

12 A. Yes, it does.

13 MR. DeFILIPPIS: Your Honor, the government offers
14 Government Exhibit 648.

15 THE COURT: So moved.

16 Q. Okay. So just tell us the time and date -- the date and
17 time of the email from Mr. Fritsch.

18 A. October 17, 2016, 4:04 p.m.

19 Q. And briefly, if you could just remind us, who was Peter
20 Fritsch? What was his title or position?

21 A. Peter Fritsch was one of the partners at Fusion GPS.

22 Q. How many partners were there, if you know?

23 A. Four.

24 Q. And not a memory test, but do you remember who they
25 were?

1 A. Sure. It was Peter Fritsch, Glenn Simpson, Tom Catan,
2 and Jason Felch.

3 Q. For the court reporter, how do you spell "Catan"?

4 A. C-A-T-A-N.

5 Q. Now, this email is titled "Memos," and then it has two
6 attachments. What are the names of those attachments?

7 A. "Server Findings.doc.x" and "Alpha Group Overview
8 9.1.16.doc.x."

9 Q. What, if anything, do you remember and can you say about
10 the purpose of this email and its attachments?

11 A. I don't remember.

12 Q. How much time would you say you spent on the Alfa-Bank
13 issue? Was it a big part of your time? Small time? Small
14 part?

15 A. I don't recall it being a big part of my time. I always
16 had other cases in addition to the Trump matter, and there
17 was a lot going on in the Trump case as well.

18 Q. Okay.

19 MR. DeFILIPPIS: And then, Ms. Arsenault, if we
20 could just scroll briefly through.

21 Q. It's all redacted, but I just want to show you,
22 Ms. Seago, it appears this is a fairly lengthy attachment
23 with multiple pages. Is that --

24 A. Yes, that's what it appears.

25 Q. Okay. So is it your inference that there was some kind

1 of paper or document attached to the email?

2 A. Yes.

3 Q. All right. So we'll now turn to what's been premarked
4 as Government Exhibit 634.

5 Is this an email from you to Peter Fritsch?

6 A. Yes. That's what it appears to be.

7 MR. DeFILIPPIS: Your Honor, the government offers
8 Exhibit 634.

9 THE COURT: So moved.

10 Q. And what's the date of the email from you to
11 Mr. Fritsch?

12 A. October 5, 2016.

13 Q. And you copied who?

14 A. Glenn Simpson.

15 Q. And then the "Subject" line?

16 A. "Re: Alfa."

17 Q. And do you understand that to be Alfa-Bank?

18 A. I have no independent memory of this email, but that's a
19 safe assumption.

20 Q. For about how long in time would you say that you
21 focused on the Alfa-Bank issue? Days? Weeks? Months?

22 A. It's difficult to say. You know, focused on it to the
23 exclusion of other work, only a few days. I might have
24 dipped in and out of the matter for a month or two.

25 Q. Okay. Next is Government Exhibit 631, an email from

1 Mr. Fritsch to you copying Glenn Simpson; is that right?

2 A. Yes.

3 MR. DeFILIPPIS: Your Honor, the government offers
4 Government Exhibit 631.

5 THE COURT: So moved.

6 Q. And what is the date of this email?

7 A. October 5, 2016, at 6:33 p.m.

8 Q. And the "Subject" line?

9 A. "Forward: Alfa."

10 Q. Okay. So this is Mr. Fritsch presumably sending you
11 something titled with "Alfa" in the subject line?

12 A. That's what it appears to be.

13 Q. And then if we turn to what's been marked as Government
14 Exhibit 635, is that an email in which it appears that you
15 reply to what you had received from Mr. Fritsch?

16 A. Yes, that's what it appears to be.

17 MR. DeFILIPPIS: Your Honor, the government offers
18 Government Exhibit 635.

19 THE COURT: So moved.

20 Q. And, again, no recollection as to the substance?

21 A. I'm afraid not.

22 Q. Not too many more. Don't worry.

23 The next exhibit that we'll show you has been
24 premarked Government Exhibit 677. Is this an email from you
25 to Mr. Fritsch?

1 A. Yes.

2 MR. DeFILIPPIS: Your Honor, the government offers
3 Government Exhibit 677.

4 THE COURT: So moved.

5 Q. And what was the date and time of this particular email?

6 A. November 1, 2016, at 2:48 p.m.

7 Q. And you sent it to Mr. Fritsch. Who did you copy?

8 A. Jake Berkowitz.

9 Q. And remind us who Mr. Berkowitz is.

10 A. He was another analyst at Fusion GPS.

11 Q. And how frequently did you work with Mr. Berkowitz?

12 Every day or...?

13 A. Quite frequently.

14 Q. And what's the subject line of this email?

15 A. "What the other side is saying."

16 Q. What did you mean by "the other side" there?

17 A. To the best of my recollection, this was discussing
18 other opinions about the allegations of the connection
19 between Trump organization and Alfa-Bank, folks who were
20 skeptical of -- that those showed communication.

21 Q. All right. And finally, Ms. Seago, in terms of
22 documents, I'm going to show you what's been marked
23 Government's Exhibit 680. Is this an email from you to
24 Mr. Fritsch?

25 A. It appears to be, yes.

1 MR. DeFILIPPIS: Your Honor, the government offers
2 Government Exhibit 680.

3 THE COURT: So moved.

4 Q. And, Ms. Seago, what was the date and time of this
5 particular email?

6 A. November 3, 2016, at 3:33 p.m.

7 Q. And you copy on the email Mr. Catan, who you mentioned
8 earlier, and then Patrick Corcoran. Is that someone you
9 mentioned before?

10 A. I'm not sure I have.

11 Q. Who is Mr. Corcoran?

12 A. He's the research director at Fusion GPS.

13 Q. And what does the research director do?

14 A. He oversees all of the analysts, makes sure that our
15 cases are staffed appropriately.

16 Q. So was he a boss of yours, or not really?

17 A. Not really. He also does his own analysis. He just had
18 a particular role in managing staffing.

19 Q. And then there's an email address,
20 research@fusiongps.com. What is that?

21 A. To the best of my recollection, that address contacts
22 all of the analysts at Fusion GPS.

23 Q. Okay. So it's like a group Listserv?

24 A. Exactly.

25 Q. And then the subject line of this email is what?

1 A. "Re: Foer follo."

2 Q. Based on your subject-naming conventions, what do you
3 think you meant by "Foer follo"?

4 A. I don't know. I'm replying to somebody else's subject
5 line, so I don't know. I don't think I wrote that subject
6 line.

7 Q. Okay. Do you recall there being follow-up from the
8 meeting with Mr. Foer?

9 A. I can't recall specifically.

10 Q. Did there come a time when you learned that articles
11 came out in the news about the Alfa-Bank issue?

12 A. Yes.

13 Q. And do you remember who published those articles?

14 A. Mr. Foer did publish an article. *The New York Times*
15 also mentioned the allegations briefly in an article.

16 Q. And to the extent you recall, what was the general time
17 period of those articles?

18 A. I believe it was October 31st of 2016.

19 Q. To the extent you met with Mr. Foer and -- you and
20 others met with Mr. Foer, is that the kind of thing that you
21 cleared with Perkins Coie before doing it?

22 A. That would have been above my pay grade. I don't know
23 if Mr. Fritsch or Mr. Simpson cleared it with Perkins Coie.

24 Q. Okay.

25 Okay. One more exhibit, Ms. Seago, that I'm going

1 to show you, which is Government Exhibit 612. Do you
2 recognize this, which looks to be an email from you to
3 Mr. Fritsch?

4 A. It appears to be an email from me to Mr. Fritsch. I
5 don't recall this email specifically.

6 MR. DeFILIPPIS: Okay. And, Your Honor, if
7 there's no objection from the defense, we'll offer
8 Government's Exhibit 612.

9 MR. BERKOWITZ: No objection.

10 THE COURT: So moved.

11 Q. Okay. So what is the date and time of this email?

12 A. October 5, 2016, at 5:23 p.m.

13 Q. And the "Subject" line?

14 A. "Re: so is this safe to look at" -- excuse me -- "so
15 this is safe to look at."

16 Q. And then the attachment name?

17 A. gdd.zip.

18 Q. Okay. And then it looks like, off to the side of the
19 exhibit, there are some attachment names listed.

20 MR. DeFILIPPIS: If we could just enlarge those a
21 bit.

22 Q. Looking at these attachments, what were those
23 attachments?

24 A. I don't recall documents specifically. I actually don't
25 know.

1 Q. I mean, based on your recollection and looking at them,
2 do they appear to be data? Papers? Any sense one way or
3 the other?

4 A. It looks like an HTML file, and the files that would go
5 into a website. So "all.html" is like a Web page, and
6 "exporting.js" or "highstock.js" are JavaScript files that
7 would go into a Web page to create certain features.

8 "Network_small.png" is an image file.

9 "Index.html" is another web-page-type file. "Network.html"
10 is another web-page-type file.

11 "Result-light.css" is a cascading style sheet.

12 That's the sort of thing that just determines the fonts and
13 colors on a Web page, how it looks.

14 So it looks like all of the stuff that goes into
15 making a Web-page document.

16 Q. Okay. And going back to the attachment listed on the
17 header of the email itself, it was gdd.zip. What was
18 "gdd.zip"? Do you remember dealing with anything with the
19 acronym "gdd" in the Alpha-Bank or any other matter?

20 A. The name sounds familiar. My recollection is gdd.zip
21 was posted to the Internet by an anonymous person containing
22 documents related to the allegations that the Trump
23 organization was communicating with Alfa-Bank.

24 Q. And was that something you found on your own? Did
25 someone alert you to it?

1 A. I don't remember.

2 Q. Of the people at Fusion GPS, who was the most
3 technically proficient on cyber matters and things like
4 that?

5 A. That would have been me.

6 Q. And with regard to DNS data, how proficient or familiar
7 or unfamiliar were you with DNS data?

8 A. I have no professional experience working with the DNS
9 system, but I've been working with computers my whole life.
10 I taught myself several programming languages, and so the
11 learning curve was a little less steep for me on
12 understanding technical matters.

13 So I was conversant in DNS. I wouldn't call
14 myself an expert.

15 Q. Okay. And let me redirect you to Government Exhibit 612
16 and direct you to page 4 of the exhibit, which has some
17 metadata. And you may understand this better than I do, but
18 the metadata lists gdd.zip as the file name, and then the
19 title is "maill.trump-email.com DNS timeline."

20 Any sense of what that is?

21 A. I'm afraid not.

22 Q. Do you remember, in connection with the Alfa-Bank issue,
23 there being any particular domain at issue?

24 A. I know that there was a trump-email.com server and an
25 Alfa-Bank server. Those were the domains at issue.

1 This looks familiar. The mail1.trump-email.com,
2 that may have been the Trump domain at issue in these
3 communications.

4 Q. Okay. Now, were you aware of any other efforts -- other
5 than your meeting with Mr. Foer -- other efforts that Fusion
6 GPS made to disseminate the Alfa-Bank issue in the media?

7 A. I wasn't personally aware of any.

8 Q. And are you certain you would remember if you were, or
9 do you just not remember any?

10 A. I don't -- I'm not certain. I don't think I was
11 personally involved in any other communications with
12 journalists about this.

13 Q. Who did Mr. Foer work for? Was there a particular
14 newspaper or media outlet?

15 A. He was writing for *Slate* at the time.

16 Q. And I think you testified earlier that they -- I think
17 you used the phrase "they" hoped to get an article published
18 about Alfa-Bank. Who was the "they"? Was that Perkins
19 Coie? Fusion GPS?

20 A. My bosses at Fusion.

21 Q. Okay.

22 A. I took direction from them.

23 Q. And I think you testified earlier, you understood that
24 this Alfa-Bank work was related to the broader project for
25 Perkins Coie and the Democratic entity?

1 A. That was my understanding, yes.

2 MR. DeFILIPPIS: Okay. Thank you very much.

3 THE WITNESS: Thank you.

4 THE COURT: Mr. Berkowitz, how long do we think
5 you have? Should we take our morning break before your
6 cross?

7 MR. BERKOWITZ: Less than 30 minutes.

8 THE COURT: Ladies and gentlemen, why don't we
9 take our morning break. It is 10:40 by my watch. Why don't
10 we reconvene at 11:00.

11 No discussions about the case. No research about
12 the case.

13 (Jury exits courtroom)

14 THE COURT: Okay.

15 (Recess taken)

16 THE COURT: All right. Welcome back, everyone.
17 Please be seated.

18 Mr. Berkowitz.

19 CROSS-EXAMINATION

20 BY MR. BERKOWITZ:

21 Q. Good morning, Ms. Seago.

22 A. Good morning.

23 Q. We've never met before, have we?

24 A. I don't believe so.

25 Q. Okay. My name is Sean Berkowitz, and I represent

1 Michael Sussmann. I think you testified that you've met
2 Mr. Sussmann once, at least during the 2016 time period?

3 A. That's right.

4 Q. In July or August, to the best of your recollection?

5 A. That's what I can recall, yes.

6 Q. And it was at a meeting with him and Mr. Elias,
7 Mr. Joffe, and Mr. Fritsch, correct?

8 A. Yes.

9 Q. Other than that one meeting with Mr. Sussmann, do you
10 recall having any communications with him ever?

11 A. No.

12 Q. Now, let's kind of level set, because you mentioned a
13 couple of times certain things were above your pay grade,
14 and I want to make sure that the jury understands what your
15 role was and what it wasn't.

16 So a little bit about your background. Where did
17 you work before you started at Fusion?

18 A. Before Fusion I was in graduate school. I was in a
19 joint PhD program in public policy and political science.

20 Before that, I was a research associate at the
21 Brennan Center for Justice.

22 Q. And you graduated from the University of Chicago in
23 2007?

24 A. That's right.

25 Q. And then you did PhD work?

1 A. That's right.

2 Q. And after those couple of jobs in the not-for-profit
3 sector and the Brennan institute, you responded to a job
4 posting?

5 A. That's correct.

6 Q. That was in about 2015?

7 A. That's right.

8 Q. And what was the job posting for, Ms. Seago?

9 A. It was for an analyst who had technical skills who knew
10 programming languages at Fusion GPS.

11 Q. And you'd worked on computers and websites and things
12 like that since you were younger, right?

13 A. That's right.

14 Q. So you went to work for Fusion GPS in the 2015 time
15 period?

16 A. Yes.

17 Q. And your role, I think you said, was to do open source
18 research, meaning do research that's available to the
19 public. Correct?

20 A. Yes.

21 Q. And report that information to whichever partner was
22 asking you for the information?

23 A. Yes. That's right.

24 Q. When you did research, did you try and provide
25 information that was accurate?

1 A. Always.

2 Q. Now, in the 2015 time period, I think you said that the
3 work that your company, the company you had signed on for,
4 was working for anti-Trump Republicans, right?

5 A. That was my understanding.

6 Q. That was during the primary cycle, presumably?

7 A. Yes.

8 Q. And then in the general election cycle, you understood
9 that the firm had been hired by a Democratic entity to do
10 the same type of research?

11 A. Yes. That was my understanding.

12 Q. And you were not the expert at Fusion about Alfa-Bank,
13 right?

14 A. No.

15 Q. There were others at Fusion who had more meaningful
16 engagement on the Alfa-Bank issues?

17 A. Yes.

18 Q. One of them you mentioned was Jake Berkowitz?

19 A. Yes.

20 Q. Just for -- I'm not related to Jake Berkowitz. I'll
21 make that representation. I don't know that that's evidence
22 or not, but I don't know him.

23 And you mentioned Mr. Fritsch?

24 A. Yes.

25 Q. And Mr. Simpson, correct?

1 A. Correct.

2 Q. All right. So your work on the Alfa-Bank issues was
3 largely related to looking into any public source
4 information associated with the Alfa-Bank server
5 allegations?

6 A. That's correct.

7 Q. In other words, the suggestion or the possibility that
8 there were connections between a Trump server and a server
9 associated with a bank called Alfa-Bank, right?

10 A. Yes.

11 Q. And you had a meeting with Mr. Joffe, Mr. Sussmann,
12 Mr. Elias, and Mr. Fritsch about that, right?

13 A. Yes.

14 Q. And at that meeting, you understood, based on whatever
15 it was that caused you to do this, that Mr. Joffe, who was
16 there, was Mr. Sussmann's client, correct?

17 A. That was my understanding, yes.

18 Q. You'd never heard of Mr. Joffe before?

19 A. Not before that meeting.

20 Q. Okay. And you never saw him after that meeting,
21 correct?

22 A. Not that I can recall.

23 Q. There were some emails exchanged, correct?

24 A. Yes.

25 Q. Okay. And your impression -- well, and Mr. Joffe was

1 not, to the best of your knowledge, a client of Fusion, was
2 he?

3 A. Not to my knowledge.

4 Q. And your impression of Mr. Joffe that was made at that
5 meeting was that he was -- he seemed reliable?

6 A. Yes.

7 Q. And he seemed well-placed to have knowledge and
8 information about the server issues?

9 A. Yes, he did.

10 Q. And you understood that Mr. Joffe supported the
11 suggestion that there was at least potential contact between
12 Trump servers and Alfa-Bank servers?

13 A. Yes, I did.

14 MR. DeFILIPPIS: Objection, Your Honor.

15 THE COURT: Overruled.

16 Q. You answered the question?

17 A. Yes, I did understand that.

18 Q. So you then, after that meeting, I take it, did certain
19 open source research. Correct?

20 A. Yes.

21 Q. And I think you testified that as a result of your open
22 source research you -- did you identify other people on the
23 Web that had agreed with the suggestion of the allegations?

24 A. Yes.

25 Q. Okay. Who were they?

1 A. There was somebody using a pseudonym, Tea Leaves, who
2 posted data and allegations on the Web largely agreeing with
3 these claims.

4 Q. And you're not -- just to be really clear -- an expert
5 in DNS data, correct?

6 A. No.

7 Q. You know what it is?

8 A. Yes.

9 Q. And at some point, I take it, you were asked to speak
10 with someone from the press, correct?

11 A. Yes.

12 Q. Okay. Now, to be clear, you did not, before the
13 election, ever speak with a gentleman named Eric Lichtblau,
14 did you?

15 A. Not before the election.

16 Q. And not -- and before the election you didn't speak with
17 anyone from *The New York Times* about these issues, correct?

18 A. No.

19 Q. And you were, it sounds like, asked to go to a meeting
20 with a gentleman named Franklin Foer?

21 A. That's right.

22 Q. And Mr. Foer, is he somebody you were familiar with
23 before you met with him?

24 A. I knew the name.

25 Q. Okay. You didn't know why you were going before you

1 went there?

2 A. Peter Fritsch asked me to attend. I don't recall if he
3 told me the subject.

4 Q. Okay. And to the best of your recollection, if
5 anything, what was your role at that meeting?

6 A. To explain the technical aspects of these allegations in
7 lay terms that a journalist like Mr. Foer could understand.

8 Q. Did you try and accurately convey what you knew?

9 A. Yes.

10 Q. Did you provide him any names?

11 A. I don't recall.

12 Q. Okay. Do you know or understand whether he did
13 independent research after your discussion with him?

14 A. I don't know.

15 Q. Did, in fact, a story ultimately come out by Mr. Foer?

16 A. Yes.

17 Q. Let me show you what has been marked as Government
18 Exhibit 54. This is an October 31, 2016, document that
19 appears to be an article by Franklin Foer, correct?

20 A. Yes.

21 MR. BERKOWITZ: Judge, I'd move into evidence the
22 document.

23 MR. DeFILIPPIS: No objection, Your Honor.

24 THE COURT: So moved.

25 Q. And we're not going to go through the extent of the

1 document, but did you read it at the time?

2 A. Yes, I did.

3 Q. All right. And did Mr. Foer identify in that article,
4 to the best of your knowledge, other experts that he spoke
5 with?

6 A. That's what I remember, yes.

7 Q. And is that the Jean Camp and Paul Vixie?

8 A. Yes.

9 Q. Those were names that he came up with, correct?

10 A. Yes.

11 Q. And with respect to your meeting with Mr. Foer, did you
12 tell Mr. Foer that the FBI was investigating these
13 allegations?

14 A. No. I had no knowledge of that investigation.

15 Q. So before your meeting with Franklin Foer, did you have
16 any information that the FBI was involved in any way?

17 A. No.

18 Q. All right. Did Mr. Fritsch or anyone else at the
19 meeting say, "The FBI is looking into this"?

20 A. Not that I can remember.

21 Q. Okay. And going back to the meeting with Mr. Sussmann,
22 Mr. Joffe, Mr. Fritsch, and Mr. Elias, do you recall any
23 discussion at that meeting about bringing these allegations,
24 these server allegations, to the FBI?

25 A. No, I don't.

1 Q. Okay. We looked at about 12 emails. When I say "we,"
2 Mr. DeFilippis showed you about 12 emails between -- some
3 were with Mr. Joffe, some had Mr. Sussmann on it, some were
4 internal Fusion emails. Do you remember those?

5 A. Yes.

6 Q. Okay. Did any of those communications reference, to the
7 best of your knowledge, discussions with law enforcement or
8 the FBI?

9 A. Not that I can recall.

10 Q. And that's something you think you would recall?

11 A. I think I would.

12 Q. Now, with respect to the further discussions with the
13 press, other than this one meeting with Mr. Foer, were you
14 involved in any discussions with the press?

15 A. Not about the Alfa-Bank matter.

16 Q. Okay. Were you involved in any discussions internally
17 or with the press about leaking allegations about the FBI
18 looking into the server allegations to the press?

19 A. No.

20 Q. And when you met with the press, was the Alfa-Bank time
21 the only time you'd ever met with the press?

22 A. No. I met with them on other matters.

23 Q. And did you find anything unusual about the meeting with
24 Mr. Foer?

25 A. No.

1 Q. Did you think the Alfa-Bank story was an important
2 story?

3 A. Yes, I did.

4 Q. Why?

5 A. I thought it was a matter of national security, if a
6 Russian bank was interfering in our elections.

7 Q. And you understand that Mr. Foer is a journalist who
8 would do his own research on matters?

9 A. Yes.

10 Q. And the information that you provided at that meeting
11 and any information you provided to your employers was
12 accurate, to the best of your knowledge?

13 A. Absolutely, yes.

14 MR. BERKOWITZ: I appreciate your time.

15 THE WITNESS: Thank you.

16 MR. BERKOWITZ: Nothing further.

17 REDIRECT EXAMINATION

18 BY MR. DeFILIPPIS:

19 Q. Ms. Seago, on cross-examination you were asked about
20 your task being part of looking for public source
21 information; is that right?

22 A. Yes.

23 Q. To the extent you received information on this matter
24 from Mr. Joffe, did you understand that to be public source
25 information or something else?

1 A. I didn't understand that Mr. Joffe had open source
2 information, no.

3 Q. Okay. So it would have been non-open source
4 information?

5 A. Correct.

6 Q. Okay. And what, if anything, did you do to inquire as
7 to where Mr. Joffe had gotten information he gave you on
8 this issue?

9 A. I didn't inquire. My understanding was that he had
10 access to that information.

11 Q. And what, if anything, did others, as far as you know,
12 at Fusion do to inquire as to the origins of the
13 information?

14 A. I don't recall anybody inquiring.

15 Q. What, if anything, did you learn or hear at the time
16 about whether the server at issue was actually a server used
17 to send spam marketing email?

18 A. I know there was speculation about that after Mr. Foer
19 published his story. I certainly didn't hear anything about
20 that before.

21 Q. Okay. So if that was known to others around you, you
22 don't have any recollection of them mentioning that?

23 A. I don't recall being aware of it.

24 Q. Okay. And do you think -- had someone mentioned -- to
25 what extent do you think you would remember if someone in

1 any of these meetings had mentioned that prior to it being
2 in the public domain?

3 A. It's difficult to say. I don't remember any mention of
4 that.

5 Q. Okay. You were asked about whether you knew that the
6 FBI was investigating this matter or was aware of this
7 matter. To what extent were you aware whether others on the
8 team at Fusion were aware, based on any knowledge you have?

9 A. I had no awareness that anybody knew that anybody was
10 talking to the FBI at that time.

11 Q. Now, I think -- I may have misunderstood your testimony
12 on direct. I think -- I thought you had testified on direct
13 that you had not reached out to the media in connection with
14 your Fusion work. Was that just on the Alfa-Bank matter?

15 A. Yes, just on the Alfa-Bank matter.

16 Mr. Foer was the only person I spoke with. I
17 apologize if I was unclear.

18 Q. Okay. And with regard to the broader Trump/Russia
19 issues, did you communicate with the media on those issues?

20 A. Yes, from time to time I did.

21 Q. And tell us about that. Which reporters and on what
22 sorts of issues?

23 A. It's difficult to remember the specific communications
24 or reporters. I know that we -- I pulled some business
25 records of Mr. Trump's businesses and spoke with the press

1 about those.

2 Q. Okay. And were those discussions on the record? Off
3 the record? Or a combination?

4 A. It would have been on background.

5 Q. Okay. And what does that mean?

6 A. They're welcome to use the information, but it's not for
7 attribution.

8 Q. Okay. So they wouldn't be able -- would they be able to
9 say publicly that they got it from Fusion GPS?

10 A. No.

11 Q. And to what extent, in those communications, would you
12 disclose to the media that you were working for a Democrat-
13 affiliated client?

14 A. Again, client communications were really above my pay
15 grade. I didn't set up meetings with journalists at that
16 time, and I didn't communicate about our clients with
17 anyone.

18 Q. And did you ever receive instructions one way or the
19 other as to whether you could disclose who the client was to
20 the media?

21 A. No.

22 Q. Did you ever receive instructions that you couldn't
23 disclose your affiliation with Fusion GPS to the media?

24 A. No. I don't remember hiding that affiliation from the
25 media ever.

1 Q. Do you ever remember hiding or considering hiding that
2 affiliation from anyone?

3 A. No.

4 Q. How certain are you of that?

5 A. I'm quite certain. You know, we don't go around
6 advertising who we are and where we work, but I certainly
7 don't lie to people, and I don't lie to the press about
8 where I work.

9 Q. Okay. So you're fairly certain you never sought to
10 conceal that?

11 A. Not that I can recall.

12 Q. With regard to the meeting with Mr. Foer, who, if
13 anyone, would be responsible for following up after that
14 meeting?

15 A. I don't know.

16 Q. When the article came out, what was your -- did you
17 speak to Mr. Foer again?

18 A. I don't recall speaking to him about that article.

19 MR. DeFILIPPIS: Okay. Nothing further. Thank
20 you very much.

21 THE WITNESS: Thank you.

22 THE COURT: Okay. Ms. Seago, thank you very much
23 for your testimony. You are excused.

24 THE WITNESS: Thank you.

25 THE COURT: Please don't discuss your testimony

1 with anyone until the end of the case, okay?

2 THE WITNESS: Thank you.

3 THE COURT: Have a good day.

4 Okay. Ladies and gentlemen, you heard Ms. Seago
5 refer a couple of times to the attorney-client privilege.
6 As you all may know from personal experience, usually an
7 attorney's communication with his or her client is
8 confidential, and that's what the attorney-client privilege
9 refers to. And so the witnesses have been instructed to
10 steer clear of privileged communications between themselves
11 and a client or that arise in the context of an attorney-
12 client relationship.

13 So the witnesses are not being evasive or refusing
14 to give testimony that they should be providing. It's a
15 very natural thing when cases involve attorneys and
16 attorney-client relationships.

17 Similarly, you will see certain matters that are
18 redacted from documents. One reason something might be
19 redacted is that it's covered by confidential attorney-
20 client communications. So while you can consider that an
21 email was sent by one person to another on a certain day and
22 may have included an attachment, if that attachment is
23 redacted, consistent with my instructions yesterday, you
24 shouldn't speculate as to what may be behind that redaction.

25 Understood?

1 Okay.

2 MR. DeFILIPPIS: Your Honor, could we speak to you
3 on the phone?

4 THE COURT: Excuse me?

5 MR. DeFILIPPIS: Could we speak to you on the
6 phone?

7 THE COURT: Yes.

8 (The following is a bench conference
9 outside the hearing of the jury)

10 MR. DeFILIPPIS: Your Honor, can you hear me now?

11 THE COURT: Yes.

12 MR. DeFILIPPIS: So we have an issue with regard
13 to Ms. Seago's testimony. The government followed carefully
14 Your Honor's order with regard to the Fusion emails that
15 were determined not to be privileged but that the government
16 had moved on.

17 As Your Honor may recall, there was an email in
18 there in which Ms. Seago talks very explicitly about seeking
19 to approach someone associated with the Alfa-Bank matter and
20 concealing her affiliation with Fusion in the email. When
21 we asked her broadly whether she ever did that, she
22 definitively said no when I, you know, revisited it with
23 her. So it raises the prospect that she may be giving false
24 testimony.

25 And so we were -- you know, I considered trying to

1 refresh her with that, but I didn't understand that to be in
2 line with Your Honor's ruling. So the government is -- we'd
3 like to consider whether we should be -- we'd like Your
4 Honor to consider whether we should be able to at least
5 recall her and refresh her with that document?

6 THE COURT: I don't remember that question, but
7 the subject matter was concealing Fusion or her identities
8 in conversations with the press. If I recall correctly,
9 that email related to "tea leaves," correct?

10 MR. DeFILIPPIS: Your Honor, I thought I had
11 phrased it more broadly. We can go to the transcript.

12 THE COURT: Mr. Berkowitz?

13 MR. BERKOWITZ: Judge, I'm not familiar with the
14 specifics. I'm happy to take a look at the transcript. I
15 certainly got the impression he was asking if she had ever
16 concealed Fusion as an entity from the press. That was what
17 was asked in her deposition, and she answered the same way
18 in her deposition.

19 One thing, just to note, some of our paralegals
20 can hear Mr. DeFilippis talking, so I suggest, just as a
21 reminder, to keep your voices down.

22 MR. DeFILIPPIS: Sure, sure.

23 THE COURT: All right. Let me look at the
24 transcript.

25 (Pause)

1 THE COURT: Can you hear me?

2 MR. DeFILIPPIS: Yes, Your Honor.

3 THE COURT: All right. Looking at the transcript,
4 I think you did ask a more open-ended question. She said,
5 "I don't remember hiding that affiliation from the media
6 ever."

7 And then you followed up, "Do you ever remember
8 hiding or considering hiding that affiliation from anyone?"

9 And she answered, "No."

10 I would -- so I think that she -- I think the
11 email is inconsistent with her answer, Mr. Berkowitz. But
12 the question now is whether they can refresh her with that
13 email notwithstanding the Court's order. And now she's
14 gone.

15 How are we going to do that even if we were to
16 allow it? Is it worth the candle of calling her back?

17 MR. DeFILIPPIS: Your Honor, I understand she's
18 still in the building.

19 MR. BERKOWITZ: Your Honor, is this email
20 privileged?

21 MR. DeFILIPPIS: This was one of the emails that
22 was determined not to be privileged by Your Honor.

23 MR. BERKOWITZ: So why didn't they impeach her
24 with it when they had the chance?

25 MR. DeFILIPPIS: Your Honor, the reason is because

1 I didn't want to violate Your Honor's order that we couldn't
2 use those affirmatively.

3 THE COURT: Well, I think the time to have asked
4 the Court whether using the document to refresh was
5 consistent with the order was before she was tendered and
6 dismissed.

7 So I think you waived your opportunity. All
8 right? So we're going to move on.

9 (This is the end of the bench conference)

10 THE COURT: All right. Who is up next?

11 MR. DeFILIPPIS: Your Honor, the government calls
12 Marc Elias.

13 THE COURT: Okay. Good morning, sir. It's still
14 morning.

15 THE WITNESS: Good morning, Your Honor.

16 THE COURT: Please remain standing and raise your
17 right hand to be sworn in.

18 (Witness sworn)

19 THE COURT: All right. Have a seat, sir. Make
20 yourself comfortable.

21 MARC E. ELIAS, Sworn

22 DIRECT EXAMINATION

23 BY MR. DeFILIPPIS:

24 Q. Good morning, Mr. Elias.

25 A. Good morning.

1 Q. Would you please state and spell your name for the
2 record?

3 A. Sure. It's Marc, M-A-R-C; Erik is my middle name, with
4 a K; and then Elias, E-L-I-A-S.

5 Q. Mr. Elias, where do you work?

6 A. I work at the law firm Elias Law Group.

7 Q. And where did you work before Elias Law Group?

8 A. I was a partner and then before that an associate at a
9 law firm called Perkins Coie.

10 Q. And in the 2016 time period, where did you work then?

11 A. At Perkins Coie.

12 Q. And what sorts of work did you do at Perkins Coie?

13 A. So in that time frame I chaired the political law
14 practice, which meant I did -- I represented Democratic
15 campaigns, Democratic candidates, progressive causes in
16 matters relating to how they engaged in the political
17 process. Everything from voting rights litigation to
18 campaign finance and everything in between.

19 Q. And so in connection with that work, did there come a
20 time when you started doing work on behalf of the Hillary
21 For America Campaign?

22 A. Yes.

23 Q. And approximately when was that?

24 A. It was around April of 2015. It was -- it could have
25 been give or minus a few days. It was shortly before she

1 announced her presidential campaign, which I think was in
2 April.

3 Q. And how is it that you came to work on behalf of the
4 campaign?

5 A. So I had worked on a large number of Democratic
6 campaigns. I was the general counsel to the Democratic
7 Senatorial Campaign Committee and had worked on a lot of
8 Senate -- I represented lots of Democratic Senate races.
9 I'd been the general counsel to John Kerry's presidential
10 campaign. I had done some work -- my firm was the general
11 counsel to the Obama for America Campaign in 2008 and 2012.

12 So at some point in late 2014 or early 2015 I was
13 contacted by people who were later to be associated with the
14 campaign and asked if it was something I was interested in.

15 Q. And so you took them up on that offer?

16 A. Yes.

17 Q. And your title on the campaign was?

18 A. So my title was general counsel.

19 Q. And in terms of your staff or others who worked for you
20 in the legal area on the campaign, were they folks at
21 Perkins Coie or the campaign proper or a combination?

22 A. Good question. It was a mix. So some campaigns have an
23 in-house general counsel and then outside counsel.

24 This campaign we -- I was the general counsel. So
25 I relied on probably, you know, a couple of dozen lawyers at

1 Perkins who did one or more things for the campaign. And
2 then I think -- by the time we got to the general election,
3 I think we had maybe eight in-house lawyers who were just
4 employees of Hillary For America --

5 Q. Okay.

6 A. -- or the DNC working with the Clinton Campaign.

7 Q. Got it. And who principally did you work closest with
8 in the legal realm, other lawyers? Which other lawyers?

9 A. In the campaign or at the firm?

10 Q. In the campaign.

11 A. In the campaign I'd say the people I worked closest with
12 depended a little bit on the phase. So early in the
13 campaign -- and I don't know if you are interested in early
14 in the campaign -- I'd say it was the lawyers who were
15 corporate lawyers.

16 You know, first -- my piece of advice to everyone
17 who does a campaign is first thing get someone who knows
18 leases, contracts, database vendors --

19 THE COURT: I'm sorry, Mr. Elias. Could you slow
20 down just a little bit for the benefit of the jury and the
21 court reporter.

22 THE WITNESS: I apologize. It's my New York
23 coming out.

24 THE COURT: I understand.

25 A. So early in the campaign there was a woman, Joslyn

1 Massengale, who was the first lawyer we hired to do
2 corporate work.

3 As the campaign got going, it was more -- we had
4 someone who was dealing with HR issues inside the campaign
5 who I worked with, you know, periodically.

6 Then further along it would have been Debbie Fine,
7 who was handling pieces -- I think she joined the campaign,
8 though, later. I think she joined the campaign in the
9 middle of 2016 or early 2016.

10 And then Hannah Freid, who was running the voter
11 protection program, which is huge, you know, preventing
12 election subversion and voter suppression.

13 Q. Now, was your retention by the campaign memorialized in
14 an agreement?

15 A. It was.

16 Q. And if I could show you, Mr. Elias, what's been
17 premarked as Government Exhibit 301, which will show up on
18 your screen in a moment.

19 A. Yes.

20 Q. Do you recognize this?

21 A. Yes.

22 Q. What is it?

23 A. This is the engagement letter for the Clinton Campaign.
24 HFACC, Inc., was the technical legal name of the campaign,
25 like if you looked in the New York State Registry of

1 Corporations. It did business as Hillary For America.

2 Q. Okay. And just looking at the address line of who the
3 letter -- oh, I'm sorry.

4 MR. DeFILIPPIS: Your Honor, the government offers
5 Government Exhibit 301.

6 THE COURT: Any objection?

7 MR. BERKOWITZ: No objection, Your Honor.

8 THE COURT: So moved.

9 Q. If we look at the address line of this retention letter,
10 there's an individual listed there, Mr. Robby Mook or Mook?

11 A. Yes.

12 Q. How do you pronounce that?

13 A. I say "Mook," but I will tell you, if you ask five
14 people, they're going to give you five different answers.

15 Q. Okay. So Mr. Robby M., who is that?

16 A. Robby Mook was, on April 1st of 2015, the campaign
17 manager.

18 Q. And is he the one who formally retained you?

19 A. He was, yes.

20 Q. And did you interact with him frequently in your work at
21 the campaign?

22 A. Yes.

23 Q. So looking at the first two paragraphs of the letter
24 there. The first paragraph says, "Thank you for selecting
25 the firm to serve as general counsel. This includes legal

1 counseling and representation of Hillary For America in
2 connection to its legal affairs, including Federal Election
3 Commission and other regulatory requirements and general
4 organizational and compliance matters."

5 Then it says, "Our firm will not represent another
6 candidate for president in the 2016 election cycle."

7 Is this language common, uncommon, in terms of how
8 election retentions go?

9 A. It's generally common. We had a history and after this
10 of representing multiple candidates for president, so that
11 last sentence was I won't say uncommon -- well, less common.

12 Q. Okay. Now, were there any other retention letters
13 between Perkins Coie and the campaign covering the election
14 cycle in 2016?

15 A. That were memorialized? Not that I recall, but it's
16 possible.

17 Q. Okay. But was this the main --

18 A. Yes, yes, this was the main one. But I don't know
19 whether there was some matter we handled, a litigation
20 matter or something, that there was a separate engagement
21 letter for. I don't recall.

22 Q. Okay. And if we go down to the third paragraph of that
23 letter there, so is this the paragraph about the fees, the
24 money?

25 A. Yes.

1 Q. And just generally speaking, what was the arrangement
2 for paying Perkins Coie by -- for the campaign to pay
3 Perkins Coie? What was the -- how did the fees work?

4 A. They paid us a flat monthly fee that scaled over time.
5 And then I think it said in the first paragraph that if
6 there was like litigation or recounts or contests, it would
7 be billed separately.

8 Q. And so just for the jury's benefit, when a law firm's
9 being paid on a flat monthly fee, how does that work in
10 terms of if you work a lot of hours or not a lot of hours in
11 terms of how much the client pays?

12 A. The client pays the same amount no matter how much you
13 work or don't work.

14 Q. Okay. So if we look at Paragraph 3, it says that -- it
15 sets out amounts that the firm will be paid. It says
16 \$130,000 per the month of April and May. So was that
17 \$130,000 each month?

18 A. It was, yes.

19 Q. Okay. So --

20 A. That's why I put the word "per" at the end.

21 Q. Right. Right. If the firm only worked two hours in one
22 of those months, they would pay \$130,000; is that --

23 A. Correct.

24 Q. And if they worked 2,000 hours, it would be the same?

25 A. Correct.

1 Q. Okay. And any particular reason why the numbers trail
2 off a bit as time goes on?

3 A. So the first two months were really -- were higher than
4 the others for the reason I said, which is a start-up
5 campaign has a zillion legal needs. I mean, on Day 1 you
6 need a website, which means you need a privacy policy, which
7 means a website vendor, which means you need a hosting
8 company, which -- right? And that's just the website.

9 Like, you have office leases. You have HR issues,
10 right? You have onboarding of hundreds of employees. And
11 we didn't have the in-house staff yet, right?

12 So essentially at the very beginning Perkins Coie
13 was the only lawyers for the campaign, so we hadn't yet
14 hired -- so I said the first hire is always a corporate
15 lawyer to sort of take more of that work off of us. But
16 that's why the first two months were higher.

17 Q. Okay. And about how many lawyers would Perkins Coie
18 have working for the campaign?

19 A. I mean, I don't know if I can refer to a document or not
20 in evidence, but you could look at the pro formas and come
21 up with an actual number. But my guess is there were
22 probably two dozen lawyers in any given months working on
23 the campaign.

24 Q. Okay. And who was the managing or billing partner for
25 that?

1 A. I was.

2 Q. That was you.

3 So to the extent that bills came back -- sorry,
4 that bills went out to the campaign, would you review them
5 or...?

6 A. Depended on the time period, and it depended on the
7 client. So, you know, my general practice -- you know, at
8 the same time that I was representing the Clinton Campaign I
9 had, you know, several dozens or more other clients, so I'd
10 get a lot of pro formas, are what they're called, every
11 month. And often I would review the hourly ones, if I had
12 the most knowledge.

13 If I didn't have the most knowledge, I'd send it
14 to the lawyer who had the most knowledge.

15 For the flat fees, I would usually begin reviewing
16 them to make sure that we were essentially meeting our
17 agreement with the client. But over time I oftentimes
18 didn't review them because it was just the same flat fee
19 every month, so I would have someone else at the firm review
20 them instead.

21 Q. Now, the concept that's commonly referred to as
22 opposition research or campaign research, are you familiar
23 with that idea?

24 A. I am.

25 Q. Was that something that would have been covered under

1 this retention agreement that we just looked at?

2 A. So I certainly included -- would have conceived of under
3 this retention consulting with all aspects of the campaign,
4 including its research department. So if the research
5 department had a question about how do you read a financial
6 disclosure report, an SF278 or, you know, something like
7 that, you know, I'd consider it part of this because that's
8 just a department -- that was just a department of the
9 campaign.

10 Q. Okay. So did the campaign itself have opposition
11 research folks who did that kind of work outside of Perkins
12 Coie?

13 A. So the campaign and the DNC, depending on the time
14 period. So the campaign always had a robust research
15 department, both looking at herself, what's called self-
16 research, and looking at the opponents, which is called
17 opposition research.

18 The DNC, which was also a client, also had a
19 research operation that was, I would say, probably more
20 focused on pure opposition research.

21 Q. And then to what extent was there opposition research
22 that fell under the supervision of Perkins Coie?

23 A. So I don't know that I would use the term "opposition
24 research." We did hire -- but I don't want to quibble. We
25 hired an investigative firm to serve as sort of a general

1 contractor of research or investigative services that I
2 needed in order to represent the campaign.

3 Q. Okay. And what was the name of that firm?

4 A. Fusion GPS.

5 Q. And how did it come to be -- well, first, did you hire
6 Fusion GPS? Was that principally your decision?

7 A. For 2016, yes.

8 Q. Okay. And about when did you bring them on?

9 A. So it was sometime in the spring. I don't have a
10 specific recollection of a date. But my -- but I place it
11 at about the time that Trump looked like he was going to be
12 the nominee.

13 Q. Okay. And was that retention memorialized in any kind
14 of agreement or --

15 A. It was.

16 Q. So let me show you what's been --

17 A. I'm sorry.

18 Q. -- premarked Government Exhibit -- sorry?

19 A. I am apologizing to the court reporter.

20 Q. Okay.

21 A. Too fast, too cutting off. I'll get the hang of it.

22 Q. So let me show you what's been premarked Government
23 Exhibit 302. It will show up on your screen there.

24 A. Yes.

25 Q. So just take a quick look. Do you recognize that

1 document?

2 A. I do.

3 Q. What is it?

4 A. This is the agreement between Perkins Coie and Fusion
5 GPS.

6 Q. Okay. And if we go to the first paragraph there, it
7 says, "This AGREEMENT is entered into as of April 1, 2016,
8 by and between Bean LLC d/b/a" -- do you know what that
9 stands for?

10 A. Doing business as. Like I said, Hillary For America was
11 a d/b/a of HFACC, Inc.

12 Q. Okay. -- "d/b/a Fusion GPS ('Consultant') and Perkins
13 Coie LLP. PC and Consultant shall sometimes be referred to
14 herein collectively as the 'Parties' and individually as a
15 'Party'."

16 A. Yes.

17 Q. And then if we go down to the next two paragraphs --

18 MR. DeFILIPPIS: What's that?

19 Oh, I'm sorry, the government offers Government
20 Exhibit 302. I apologize, Your Honor.

21 MR. BERKOWITZ: No objection.

22 THE COURT: So moved.

23 Q. So if we go down --

24 MR. DeFILIPPIS: If we publish this to the jury.

25 And let's just show the jury those first three

1 paragraphs.

2 Q. Okay. So you just read the first paragraph, Mr. Elias?

3 A. I did.

4 Q. And then the next two paragraphs, "WITNESSETH, WHEREAS,
5 PC desires to avail itself of the expertise and consulting
6 services of Consultant, and Consultant desires to make its
7 expertise and consulting services available to PC upon the
8 terms and conditions herein set forth;

9 "WHEREAS, PC is providing legal advice to specific
10 clients identified to Consultant related to defamation,
11 libel and similar laws in which accuracy is an essential
12 legal element."

13 Other than the Clinton Campaign at this time, was
14 there any other client who Fusion did work for?

15 A. The Democratic National Committee.

16 Q. Okay. So those were the two clients?

17 A. Yes.

18 Q. And are they referenced anywhere specifically in the
19 agreement, or is it just the clients referenced there?

20 A. I'd have to look at the whole agreement, but I doubt it.

21 Q. Okay.

22 MR. DeFILIPPIS: And if we go down to the
23 signature page of that agreement.

24 Q. So it's signed, it appears, by someone named Glenn
25 Simpson. Who was that?

1 A. Glenn Simpson, as far as I know, was one of the owners
2 of the company.

3 Q. Okay. And how frequently did you deal with -- so you
4 signed this agreement. It looks like this was in April; is
5 that right? I'm sorry, you didn't sign it.

6 Mr. Simpson signed the agreement in April?

7 A. Correct.

8 Q. And did they do work for the campaign and the DNC during
9 the duration of the election season?

10 A. Yes.

11 Q. And do you recall about when their work ended? Was it
12 right after the election or...?

13 A. I think -- and I don't know if it's in the agreement,
14 but I thought it actually ran through the end of October.

15 Q. Okay. So it ended before the election?

16 A. I mean, again, this was six years ago, but I believe
17 election day in 2016 was relatively early.

18 Q. Uh-huh.

19 A. And so I -- maybe I went the last few days without -- I
20 didn't -- you know, the theory was I wasn't going to need
21 them for the last few days.

22 I don't specifically recall. For some reason, in
23 the back of my mind, I thought it was the end of October,
24 but if you said it was November, then I wouldn't dispute it.

25 Q. Okay. That's fine.

1 Now, generally speaking, and without getting into
2 any conversations about legal advice, how did you manage or
3 interact with Fusion GPS? What was the tenor of your
4 interactions?

5 A. Mostly in person. I tried -- one of the challenges for
6 me generally, and in that era, was managing a very, very
7 busy calendar. So I tried, as I recall, to set up weekly
8 check-ins with them; and then in between, I would talk to
9 them typically by phone.

10 Q. And the weekly check-ins that -- was that an in-person
11 meeting?

12 A. Yes.

13 Q. And would you do that at Perkins Coie or at Fusion GPS?

14 A. Always at my office. I don't think I was ever at Fusion
15 GPS.

16 Q. Typically who would attend those meetings?

17 A. My best recollection is it was Glenn and Peter --
18 occasionally one of them wouldn't come -- and sometimes
19 another guy.

20 Q. Okay. And how about from your side? Anybody else go to
21 those meetings?

22 A. Not usually. On occasion -- not typically. Yes, not
23 typically.

24 Q. Okay. How about -- you mentioned Ms. Debbie Fine.

25 A. Yes.

1 Q. Did she attend those meetings or --

2 A. No. She was in Brooklyn.

3 Q. Okay. And to the extent you -- so those were your in-
4 person meetings. What -- again, without --

5 A. Just so you know, the campaign was in Brooklyn.

6 Q. Yes. No, I understand.

7 A. So that's why she was in Brooklyn.

8 Q. Okay. Now, again, without getting into any legal
9 advice, but generally speaking, what was the purpose of
10 those meetings?

11 A. To discuss needs that I had and the fruits of what they
12 had -- of their work.

13 Q. Now, to what extent did Fusion GPS report back on their
14 findings? I think that's kind of implied in what you just
15 testified, but did they report back?

16 A. I believe so.

17 Q. Okay. And were they, during the election period,
18 researching a range of issues related to Mr. Trump, the
19 then-candidate?

20 A. Yes.

21 Q. And were there any particular categories or buckets of
22 issues they were looking at?

23 A. I'll try to do this, and if I'm going to breach the
24 privilege, someone will hopefully shock me.

25 I would put it in some broad categories. There

1 was a broad swath about his litigiousness; and that was
2 something that -- you know, as part of my initial conception
3 of what was going to be the centerpiece of what they did,
4 that was definitely a big part of it. And that came to
5 pass. Like, there was a big part of it that was related to
6 issues involving litigation.

7 There was a bucket that was playing general
8 contractor for me to help obtain public records. So
9 hypothetically, if I needed a court record in, you know,
10 South Dakota, I don't have any way to get a court record in
11 South Dakota. I -- they might be able to just simply act as
12 a -- you know, find someone and do that.

13 And then, as things went along, there was a bucket
14 that related to the unusual connections that the Trump
15 Campaign, and people associated with it seemed to have an
16 affinity for Russia and Vladimir Putin.

17 Q. Okay. And in terms of your points of contact on those
18 different issues, did you have different points of contact?

19 A. At Fusion?

20 Q. Yes, I guess first at Fusion.

21 A. No. No, it was really Peter and Glenn. And then, like
22 I said, there was another guy who sometimes came. But in my
23 mind, it was Peter and Glenn.

24 Q. Okay. And then how about at the campaign?

25 A. I'm sorry, I want to answer your question, so just --

1 what was it again?

2 Q. Sorry. At the campaign, did you have different points
3 of contact for the different aspects of the research?

4 A. Not delineated that way, no. I mean, a lot of it was
5 just research I needed for my own purposes. Some of it was
6 definitely passed on to the campaign.

7 But, no, I mean, you know, if -- you know, if --
8 the campaign was so wide-ranging, there might be a need for
9 this knowledge that resided in the research department.
10 There might be needs that resided in the operations
11 department, you know, the people who keep the security for
12 the servers and all that. There might be need for this
13 information in -- you know, by the management of the
14 campaign.

15 But so no, I wouldn't say -- I mean, Debbie Fine
16 was a particular point of contact that I had who oversaw
17 particular projects that intersected with Fusion, but I
18 wouldn't say otherwise.

19 Q. Okay. Now, at Perkins Coie -- actually, first, why
20 don't we just map out the campaign.

21 Who were your general points of contact on the
22 campaign?

23 A. So I had lots of points of contact on the campaign
24 because basically it was a sprawling enterprise. So I had
25 contacts with -- you know, with every department of the

1 campaign. I would say, to try to help, you know, I was
2 mostly dealing with the senior staff at the campaign.

3 You know, Robby Mook was the campaign manager. I
4 would say, if I had one boss on the campaign, it was Robby.

5 John Podesta was the chair of the campaign, so he
6 was kind of like the boss's boss. So for sure I was
7 responsive to John.

8 Dennis Cheng was the finance director, a very
9 important department of the campaign.

10 Heather -- I forget her last name -- was the
11 deputy campaign manager.

12 Then I would say Gary Gensler was the CFO. Beth
13 Jones was the COO.

14 Q. And, I'm sorry, just for the jury, "COO" refers to...?

15 A. Chief operating officer.

16 Q. And CFO?

17 A. Chief financial officer.

18 Q. Okay.

19 A. And then the people who make ads, the tele -- you know,
20 the television consultants. And then Jen Palmieri was the
21 head of the -- was the head of the communication -- head of
22 communications, which is like media, like -- I don't want
23 to -- like what the White House press secretary does. You
24 know, like talking to the media.

25 Q. Okay. And just for the reporter, can you spell the last

1 name "Palmieri"?

2 A. P-A-L --

3 Q. P-A-L-M-I-E-R-I, is it?

4 A. That's right.

5 Q. And then how about on the leadership of the campaign on
6 policy issues, was there a policy advisor?

7 A. Yes. So the policy director was Jake Sullivan, and Maya
8 Harris, Kamala's sister, was also like co-director like
9 right under him.

10 Q. Okay. And then how frequently did you speak with the
11 candidate herself?

12 A. Relatively infrequently.

13 You know, I didn't come out of the Clinton world.
14 I was not -- I hadn't represented either her Senate campaign
15 or her prior presidential campaign. Obviously we had worked
16 for President Obama. And I had not represented President
17 Clinton.

18 So, you know, I would be invited to meetings or
19 calls, you know, maybe six, seven times throughout the
20 campaign where she had a particular legal question or where
21 it was important to brief her on the status of some legal
22 issue.

23 Q. Now, who at Perkins Coie, to the extent you know, was
24 aware of the retention of Fusion GPS?

25 A. That's a really good question. So I assume -- so some

1 number of people in management were aware, right? The firm
2 was aware because I would -- I had signed a contract on
3 behalf of the firm. So the firm general counsel and his --
4 or his designee or someone in that world, whoever approved
5 contracts in 2016, and I don't remember who that was.

6 Michael Sussmann was because -- for reasons I
7 suspect is why we're here today.

8 I assume my assistant did. And maybe other
9 lawyers in the political law group might have been aware,
10 but not really involved.

11 Q. Okay. But other than Mr. Sussmann and the top
12 management, any other names come to mind of people you know
13 were aware?

14 A. I assume my assistant, my scheduler.

15 Q. Yes. Okay. And other than that, any?

16 A. I mean, it would have been that kind of thing. It would
17 have been -- like associates might have seen on a calendar
18 that I was, like, not available and seen that I was meeting
19 with -- you know, I don't even remember how it appeared on
20 my calendar. But no beyond that.

21 Q. Okay. And then how about at the campaign itself? Who
22 there knew?

23 A. I don't -- as best I can recall, you know, thinking back
24 on this six years ago, Debbie was aware that it was -- that
25 I was working with Fusion GPS.

1 Robby was aware that I had hired consultants but I
2 don't believe knew who the consultants were.

3 Q. Okay. Anyone else on the campaign who you can think of
4 who was aware that Fusion had been retained?

5 A. By name or by concept? That's what I'm --

6 Q. Just by name.

7 A. Yes. I think -- I believe probably only Debbie, as I
8 sit here today.

9 Q. Okay. And then another question. Recognizing you can't
10 get into anybody's head at Fusion, but anyone you're aware
11 of at Fusion who knew that their client was the Clinton
12 Campaign or the DNC?

13 A. Glenn and Peter --

14 Q. Okay.

15 A. -- knew it was the Clinton Campaign and the DNC.

16 Q. And anyone beyond that, as far as you were aware?

17 A. The other guy who would come to some meetings might have
18 known.

19 Q. Okay.

20 A. But I don't know that it ever came -- I'm not sure that
21 it ever came up.

22 As best I can recall. This was like six years
23 ago.

24 Q. To what extent was there an effort by you or anyone to
25 keep the identity of the client, the campaign, or its

1 relationship with Fusion GPS confidential?

2 A. So I typically -- when I hire any consulting firm, I
3 want there to be confidentiality. I'm a lawyer, so I have
4 to worry about both attorney-client privilege. I have to
5 worry about I think it's 101.6, maybe, which is the general
6 duty of confidentiality owed clients.

7 So, you know, we tend not -- in my business, given
8 who I tend to represent, I tend to not want more people to
9 know about it than have to know about it.

10 Q. Okay. And is that both at the campaign itself and at --
11 in other words, in both directions you want to keep that
12 tightly held?

13 A. Yes.

14 I think my concern with the campaign would also
15 include -- I'm trying to think. I typically worry -- and,
16 again, I can't say I specifically remember this here, but I
17 typically worry that campaigns will want to directly reach
18 out to consultants, and that they are not always, at the
19 staff level, as attentive to privilege; so that might have
20 been another additional animating concern.

21 Q. Okay. So to what extent would it be true that -- you
22 didn't want the public to know that Fusion GPS was working
23 with the campaign. Is that fair?

24 A. Sure.

25 Q. Okay. And to what extent would it be true you didn't

1 want people outside of Perkins Coie, Fusion GPS, and the
2 campaign to know about that relationship?

3 A. Yeah, and I'm saying even within Perkins, I doubt I
4 advertised -- you know, I don't -- when you represent, you
5 know, presidents, former presidents, vice presidents, Senate
6 leaders, speakers, you know, there's just -- there is a
7 general sense that it is better to keep things more limited
8 because of leaks, because of, you know, things that can be
9 done to disadvantage the client.

10 Q. Okay. Now, you mentioned the work that was being done
11 in looking at Donald Trump's ties to Russia. Even if folks
12 at the campaign were not aware who was doing that work -- in
13 other words, Fusion GPS -- were the folks you dealt with
14 aware that that work was going on, that there was somebody
15 looking into that issue?

16 A. Yes.

17 Q. And who, principally, would have known that?

18 A. Depending on how broadly you draw that circle, it would
19 have been the senior -- the people we mentioned, John,
20 Robby.

21 Q. Jake Sullivan?

22 A. Jake Sullivan, thank you. Palmieri, and also people in
23 the tech and cyber security part of the campaign, and also
24 in the operations part of the campaign.

25 Q. Okay.

1 A. And in the legal department.

2 Q. Understood.

3 And are those the people who -- I think you
4 testified earlier that you would occasionally or regularly
5 pass back the fruits of Fusion GPS's work. Are those the
6 people who would receive those --

7 A. Not necessarily.

8 Q. Okay. I'm sorry, I don't want to mischaracterize.

9 A. I mean, the -- if I thought that -- and I'll use a
10 hypothetical to try to advance this.

11 If I thought that we could say that Donald Trump
12 used nonunion labor in building Trump Towers, but that we
13 couldn't say he was a union buster, if I got that from
14 research or the circumstances surrounding why he had the
15 only casino on the Las Vegas strip without a gaming license,
16 like, if I had that information that I thought was going to
17 help the campaign understand an issue that I had legal
18 visibility into, I would pass that back to the -- typically,
19 you know, either a comms or research, you know.

20 If it was we have a new hack release of documents,
21 and Donald Trump is taking credit and asking for Russia to
22 release 30,000 more hacked emails, then that would -- that
23 might go to the people you're saying.

24 Like it just kind of depended. Like this research
25 was -- the consultant was there to help me across a range of

1 issues that confronted a lot of different departments.

2 Q. Okay. But so on the -- whatever the issues, if Fusion
3 found something interesting, there were occasions when you'd
4 brief those people?

5 A. Absolutely.

6 Q. Okay. Now, let me show you what's been marked as
7 Government Exhibit 307, which will come up on your screen.
8 And do you recognize this, which appears to be a calendar
9 entry from someone named Leslie Bull on behalf of you?

10 A. Leslie was my assistant who I mentioned. She probably
11 knew.

12 Q. Understood.

13 MR. DeFILIPPIS: So, Your Honor, the government
14 offers Government Exhibit 307.

15 MR. BERKOWITZ: No objection.

16 THE COURT: So moved.

17 Q. All right. So, Mr. Elias, we seem to be looking at a
18 calendar entry from Ms. Bull on your behalf. And then who
19 is that addressed to? Calendar invitation, maybe I should
20 say.

21 A. Yes. It's sent to Unknown, Michael Sussmann, Nicole
22 Leigh [sic]. Yeah.

23 I think that's it, right?

24 Q. Okay. And then the subject of the calendar invitation?

25 A. "Marc/Michael/Fusion team."

1 Q. And then the location?

2 A. My office.

3 Q. The date?

4 A. 7/29/2016.

5 Q. And then the time and duration of the meeting?

6 A. 4:30 p.m. and for 30 minutes.

7 Q. Okay. And then the required attendees are the same as
8 those who were invited?

9 A. Yes. I'm not sure exactly who Leigh Nichols is, but --
10 I assume she was an assistant for Michael maybe, but I doubt
11 she was a required attendee.

12 Q. Okay. And then at the bottom there it says
13 "Categories." And then what's aside "Categories"?

14 A. Yes, "Clinton."

15 Q. So, again, explain -- do you have a sense of why it
16 appears that way? Was that one of --

17 A. Yes, so one of the ways -- I still do this. One of the
18 ways I managed my calendar at that point of -- for many
19 years, since Outlook became like a good calendar thing, is I
20 color-code it so that I know how much time in a given week I
21 am spending on the Clinton Campaign versus my other clients.
22 Or, for that matter, my other clients versus the Clinton
23 Campaign. Because I just -- you know, I need to be
24 attentive to all of the different worlds in which I was --
25 have legal responsibilities.

1 So it was kind of a -- it's a visual way that at
2 the beginning of the week I can look at -- I'm sorry, I can
3 look at it and say, okay, I'm doing a lot for this or less
4 for that. Or I can look at a given day when we were working
5 entirely in person and say, okay, you know, this is a
6 Clinton day, which means I'm probably in Brooklyn, so I
7 shouldn't schedule anything in D.C.

8 So it was -- that category corresponded with a
9 color.

10 Q. Got it. So looking at this calendar invite here, do you
11 think this was one of the regular update meetings you had
12 described earlier, one of the in-person meetings?

13 A. So I don't know. I don't know.

14 My understanding is that the Democratic Convention
15 was the week leading up to this. This may have been either
16 the first day I was back in the office or among the first
17 days I was back, having been out of the office for several
18 days.

19 So I don't know what day of the week this was,
20 but -- so I don't know if it was recurring or if it was
21 because we had skipped meetings when I was away, and that
22 this was the first opportunity to meet up. I don't know.

23 Q. Okay. But one way or the other, it appears it was a
24 meeting that you think would have been a physical meeting?

25 A. Oh, definitely.

1 Q. Since it says "Marc's office"?

2 A. Definitely.

3 Q. Okay. And 4:30 to 5:00 p.m., was that a typical time
4 that you would meet Fusion, or did it vary throughout the --

5 A. I don't specifically recall, but I thought I typically
6 met them earlier in the day. I thought I typically met them
7 in the early, midmorning.

8 But I could be wrong. I don't want to swear to
9 it.

10 Q. Okay. So this one could have been unusual? Might not
11 have been?

12 A. Yeah.

13 Q. Got it. Now, let me just ask you when -- and this is
14 for the benefit of the jury. As a lawyer, when you have
15 meetings, what does it mean to bill your time?

16 A. Okay. So lawyers in private practice -- maybe in the
17 government, I don't know, but lawyers in private practice,
18 you have to account for every six minutes of time throughout
19 the day. And so you will -- some people literally --
20 they're called time sheets because back in the day we used
21 to literally write it out on a preprinted sheet.

22 Some people still do it that way. Some people do
23 it -- they track their time throughout the day
24 electronically using various apps. Some people do it on a
25 notebook.

1 But basically you have to track how much time you
2 spent for particular clients. And then you -- I gave it to
3 my assistant, and it was entered into firm software that
4 then generated the pre-bill or pro forma that then became a
5 bill.

6 So that's -- so when we talk about billing our
7 time, we talk about how we track how much time we spent and
8 what we spent it on for the client so that it can get put
9 eventually on a pro forma and then be billed.

10 Q. Okay. So am I understanding your testimony correctly?
11 You keep track in some way of what you're doing with every
12 six minutes of your time during the day. And was it your
13 practice, then, to give a note to your secretary or an email
14 or something?

15 A. Yes.

16 Q. Okay. And then what is it your understanding that she
17 would do to then record that? There was a system or --

18 A. There is. And I'm embarrassed to say I think most
19 lawyers actually just learned the system themselves and
20 entered it directly. I never -- I never did that.

21 So -- but my understanding is there's like --
22 there's a system where you type in the client number,
23 because every client has a number, has a code, right, so --
24 and then you type in the matter number. Every client has
25 one or more matters. And then you type in the description,

1 and then I assume you type in the time.

2 But I never actually entered my own time that way.

3 Q. Okay. So for a meeting like this, you would then just
4 note to your secretary who the client was?

5 A. Yes.

6 Q. And here who would that be?

7 A. Here it was probably -- you could check my time sheets,
8 if you have them, or the bills. I would have either billed
9 it to the DNC or HFA or both.

10 Q. Okay. And you would note an amount of time?

11 A. Yeah. Yes, yes, yes.

12 Q. And then do you delineate any further within the
13 particular client what subject or matter you're working on?

14 A. So, yeah, really good question. So some clients you
15 have a lot of matters for. Some clients you have one matter
16 for.

17 The Clinton Campaign, because it was a flat fee,
18 most of the matters were collapsed -- most of the time, I
19 should say, not "matters." Most of the time simply went
20 into Matter 1, which is like general or campaign advice or
21 something.

22 There was a separate billing number for research,
23 I believe.

24 Q. Okay. So your secretary receives your time. She puts
25 them into a software. And then how does the firm then keep

1 track of how they have to bill the client?

2 A. So the firm then -- people enter their time, and it's
3 obviously entered by a lawyer, so there's -- there was a
4 code at Perkins Coie for me. I think it was 02667. And so
5 like every lawyer's got a code. You enter -- so in my case
6 my assistant would enter the code, the lawyer's name, the
7 client, the client matter, and then the description.

8 That then gets collated by I believe the billing
9 department at Perkins. I think that's what it's called. It
10 might be called something different, but I thought of it
11 that way.

12 They collated it, and then they would -- then,
13 like at the end of the month or a few days after the end of
14 the month, they would generate what was called a pro forma,
15 I believe was the terminology. At some point they changed
16 to pre-bill, or they were pre-bills and they changed to pro
17 forma. But they generated essentially a printout of all of
18 the time entries on behalf of all the lawyers, and then that
19 was then sent to the bill-reviewing lawyer.

20 Q. Okay. So the bill-reviewing lawyer receives all the
21 entries, and the pro forma is essentially an internal
22 accounting. Is that --

23 A. It is, yes.

24 Q. Okay. And then -- I apologize for all the detail, but
25 we just want the jury to understand.

1 A. That's all right.

2 Q. What happens, then, when the billing department prepares
3 these pro forma internal bills?

4 A. So the pro formas then -- and I can really only speak
5 for myself and a little bit about the political law group.
6 So it's possible other practice groups had different
7 practices.

8 But in our practice, they would then get
9 distributed to whoever was going to review the bill, review
10 the pro forma, edit it, and then given instructions about
11 any changes.

12 Oftentimes you remove time if it's extraneous; or
13 you might remove an expense, if it's wrongly billed; or you
14 might transfer time that's billed to the wrong matter or
15 client. And then that -- those instructions go back to the
16 billing department, and then they, then, generated an
17 invoice, and the invoice then went to the client.

18 Q. Okay. And the person who reviews the internal bill, the
19 pro forma, is that the partner responsible for the matter?

20 A. So it depends. You know, if I -- you know, I was
21 responsible for -- you know, I probably had a hundred or
22 more pro formas a month, and they fell in kind of three
23 categories. Like for some of them I was nominally -- I was
24 the client service lawyer, but I didn't really have anything
25 to do or didn't know what the -- what the -- what the --

1 what was actually going on.

2 So imagine I bring in a PAC, and they have a
3 trademark problem. Like, I don't know anything about
4 trademark law. So I'd probably hand it to a trademark
5 lawyer. I would still get the pro forma, but I would have
6 no basis to review it so I would send it to that other
7 person. So that's one bucket.

8 The second are clients where I knew that, you
9 know, I had the most visibility and knowledge.

10 And then the third were flat-fee clients. And we
11 had a number of flat-fee clients. It wasn't just the
12 Clinton Campaign and DNC. And those would oftentimes get
13 divvied out to other lawyers who had enough visibility to
14 be able to review them at the level they needed to be since
15 the -- it was going to be the same amount charged either
16 way.

17 Q. Okay. And for the Clinton Campaign and the DNC, were
18 you the point of contact for the pro formas and the bills?

19 A. They definitely would -- in the beginning went to me for
20 review. I don't remember whether at the -- you know, when
21 we got into the thick of the campaign -- you know, the
22 general election -- whether I was still reviewing them or
23 not.

24 Q. Okay.

25 A. If you show them to me, I can tell you based on

1 handwriting.

2 Q. Okay. So, Mr. Elias, did you and I prepare in any way
3 for your testimony today? Did we meet?

4 A. Very briefly.

5 Q. Okay. And when we met very briefly, did I give you a
6 binder --

7 A. You did.

8 Q. So let me just --

9 MR. DeFILIPPIS: May I approach, Your Honor?

10 THE COURT: You may.

11 Q. Okay. Mr. Elias, if you would just take a quick look
12 at the binder that I've put on the stand there. And does
13 that appear to contain exhibits marked 553 and also -- are
14 there -- I'm sorry.

15 A. There are others.

16 Q. There are others. I just want to make sure to enter the
17 right ones.

18 A. 552, 553.

19 Q. So the two there --

20 A. So 552 --

21 Q. Yes. 552, 553.

22 A. -- 553, 562, 563.

23 THE COURT: All right. We're off the record
24 briefly.

25 (Discussion off the record)

1 THE COURT: We're back on the record.

2 MR. DeFILIPPIS: Sorry, Your Honor.

3 BY MR. DeFILIPPIS:

4 Q. Looking at Exhibits 552, 553, 562, and 563, do they
5 appear to be -- what do they appear to be?

6 A. So 552 and 553 are the pro formas that I was describing.

7 562 and 563 are actually client invoices. So
8 these are the finished -- this is what went to the -- I'm
9 sorry. For the record, 562 and 563 is what actually goes to
10 the client.

11 Q. Okay. And these were prepared by Perkins Coie?

12 A. They were.

13 MR. DeFILIPPIS: Your Honor, the government offers
14 Government Exhibits 552, 553, 562, and 563.

15 MR. BERKOWITZ: No objection.

16 THE COURT: Okay. The Government Exhibits 552,
17 553, 562, and 563 are admitted.

18 Q. Mr. Elias, I want to just return briefly to the meeting
19 invite that we had looked at, which was Government Exhibit
20 307.

21 A. Can I put these away or keep these?

22 Q. You can just --

23 THE COURT: Leave them aside.

24 Q. -- leave them there for now.

25 A. Okay.

1 Q. This was the meeting invite for a meeting on July 29,
2 2016; is that right?

3 A. That's what it appears to be, yes.

4 Q. And it was for about an hour and a half?

5 A. That was for a half hour.

6 Q. Okay.

7 A. I mean, I'm reading the same --

8 Q. Yes, sorry, for a half hour, okay.

9 Now, is that the type of meeting that you and the
10 other lawyers would typically bill time for?

11 A. I don't know what happened at this particular meeting,
12 so I couldn't -- I couldn't tell you, but it would not be
13 atypical to bill time for a meeting.

14 Q. Okay. Let me show you Government Exhibit 553.1, which
15 will show up on your screen.

16 Now, this is just a one-page exhibit, Mr. Elias --

17 A. Am I -- oh, looking on the screen.

18 Q. The screen, yes.

19 A. Sorry.

20 Q. This is just a one-page exhibit, but what does it appear
21 to be?

22 A. This is a time entry from a pro forma, it looks like.

23 Q. And the --

24 A. Do you want me to read the whole --

25 Q. No, no, that's okay.

1 MR. DeFILIPPIS: Your Honor, the government offers
2 Government Exhibit 553.1.

3 MR. BERKOWITZ: No objection.

4 THE COURT: So moved.

5 Q. Now, you mentioned earlier that a pro forma is sort of
6 the internal bill that's prepared within Perkins Coie.

7 A. Correct.

8 Q. Now, looking at this pro forma, first we've excerpted a
9 section here. And do you see several columns?

10 A. I do, yes.

11 Q. So starting with the left, can you just explain to the
12 jury what each column includes.

13 A. So I don't actually know what the time entry column is.
14 I assume it's some internal tracking system, but I don't
15 know.

16 The date is the date that the time took place on,
17 so it's the day that the event you were billing for
18 occurred.

19 Q. So here, what's the date?

20 A. 7/29/16.

21 Q. Okay.

22 A. The timekeeper name is the name of the person whose time
23 is going to be charged or is being -- was tracked for
24 billing.

25 The hours are the number of hours. Again, the 0.3

1 is on a 10-point scale. So 0.3 would be 12 minutes, one
2 second, to 18 minutes, for example. So that's the hours.

3 And then the fees are how much the time is times
4 that lawyer's or timekeeper's billing rate. So 5.3 times
5 whatever Mr. Sussmann's billing rate was will equal
6 \$4,425.50.

7 The section that says "Redacted" is where the
8 narrative goes. It's essentially where the description is
9 of what you were doing.

10 And then the "Circle Action," "WD" is write down;
11 "HD" is hold; and "TR" is transfer.

12 I think I mentioned sometimes time is incorrectly
13 billed, so you can do three things. You can write it down,
14 which is just like we're not going to charge anyone for
15 this. You can hold it and say, you know what, let's wait
16 until next month to see whether we're going to bill this.
17 Or you can transfer; you can say, okay, it wasn't correctly
18 billed to this client, but it could have been billed to that
19 client, so you would circle "Transfer."

20 Q. Okay. And "WD," write down, you said that means
21 basically don't charge?

22 A. Yes, it means don't charge it.

23 Q. So on this pro forma bill, then, the timekeeper is
24 Mr. Sussmann, and the total hours is 5.3.

25 A. Yes.

1 Q. Is it your understanding that if you have multiple
2 meetings or events for a particular client on a day, would
3 you lump them all together there?

4 A. It depends on the billing practice of the lawyer.

5 Q. Okay. So if you look at the parts that are not
6 redacted, it says "Meeting with M. Elias, others," and then
7 there's some redactions, and "Confidential Project."

8 So would you understand that the unredacted
9 portions are a part of those 5.3 hours --

10 A. Yes.

11 Q. -- you just don't know how much?

12 A. Yes, correct.

13 Q. All right. And let's go to the top of the document and
14 the header area. There's a client and matter there.

15 So what does it mean that this is at the top of
16 the document?

17 A. So the client is -- 116514 was the billing number for
18 Hillary For America. Again, its legal name was HFACC, Inc.

19 The matter was Matter 1, which is why you have the
20 0.0001 after the "Matter." And the name of the matter was
21 "General political advice."

22 Q. Okay. Now, those designations, how, again, do those get
23 reflected? Does that come when you inform your secretary or
24 enter it into the software?

25 A. That's my understanding, is -- yes, that basically in

1 the software you enter -- if I gave her time that said, you
2 know, 0.5 Clinton, you know, meet with Andrew, she would go
3 into the software, and rather than type in "Clinton," she'd
4 find that number, and that would prepopulate or allow them
5 to then track all of those things on the computer end into
6 one pro forma.

7 Q. And is it the expectation of the firm, in your
8 experience, that lawyers are supposed to bill to whoever
9 they're doing the work for?

10 A. Well, I mean, you'd have to ask the firm what their
11 expectations were. I mean, there are certainly instances in
12 which you bill time to someone who is -- I'll give you a --
13 I'll give you an example.

14 You might -- you might represent -- and this is --
15 again, all I know is my world. I might represent a party
16 committee, and the party, they say, you know what, help out
17 this campaign, you know. Just do them a favor. You know,
18 do us a favor. You can bill us for it, but, you know, help
19 this campaign solve this problem. In fact, the campaign
20 finance laws are set up to allow that.

21 So that would be an instance where you -- where I
22 would bill the time to a party committee, but not -- but it
23 would be for -- it would be for the benefit of the campaign.

24 Q. Okay.

25 A. I'm just trying to be -- I'm just trying to be, like,

1 precise.

2 Q. Understood. Understood. But whoever you bill is going
3 to pay for the work?

4 A. Correct.

5 Q. All right.

6 MR. DeFILIPPIS: Now, if we could just show the
7 full header of the document.

8 Q. And then you see the other entries on the right side
9 there, "Pro Forma Number." Any sense what that refers to?

10 A. Again, I think that that's an internal tracking thing,
11 because sometimes, if I had not returned my pro formas,
12 you'd get these reminder emails, and they would say, "You
13 have not returned," and there would be a number. And I'd
14 ask my assistant, "Can you find this?" So I think this is
15 some way they track those pro formas that are outstanding.

16 The date is that date -- as I have always
17 understood it, the date is the date it was printed or it
18 was, like, generated. I don't know if it was physically
19 printed. There's some way that the system, like, generates
20 the pro forma, and, like, that date is that date.

21 Q. Okay. And then the bill reviewer?

22 A. Bill reviewer, I described. That's who the pro forma is
23 sent to.

24 Q. Got it. So does looking at these documents and
25 recognizing that you don't know what Mr. Sussmann did or

1 didn't do, but based on what you know about billing, does it
2 look like Mr. Sussmann billed a meeting with you on the 29th
3 to the Clinton Campaign?

4 A. Yes.

5 Q. Okay. Let's look now at Government Exhibit 319, which
6 will come up on your screen.

7 Do you see a calendar invitation there?

8 A. I do.

9 MR. DeFILIPPIS: Your Honor, the government offers
10 Government Exhibit 319.

11 MR. BERKOWITZ: No objection.

12 THE COURT: So moved.

13 Q. Mr. Elias, was it -- so this comes from Leigh Nichols.
14 I think you testified before you're not quite sure who that
15 is?

16 A. I'm really not.

17 Q. It's to Mr. Sussmann, right?

18 A. It is.

19 Q. And you're not actually a listed recipient of the
20 invite; is that correct?

21 A. Correct.

22 Q. What's the subject line?

23 A. "Meeting with Rodney."

24 Q. And the date and time?

25 A. I'm sorry, August 12, 2016, at 7:30 a.m. to 9:00 a.m.

1 Q. Okay. Was it common or uncommon for you to have
2 meetings that early?

3 A. Not common.

4 Q. Okay. And it looks like the location of this meeting is
5 what?

6 A. If I had this meeting?

7 Q. Yes, yes.

8 A. I don't typically have 7:30 a.m. meetings.

9 Q. Okay. So this would be an unusual one?

10 A. If I was -- if I was there.

11 Q. Okay. And the location?

12 A. It says, "Elias' office."

13 Q. Okay. Any specific recollection of this meeting?

14 A. No.

15 Q. Do you know who "Rodney" is?

16 A. I'm going to assume it's Rodney Joffe.

17 Q. Okay.

18 A. But that's contextual.

19 Q. Got it.

20 So if we move now to Government Exhibit 316, which
21 is on your screen, does this look to be an email from you --
22 sorry -- from Mr. Sussmann to someone named Glenn Simpson
23 and Peter Fritsch?

24 A. Yes.

25 Q. Okay. And you're copied?

1 A. Yes.

2 MR. DeFILIPPIS: Your Honor, the government offers
3 Government Exhibit 316.

4 MR. BERKOWITZ: No objection.

5 THE COURT: So moved.

6 Q. So Mr. Elias, is it -- the last invitation we looked at
7 was August 11th at 5:20 --

8 A. Yes.

9 Q. -- p.m.

10 Does it look like this one is a couple of hours
11 later?

12 A. Yes.

13 Q. Okay. And that's on the same date, August 11th?

14 A. Yes.

15 Q. Okay. So it looks like a couple of hours after the
16 scheduled meeting with Rodney.

17 This is from Mr. Sussmann to Mr. Fritsch and
18 Mr. Simpson. Those are the Fusion GPS individuals you
19 mentioned before, at least one of them?

20 A. They are.

21 Q. And then what is the subject line of the email?

22 A. "Connecting you all by email."

23 Q. Now, Mr. Elias, does this jog any recollections in terms
24 of why you or someone might have been connecting these folks
25 by email?

1 A. My best assumption is it's because I wasn't going to be
2 at the meeting.

3 Q. Okay.

4 A. That's an assumption.

5 Q. So there was a meeting that was coming up after this
6 email?

7 A. I'm looking at those two things back to back.

8 Q. Yes.

9 A. I get -- there's an invite that comes in. I believe
10 that the 11th was a Thursday, which was the days I was in
11 New York until, like, really late. So I am supposing here,
12 not recalling, that I get this invite, and then I am, like,
13 connecting you all by email so you guys can meet at 7:30 in
14 the morning.

15 Q. Okay.

16 A. But I don't have a specific recollection.

17 Q. Okay. Any specific recollection as to why you would be
18 connecting Mr. Sussmann to Fusion GPS for a meeting?
19 Anything?

20 A. I don't recall. I literally don't recall this, which is
21 why I said I was supposing.

22 Q. Okay. Any reason why shortly after a meeting with
23 Mr. Joffe you would be connecting Mr. Sussmann to a meeting
24 with Fusion GPS? Anything on that?

25 MR. BERKOWITZ: Objection; foundation.

1 THE COURT: Overruled.

2 A. I'm sorry, can you --

3 Q. Yes. Any recollection as to why, shortly after a
4 scheduled meeting with Rodney, you would be connecting
5 Mr. Sussmann to individuals at Fusion GPS? Any sense there?

6 A. Yes.

7 Q. Okay. And what is that sense?

8 A. It is probably privileged for me to say.

9 Q. Okay. Let me ask you this. Did there come a time --
10 without getting into any privileged matters, did there come
11 a time in the summer of 2016 when you learned about a
12 supposed secret channel of communications between the Trump
13 organization and Alfa-Bank?

14 A. Like a secret server connection?

15 Q. Yes.

16 A. Yes.

17 Q. Okay. And would that have been around this time --
18 Earlier? Later? -- when you learned about that?

19 A. My recollection is it was sometime around this time.

20 Q. Okay.

21 A. In the August time frame, but I couldn't say what day.

22 Q. Got it. And without getting into anything that may be
23 the subject of legal advice, anything you can tell us about
24 how you learned about it?

25 A. From Mr. Sussmann.

1 Q. Okay. Let's go to what's been premarked as Government
2 Exhibit 317.

3 Is this another email in which -- of the same
4 subject line, "Connecting you all by email"?

5 A. Yes.

6 MR. DeFILIPPIS: Your Honor, the government offers
7 Government Exhibit 317.

8 MR. BERKOWITZ: No objection.

9 THE COURT: So moved.

10 Q. And, Mr. Elias, I'm going to assume that this similar
11 email jogs no further recollections?

12 A. None.

13 Q. Okay. If we go back to Government Exhibit 319, that was
14 the meeting in your office with Rodney. Do you recall that?

15 A. I don't recall this --

16 Q. I'm sorry, you recall the invite, not the meeting.

17 A. Yes. I recall the invite. I do not recall the meeting.

18 Q. Okay. I just want to clarify. It looks like it was
19 sent on August 11th, but the meeting was scheduled for
20 August 12th. Does that seem right?

21 A. Yes.

22 Q. So August 12th at 7:30 a.m.?

23 A. Yes. It looks like I got a calendar invite while I was
24 in New York at 5:20 p.m. asking me to be at a meeting the
25 next morning at 7:30 a.m.

1 Q. Got it. And you have no recollection of whether the
2 meeting happened?

3 A. I don't.

4 Q. Okay. So let's now look at Government Exhibit 553.3.

5 What are we looking at here?

6 A. I'll leave out the control numbers.

7 Q. Yes, sure. I mean generally.

8 A. Oh, I'm sorry. I apologize.

9 This is a -- this is a time entry by -- from
10 Mr. Sussmann on a pro forma dated 10/25/16, and the time
11 entry is for August 12th.

12 MR. DeFILIPPIS: Okay. Your Honor, the government
13 offers Government Exhibit 553.3.

14 MR. BERKOWITZ: No objection.

15 THE COURT: So moved.

16 Q. Now, the prior -- the calendar invite we looked at was
17 dated August 12th. This appears to be the -- the time entry
18 listed here appears to be for the same date; is that right?

19 A. It does, yes.

20 Q. And who is the time keeper, the attorney?

21 A. Mr. Sussmann.

22 Q. And what's the amount of time?

23 A. One and a half hours or 1.5.

24 Q. Okay. And then the fees charged, at least according to
25 this on the internal bill?

1 A. \$1,252.50.

2 Q. And then what is the description listed by Mr. Sussmann?

3 A. "Confidential meetings with M. Elias and others." I'm
4 sorry, let me retry that.

5 "Confidential meetings with M. Elias, others."

6 Q. Okay. Does looking at that time entry jog any memories
7 about a meeting?

8 A. It doesn't.

9 Q. Okay. And let's go to the top, to the client and matter
10 listed here. Who are the client, and what is the matter?
11 Who is the client, and what is the matter?

12 A. The client is the Clinton Campaign, and the matter is
13 that general political advice matter that was the flat fee.

14 Q. And you did, I think, mention that earlier, but what
15 sorts of work fell under general political advice?

16 A. So I think you saw it in the engagement letter actually.

17 Q. Okay.

18 A. It was basically all of our counseling work for the
19 campaign.

20 Q. Understood.

21 A. But it's in that first paragraph.

22 Q. Okay. Because you mentioned him earlier, Mr. Rodney
23 Joffe, to what extent do you recall him being connected to
24 the Alfa-Bank allegations, as far as you knew from your
25 interactions? And putting aside anything privileged.

1 A. My understanding was that he was the person who found --
2 discovered whatever the secret connection was.

3 Q. Understood.

4 And did you -- is your best recollection that you
5 communicated with Mr. Joffe about that?

6 A. My recollection is that I -- I I met him in person at
7 some point. I remember he had, like, an accent that was,
8 like, either -- I don't think he was British. I think it's,
9 like, one of those accents that I can't tell apart from
10 being British; so it was, like, a South African, Australian,
11 New Zealand, kind of that thing. And I met him because I
12 remember that.

13 And then my recollection is otherwise I remember
14 talking to him on the phone.

15 Q. Okay. And would those -- during this time period, would
16 that have been about these allegations, the Alfa-Bank
17 allegations?

18 A. Yes.

19 THE COURT: Okay. Mr. DeFilippis, how much longer
20 do you have?

21 MR. DeFILIPPIS: Your Honor, I think we've got a
22 bit longer. If now is a good time for a break -- I think we
23 have a lot.

24 THE COURT: Okay. Why don't we take our lunch
25 break, ladies and gentlemen. It's about 12:35. Why don't

1 we reconvene at -- be ready to go at 1:45, so about an hour
2 and ten minutes for lunch, okay?

3 Again, no discussions about the case. No research
4 about the case.

5 And I'm sorry. Juror No. 8, if you could stay
6 back, please. Thanks.

7 (Jury exits courtroom)

8 THE COURT: Okay. Mr. Elias, you can step down.
9 Please don't discuss your testimony over the lunch break,
10 okay?

11 THE WITNESS: Thank you very much.

12 THE COURT: All right. Be seated.

13 Okay, sir, would you mind coming up and taking the
14 stand, please. How are you feeling?

15 JUROR NO. 8: Good.

16 THE COURT: Take your mask off.

17 Just for the record, you sent a text to the
18 courtroom deputy last night that we've now printed out and
19 have been able to review. I understand you're supposed to
20 start a new job on Monday; is that correct?

21 JUROR NO. 8: Yes, that's correct.

22 THE COURT: Speak into the mic. And what is that
23 job?

24 JUROR NO. 8: It is a maintenance technician.

25 THE COURT: A maintenance tech?

1 JUROR NO. 8: Yes.

2 THE COURT: And that's at an apartment building?

3 JUROR NO. 8: Yes, correct.

4 THE COURT: Okay. And when you filled out your
5 questionnaire and when you were questioned, I don't remember
6 you told us anything about a new job; is that right?

7 JUROR NO. 8: No, I -- yes, that is correct.

8 THE COURT: And why didn't you tell us about that?

9 JUROR NO. 8: I was completely nervous, and I
10 didn't -- I forgot to tell.

11 THE COURT: Okay. You forgot.

12 Now, have you told your new employer that you're
13 on this jury?

14 JUROR NO. 8: Yes. Yes, I did.

15 THE COURT: And who at your -- not the name of the
16 person.

17 JUROR NO. 8: Well, I called my manager.

18 THE COURT: So the person who is going to be your
19 manager?

20 JUROR NO. 8: Yes.

21 THE COURT: And what did they tell you?

22 JUROR NO. 8: They said it's fine to attend the
23 jury.

24 THE COURT: Okay.

25 JUROR NO. 8: That's it.

1 THE COURT: All right. And you mentioned that
2 there is some training that you're going to start on Monday?

3 JUROR NO. 8: Yes, correct.

4 THE COURT: Okay. And can you -- is the manager
5 willing to postpone your training until you start?

6 JUROR NO. 8: That I do not know because I am the
7 only staff there working for them, so I don't know if they
8 can reschedule.

9 THE COURT: Okay. Now, in addition to this new
10 job, you mentioned that it might be distracting for you to
11 stay on the jury because of the new job. Is that -- tell me
12 more. Why would it be distracting?

13 JUROR NO. 8: Well, I'm going to be new to the
14 field, so I'll be learning like HVAC, plumbing, and
15 electrician.

16 THE COURT: Okay. But if your employer tells you
17 that you can wait a week or two and get your training then,
18 would that be less distracting? Would you be okay with
19 that?

20 JUROR NO. 8: Yes.

21 THE COURT: Okay. Now, in your questionnaire -- I
22 went back to your questionnaire, and I believe you told us
23 that you worked for -- and I want you to relax. We're just
24 having a conversation here, okay? I know you're nervous,
25 but that's natural. We just need to figure out how to deal

1 with the situation, okay?

2 JUROR NO. 8: Okay.

3 THE COURT: You said that you were working for
4 something called Jamal Ellesworth or a person named Jamal
5 Ellesworth; is that correct?

6 JUROR NO. 8: Yes. Yes, correct.

7 THE COURT: And it says here in your text that you
8 were employed by Swiss Post Solutions. Is that the same
9 thing as Mr. Ellesworth or...?

10 JUROR NO. 8: That's the company.

11 THE COURT: Okay. And Mr. Ellesworth is with the
12 company?

13 JUROR NO. 8: Yes. Yes, correct.

14 THE COURT: All right.

15 All right. Why don't you -- you can go to lunch,
16 and we'll discuss with the lawyers how we're going to go
17 forward, okay?

18 JUROR NO. 8: All right.

19 THE COURT: Okay. Have a good lunch.

20 (Juror exits courtroom)

21 THE COURT: Any thoughts?

22 MR. DeFILIPPIS: Your Honor, it sounds like he
23 could do it. It sounds like he's not happy to do it. I
24 don't know that we have a particularly strong view.

25 MR. BERKOWITZ: This may be one of the few things

1 that Mr. DeFilippis and I agree upon in this case, Judge.

2 THE COURT: All right.

3 MR. BERKOWITZ: And I hate to bump it to you.

4 You've got more experience, obviously, with these. We'd be
5 accommodating either way.

6 THE COURT: Yes. I think he's nervous, but this
7 is not a conflict that we can't avoid. I think we can
8 satisfy him, and if it requires a letter from the Court --
9 it sounds like the company is accommodating, but I think
10 he's just a little skittish.

11 So I think we'll keep him unless he tells us
12 otherwise. All right?

13 MR. BERKOWITZ: I think that's fine. And I
14 certainly have seen Courts reach out to employers in other
15 instances and have that be effective.

16 THE COURT: We're going to have him reach out
17 first; and if Court intervention is necessary, I'm happy to
18 do that.

19 MR. BERKOWITZ: Thank you, Your Honor.

20 THE COURT: All right.

21 (Lunch recess taken at 12:42 p.m.)

22

23

24

25

CERTIFICATE OF OFFICIAL COURT REPORTER

I, LISA A. MOREIRA, RDR, CRR, do hereby
certify that the above and foregoing constitutes a true and
accurate transcript of my stenographic notes and is a full,
true and complete transcript of the proceedings to the best
of my ability.

Dated this 18th day of May, 2022.

/s/Lisa A. Moreira, RDR, CRR
Official Court Reporter
United States Courthouse
Room 6718
333 Constitution Avenue, NW
Washington, DC 20001

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

-----x
:
UNITED STATES OF AMERICA, : Criminal Action No.
:
:
:
versus : 1:21-cr-245
:
IGOR Y. DANCHENKO, : October 11, 2022
:
Defendant. :
-----x

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE ANTHONY J. TRENGA
UNITED STATES DISTRICT JUDGE

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EASTERN DISTRICT OF VIRGINIA

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A F T E R N O O N P R O C E E D I N G S

(Court proceedings commenced at 1:11 p.m.)

THE COURT: Anything before we bring out the jury?

MR. KEILTY: Your Honor, I don't know if your preliminary instructions will cover this, but one of the jurors walked up to me and wanted to ask a question about logistics, Where the jury room was, and I just ignored her. Look, I'm usually rude to people, but I didn't want her to think I was --

THE COURT: All right. Well, thank you for that.

I am going to read, with some minor additions, agreed-upon jury instructions 1, 2, and 3 as preliminary instructions.

Let's bring the jury out.

(Jury present.)

THE COURT: Please be seated.

Ladies and gentlemen, as I mentioned, I'm now going to give you some preliminary instructions, following which we'll have opening statements. What I say now is intended to serve only as an introduction to the entire trial of this case. It is not a substitute for the detailed instructions on the law, which I will give you at the end of the case and before you retire to deliberate on your verdict. It is only a brief overview of the trial process.

1 Beginning with these preliminary instructions and
2 during the trial, you'll hear me use a few terms which you may
3 or may not be familiar with. Let me now briefly explain some
4 of the most common to you. You will sometimes hear me refer
5 to counsel. Counsel is simply another way of referring to the
6 lawyers or the attorneys. I will sometimes refer to myself as
7 the Court. The prosecution and the defendant are sometimes
8 called the parties to this case.

9 When I sustain an objection, I am excluding the
10 evidence from this trial for good reason. When you hear that
11 I have overruled an objection, I am permitting that evidence
12 to be admitted. When we say, "admitted into evidence" or
13 "received into evidence," we mean that this particular
14 statement or this particular exhibit is not part of the trial,
15 and most importantly, may be considered by you in making the
16 decisions you must make at the close of the case. Statements
17 or exhibits which are not admitted into evidence may not be
18 considered by you in reaching your verdict.

19 The term "burden of proof" or "sustaining its burden
20 of proof" means the obligations of proving its case in this
21 trial, the government's obligation to produce proof beyond a
22 reasonable doubt of the charges in the indictment that is
23 brought.

24 This is a criminal case commenced by the United
25 States, which I may sometimes refer to as the prosecution and

1 sometimes the government and sometimes the Special Counsel
2 against Igor Danchenko, to whom I may refer to as the
3 defendant. The case is initiated by way of an indictment.
4 You should understand that an indictment is simply a charge by
5 the government to begin a case and that it is not in any sense
6 evidence of the allegations or statements it contains. Igor
7 Danchenko, the defendant, has pleaded not guilty to the
8 indictment. The defendant contends that he is not guilty.
9 The government has the burden or obligation to prove each of
10 the essential elements of the crimes charged in the indictment
11 to you beyond a reasonable doubt. The purpose of this trial
12 is to determine whether or not the government can meet its
13 burden or obligation.

14 I instruct you that you must presume Mr. Danchenko,
15 the defendant, is not guilty of the crimes charged in the
16 indictment. The crimes charged in the indictment are based on
17 Title 18 of the United States Code, Section 1001(a)(2), which
18 provides, in relevant part, as follows: Whoever in any matter
19 within the jurisdiction of the executive branch of the
20 government of the United States knowingly and willfully makes
21 any materially false fictitious or fraudulent statements or
22 representations shall be guilty of an offense against the
23 United States.

24 To help you analyze the evidence as you hear it at
25 trial, I will give you now a preliminary summary of the

1 individual elements of the crimes charged which the government
2 is required to prove beyond a reasonable doubt.

3 In order to prove the crime of -- the crime charged
4 in Counts 1 through 5, the government must prove, one, the
5 defendant made a false, fictitious or fraudulent statement or
6 representation to the government as detailed in the count in
7 the indictment under consideration. A false or fictitious
8 statement or representation is an assertion which is untrue
9 when made and which is known by the person making it to be
10 untrue; number two, in making the false, fictitious or
11 fraudulent statement, the defendant acted willfully, knowing
12 that the statement was false; third, the statement was made in
13 a matter within the jurisdiction of the executive branch or
14 the government of the United States; and, fourth, the
15 statement made by the defendant was material to the Federal
16 Bureau of Investigation. A statement is material if it has a
17 natural tendency to influence or is capable of influencing
18 either a discreet decision or any other function of the
19 government agency to which it is addressed.

20 At the conclusion of the trial, after you've heard
21 all the evidence and after I've had an opportunity to confer
22 with the lawyers, I will give you the final and controlling
23 statement as to what the elements of the crimes are. I'm
24 giving you this preliminary summary now to help you as you
25 hear the evidence and see the exhibits as the trial

1 progresses.

2 The trial will proceed in the following order:
3 First, the parties have the opportunity to make opening
4 statements. The government may make an opening statement at
5 the beginning of the case. The defendant may make an opening
6 statement following the opening statement of the government or
7 may postpone the making of opening statement until the close
8 of the government's case. The defendant is not obligated to
9 make an opening statement.

10 What is said in opening statements is not evidence.
11 The opening statements simply serve as an introduction to the
12 evidence which the party making the opening statement intends
13 to produce during the trial. Second, after the opening
14 statements, the government will introduce evidence which it
15 feels supports the charges in the indictment. Third, after
16 the government has presented its evidence, the defendant may
17 present evidence, but is not obligated to do so.

18 The burden or obligation, as you will be told many
19 times during the course of this trial, is always on the
20 government to prove each and every element of the offenses
21 charged beyond a reasonable doubt. The law never imposes on a
22 defendant in a criminal case the burden of calling any
23 witnesses, producing any exhibits or introducing any evidence.
24 A defendant is presumed to be innocent of the charges.

25 Fourth, after all the evidence has been received, in

1 other words, after all the witnesses have testified, after all
2 the evidence has been admitted, each party will be given the
3 opportunity to present argument to you in support of its case.
4 This is called closing arguments. What is said in closing
5 arguments is not evidence, just as what is said in opening
6 statement is not evidence. The closing arguments are designed
7 to present to you the theories and conclusions of the parties
8 as to what each feels the evidence has shown and what
9 inferences may be drawn from the evidence.

10 Fifth, after you've heard the closing arguments of
11 the parties, I will give you orally and in writing the final
12 instructions concerning the laws which you must apply to the
13 evidence received during the trial. Those instructions will
14 be much more detailed than these I'm giving you now. You will
15 then retire to consider your verdict. Your verdict must be
16 unanimous. All 12 of you must agree to it. Your
17 deliberations are secret. You will not be required to explain
18 your verdict to anyone.

19 Sixth, you must keep an open mind to both the
20 government and the defense during this trial. As you know,
21 there are generally two sides to most stories, and you must
22 not make up your mind about any of the questions in the case
23 until you have heard all the evidence and all of the law which
24 you must apply to that evidence; in other words, until you
25 begin your deliberations.

1 Let me now talk about your duties as jurors, the
2 duty of the Court and the evidence.

3 Your assignment as jurors is to find and determine
4 the facts. Under our system of justice, you are the sole
5 judges of the facts. If at any time I should make any comment
6 regarding the facts or you think I am making some comment on a
7 piece of evidence, you're at liberty to disregard it totally.

8 It is especially important that you perform your
9 duty of determining the facts diligently and consciously for
10 ordinarily there is no means of correcting an erroneous
11 determination of facts by a jury.

12 On the other hand, and with equal emphasis, I
13 instruct you that the law, as given by the Court, and these
14 and other instructions constitute the only law for your
15 guidance. It is your duty to accept and to follow the law as
16 I give it to you, even though you may disagree with the law.

17 You are to determine the facts solely from the
18 evidence admitted in the case. This evidence consists of the
19 testimony of witnesses and the exhibits received.

20 Questions asked by the lawyers are not evidence.
21 For the evidence consists of the witnesses' answers to the
22 questions, not the questions themselves.

23 As I said earlier, statements and arguments of
24 counsel are not evidence. Counsel, however, may enter into
25 agreements or stipulations of facts, which are not in dispute

1 in this case. And when they do so, you may accept those facts
2 as established.

3 I may also tell you that I'm taking judicial notice
4 of certain facts, and you then may accept those facts as true.
5 It is always up to you, however, to decide what facts are
6 established by the evidence and what inferences are to be
7 drawn from the evidence.

8 The parties may sometimes present objections to some
9 of the testimony or the exhibits. An obligation -- I'm
10 sorry -- an objection is the only proper method for requesting
11 the ruling from the Court concerning evidence.

12 It is the duty of a lawyer to object to evidence,
13 which he or she believes may not properly be received or
14 admitted, and you should not be prejudiced in any way against
15 the lawyer who makes objections or against the party he or she
16 represents.

17 At times, I may sustain objections or direct that
18 you disregard certain testimony or exhibits. You must not
19 consider any evidence to which an objection has been sustained
20 or which I have instructed you to disregard.

21 Do not read any news accounts about this case in any
22 newspaper or on the internet, or watch any such news accounts
23 on television, or listen to any such news accounts on the
24 radio.

25 You must not consider anything you have read or

1 heard about the case outside of this courtroom, whether it
2 before or during the trial or during your deliberations.

3 Do not attempt any independent research
4 investigation about the matter. Your decision in this case
5 must be based solely and exclusively upon the evidence
6 received during the trial, my final instructions, and not upon
7 anything else.

8 You may have heard the terms "direct evidence" and
9 "circumstantial evidence." Direct evidence is generally the
10 testimony of a person who claims to have actual and direct
11 knowledge of a fact. For example, the testimony of an
12 eyewitness who claims to have seen an event.

13 Circumstantial evidence is generally testimony of a
14 chain of facts, which may lead to a conclusion of some kind.
15 In any event, the law makes no distinction between direct
16 evidence and circumstantial evidence.

17 In considering the evidence here in the trial, you
18 should give it such weight or importance that you think it
19 deserves, whether it is called direct or circumstantial
20 evidence, and make the deductions and reach the conclusions to
21 which your experience and common sense lead.

22 In attempting to determine the facts in this case,
23 you may be called upon to judge the credibility of witnesses
24 who testify in the trial. In deciding whether or not to
25 believe what a witness is -- what a witness has said, I

1 suggest that you consider the intelligence of the witness, the
2 ability of the witness to have seen or heard, what the witness
3 said was seen or heard, the ability of the witness to remember
4 what happened, any interest the witness may have in how this
5 case is decided, and whether the testimony is reasonable.

6 You are free to believe all of what a witness -- or
7 exhibits says, some of it or none of it. I will address the
8 subject again after you've heard all the evidence in the
9 trial.

10 No statement, ruling, remark or comment, which I may
11 make during the course of this trial is intended to indicate
12 my opinion as to how you should decide the case or is intended
13 to influence you in any way in your determination of the
14 facts.

15 I may, for example, ask questions of a witness. If
16 I do so, it is for the purpose of explaining matters, which I
17 feel should be brought out, and not in any way, to indicate
18 any opinion about the facts or to indicate the weight I feel
19 you should give to the testimony of the witness so questioned.

20 I may also find it necessary, for exhibit -- for
21 example, to admonish the lawyers. And if I do, you should not
22 show prejudice towards the lawyer or the client of that lawyer
23 because I have found it necessary to correct him or her.

24 At times during this trial, it will be important for
25 me to confer privately with the lawyers and others about

1 various elements here and procedural issues. During those
2 conferences, both here at the bench and in my chambers, it is
3 not my intention to hide anything from you, but simply to
4 determine how certain issues will be handled. Please be
5 patient with us during such delays. We're only taking care to
6 ensure that the trial is being conducted fairly and according
7 to the law.

8 At times, you will also be required to wait in the
9 jury room while I am required to hear and decide other matters
10 from other cases not contested -- not connected with this one.
11 These delays are unavoidable. I do everything I can to keep
12 these interruptions to a minimum, but can never avoid them
13 entirely, so please be patient with us.

14 You are not to concern yourself in any way with a
15 sentence, which a defendant might receive if you should find
16 him guilty. Your function is solely to decide whether the
17 government has sustained and carried its burden of proving the
18 charges to you beyond a reasonable doubt. If, and only if,
19 you find the defendant guilty of the charges, it will become
20 the duty of the Court to pronounce a sentence.

21 The attorneys and the parties will not speak to you
22 because I've already instructed them. They must not do so.
23 When you see one of the lawyers in the hallway, for example,
24 or he or she -- and he and she does not speak with you, don't
25 think that the lawyer is being rude or cold or unfriendly, but

1 that lawyer is simply doing what I've ordered all the lawyers
2 in this case to do. It simply does not look appropriate for
3 one side or the other to be speaking with any of you no matter
4 how innocent or trivial that conversation, in fact, may be.

5 Until this case is submitted to you to begin your
6 deliberations, you must not discuss it with anyone at all,
7 even with your fellow jurors. After it's submitted, you must
8 discuss the case only in the jury room with your fellow
9 jurors.

10 It is important that you keep an open mind and not
11 decide any issue in this case until the entire case has been
12 submitted to you and you have received the final instructions
13 of the Court regarding the law, which you must apply to the
14 evidence.

15 Please keep a few principles in mind as we begin the
16 trial. First, again, your job is to decide all the factual
17 questions in the case; like who should be believed and who
18 should not be believed; how to decide all the legal questions
19 in the case, like what testimony or exhibits are received into
20 evidence and which are not received. Please do not concern
21 yourself with the legal questions.

22 The defendant has pled not guilty, and is presumed
23 to be innocent of the crimes charged. As such, the defendant
24 is not required to produce any evidence whatsoever. By
25 bringing the indictment, moreover, the government has accepted

1 the responsibility of proving the guilt of the defendant to
2 each of you, unanimously, beyond a reasonable doubt.

3 Finally, do not discuss this case with anyone. Keep
4 an open mind regarding each issue in the case until all the
5 evidence has been received. At that time, I will be able to
6 give you the final and complete instructions, which you must
7 use to guide you in reaching your decisions. Then and only
8 then, will you be fully prepared to begin your deliberations
9 and reach your verdict.

10 There's also been publicity about this case prior to
11 the beginning of this trial. The statements contained some of
12 the accounts may, of course, not be accurate, and may have
13 come from individuals who will not be present in the
14 courtroom, therefore, cannot be seen or evaluated by the jury
15 like all other witnesses, and will not be examined or
16 cross-examined by either of the parties under oath.

17 You, of course, must lay aside and completely
18 disregard anything you have heard, or read or heard about the
19 case, outside of this courtroom because your verdict must be
20 based solely and exclusively on the evidence presented here in
21 the court in accordance with my instructions to you at the
22 close of the case about the law you must apply to the
23 evidence.

24 To rely upon anything you see or hear outside of the
25 courtroom in reaching your verdict is a violation of your oath

1 as a juror.

2 The Court is also permitting each of you to take
3 notes during the course of this trial, and you should have
4 notebooks by now. You, of course, are not obligated to take
5 notes. If you do not take notes, you should not be influenced
6 by the notes of another juror, and rely upon your own
7 recollection of evidence.

8 Notes are only an aid to your recollection. You're
9 not entitled to any greater weight than actual recollections
10 or impressions of each juror as to what the evidence actually
11 is. Note-taking must not be allowed to interfere with the
12 ongoing nature of the trial or distract you from what happens
13 here in court.

14 Notes taken by any juror, moreover, are not evidence
15 in the case and must not take precedence over the independent
16 recollections or the evidence received in the case. And any
17 notes taken by any juror concerning this case should not be
18 disclosed to anyone other than a fellow juror, and should
19 remain in the jury room at the end of the day and not be
20 brought home with you.

21 So with those preliminary instructions, we will now
22 begin. We'll have opening statements.

23 MR. KEILTY: Thank you, Your Honor.

24 **OPENING STATEMENT**

25 MR. KEILTY: Good afternoon, ladies and gentlemen.

1 My name is Mike Keilty, and along with John Durham and
2 Brittain Shaw, we have the privilege of representing the
3 United States.

4 Before I begin, I just wanted to echo with what
5 Judge Trenga said to you, and thank you for your jury service
6 today.

7 Ladies and gentlemen, this is a false statements'
8 case, false statements that the defendant told to the FBI.
9 Lies that the FBI relied on in a historic investigation of
10 alleged collusion between United States citizens and the
11 Russian government. Lies that the FBI relied on as it used
12 its powerful authorities to conduct national security
13 wiretaps. Lies that the FBI should have uncovered, but never
14 did.

15 In September 2016, the FBI received a series of
16 reports from a former British intelligence officer by the name
17 of Christopher Steele. Now, these reports contain allegations
18 that candidate Donald Trump and members of his campaign were
19 communicating with the Russian government.

20 Some of you may recall that these reports became to
21 be known in the media as the Steele dossier. The evidence in
22 this trial will show that the Steele dossier would cause the
23 FBI to engage in troubling conduct that would ultimately
24 result in the extended surveillance of the United States
25 citizens. And the defendant's lies played a role in that

1 surveillance.

2 You see, ladies and gentlemen, the evidence will
3 show that the defendant was the primary source of the
4 information contained in the Steele dossier. And when
5 questioned by the FBI about the important parts of the
6 information he provided, he lied.

7 You see the FBI needed to know where the defendant
8 was getting his information. They needed to know so they
9 could evaluate that information and vet that information. So
10 agents asked him questions about his sources. And in two
11 important respects, instead of telling the agents the truth
12 about that information and those sources, the defendant lied.

13 And what were those lies? Well, there were two of
14 them. First, he fabricated a source. And second, he
15 concealed the source. So let's talk about each one of those
16 lies in turn.

17 First, the evidence in this case will show that the
18 defendant lied to the FBI about a telephone call he claimed to
19 believe was from a man by the name of Sergei Millian.
20 According to this defendant, despite having no contact with
21 Mr. Millian, Mr. Millian allegedly told him about an exchange
22 of information between the Trump campaign and Russian
23 government officials.

24 The government is going to prove to you, through the
25 defendant's own words and phone records, that this call never

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1 took place. There simply was never a call. And you will hear
2 testimony from FBI agents that the information that this
3 defendant provided, allegedly from Mr. Millian, ended up in a
4 surveillance warrant against a United States citizen.

5 And you'll hear testimony that had the defendant
6 been truthful about Mr. Millian, the FBI would have been
7 required to advise the Court about the misrepresentations that
8 they put in that surveillance application that a federal judge
9 signed against a United States citizen.

10 Now, in December of 2016, the FBI eventually figured
11 out that the defendant, a Russian citizen living in
12 Washington, right here in Washington across the river, was
13 Christopher Steele's primary source of information for his
14 dossier. And you will learn, the evidence will show, that in
15 January of 2017, the FBI interviewed the defendant about his
16 role in the dossier. And as part of that interview, you will
17 learn the defendant was provided with an immunity agreement.
18 The only requirements of that agreement, the only requirements
19 was that the defendant provide complete and truthful
20 information, that he not withhold any information, and that he
21 not attempt to protect any person through false information or
22 omission. Those were the requirements of that immunity
23 agreement for the January 2017 interviews. And you will hear
24 testimony that, in fact, the FBI did interview the defendant
25 for three straight days in late January of 2017.

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1 You'll hear testimony that the defendant was
2 represented by a lawyer, that he spoke excellent English, and
3 that these interviews consisted of a free-flowing
4 conversation. And you will learn that the evidence will show
5 that these FBI agents conducting these interviews had two
6 goals: first, to identify the defendant's sources for the
7 Steele dossier; and, second, to corroborate or refute
8 information that was in the dossier. Two goals: Identify
9 sources, corroborate or refute information in the dossier.

10 But you will learn that one item in particular was
11 very important to the FBI, the identity of an anonymized
12 individual in the dossier known as Source E. This is the
13 individual who allegedly told the defendant about the exchange
14 of information between the Trump campaign and Russian
15 officials. This is the allegation that ended up in four
16 surveillance warrants against a U.S. citizen. And the
17 evidence will show that the defendant told the FBI that Source
18 E was Sergei Millian. And you will hear testimony that the
19 defendant told the FBI that he had never spoken to or met
20 Mr. Millian prior to reaching out to him on July 21, 2016, by
21 email.

22 You will learn that the defendant told the FBI that
23 he reached out to Mr. Millian on two separate occasions, that
24 he never received the response back from Millian; wrote to
25 him, never received a response. The evidence will show that

1 the defendant told the FBI that despite getting no response
2 from Millian, that he received a phone call in late July 2016
3 from a Russian male who didn't identify himself, but who the
4 defendant claimed to believe was Sergei Millian. The
5 defendant told the FBI that this call was either from a
6 cellular phone number or an internet-based app. Now, the
7 defendant told the FBI that this call was a 10- to 15-minute
8 conversation. And we'll show, the government will prove that
9 this call never happened. There was never a call with Millian
10 or the person the defendant claimed to believe was Millian.

11 Now, during this call, again, Mr. Millian or the
12 person the defendant claimed to be Mr. Millian, allegedly told
13 the defendant that there was an exchange of information to
14 members of the Trump campaign and Russian government
15 officials, and that this exchange of information was being
16 facilitated by two Trump campaign figures. Some of these
17 names may be familiar to you: Paul Manafort and Carter Page.
18 The caller, who the defendant believed to be Millian, also
19 said that the Kremlin, the seed of the Russian government,
20 could help to get Trump elected. Again, we will prove to
21 you -- and I'll go through the evidence in a second -- we will
22 prove to you that this call never happened.

23 The evidence will show that the defendant also told
24 the FBI that during this purported call, he agreed to meet
25 Millian in New York in late July 2016, but then Millian never

1 showed up for this supposed meeting. Now, you'll hear
2 testimony that following the January 2017 interviews, a
3 decision was made in the FBI to make the defendant what is
4 known as a confidential human source, and you'll hear the term
5 CHS, confidential human source, and that is someone who gets
6 paid by the FBI to provide information, someone who gets paid
7 by the FBI to provide information. And you'll hear testimony
8 that the defendant was engaged as a source by the FBI, in
9 part, to continue the FBI's efforts and to identify his
10 sources and to corroborate or refute the evidence contained in
11 the Steele dossier.

12 Now, you're also going to hear evidence and
13 testimony that the defendant provided other information about
14 other Russian matters, some of which I believe you'll hear
15 testimony was useful to the FBI. But with respect to the
16 dossier information, the defendant was paid to identify his
17 sources, and the defendant was paid to provide evidence that
18 would corroborate the allegations in the Steele dossier. But
19 the evidence will show that the defendant could not provide
20 any corroboration through any information he provided.

21 You will learn that during his meeting as a
22 confidential human source with the FBI, the defendant again
23 repeated his lies about his purported call with Sergei
24 Millian. He repeated his lies on four separate occasions.
25 Ladies and gentlemen, we are going to prove to you, beyond a

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1 reasonable doubt, that the defendant never received a called
2 from Sergei Millian. We're also going to prove to you that
3 the defendant never received a 10- to 15-minute call from an
4 anonymous individual. It's a fabrication, and we are going to
5 prove that to you. How so?

6 First, we are going to show you the defendant's
7 emails with Sergei Millian and others from July and August of
8 2016. These emails will make it abundantly clear to you that
9 there was never a call. The defendant's very own words will
10 show that there was never a call to say nothing of a meeting
11 in New York which Millian supposedly skipped out on. The
12 government will walk through these emails with Supervisory
13 Intelligence Analyst Brian Auten and FBI Special Agent Kevin
14 Helson. You will get to see for yourself the defendant's own
15 words with Mr. Millian. These emails will prove to you that
16 there was never a late July call, and these emails will prove
17 to you that there was never information passed by Mr. Millian
18 about the Trump campaign and the Russian government.

19 So without more, these emails will show there was
20 never a call with Millian, but there is more. You're going to
21 see phone records. The defendant's own phone records will
22 make it abundantly clear to you that he never received a call
23 from somebody he claimed to believe was Sergei Millian. In
24 fact, the evidence will show that the defendant never received
25 a 10- to 15-minute call in late July from any unidentified

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1 individual. FBI Supervisory Special Agent Ryan James is going
2 to walk through those phone records with you in detail, and
3 you'll see there was never a call with any number associated
4 with Sergei Millian, and there was never a 10- to 15-minute
5 call with any anonymous unidentified individual.

6 Now, you will learn from FBI Special Agent Kevin
7 Helson -- now, Agent Helson is what was referred to as a
8 handling agent in the FBI. So I told you that the defendant
9 was a source for the FBI. Agent Helson was his handling
10 agent. He conducted the interviews with the defendant during
11 their meetings. And you will learn from Agent Helson that he
12 asked the defendant for phone records, explicitly asked the
13 defendant for phone records that could corroborate his call
14 with Sergei Millian. The evidence will show that the
15 defendant produced nothing, no cell phone records, no records
16 of any internet apps such as WhatsApp, for example, or Signal
17 or Telegram, no records, none, from a purported call that took
18 place only six months before the interviews.

19 To that end, Agent James will also show you emails
20 that demonstrate that when the defendant did want somebody to
21 call him using an internet-based app, he would explicitly tell
22 that person which app to use. And the evidence will show that
23 the defendant's initial email to Sergei Millian, his initial
24 reach-out on July 21, 2016, said nothing about the use of an
25 internet app. The evidence will show that email simply

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1 provided his cell phone number and an email.

2 Ladies and gentlemen, the evidence in this case will
3 plainly demonstrate to you that the defendant never received a
4 call from Sergei Millian or somebody that he claimed to be was
5 Sergei Millian.

6 So why were the defendant's false statements about
7 Sergei Millian important? Why are we here? Because they
8 related directly to the FBI's investigation of a U.S. citizen
9 by the name of Carter Page. The evidence will show that the
10 information the defendant attributed to Sergei Millian partly
11 formed the basis for a surveillance warrant against Mr. Page,
12 a U.S. citizen. You see, the FBI was investigating Mr. Page's
13 connections to the Russian government. The evidence will show
14 as part of that investigation, the FBI wanted to secure what's
15 called a FISA warrant, F-I-S-A, Foreign Intelligence
16 Surveillance Act warrant. A FISA allows the government to
17 monitor the calls and emails of a subject that they believe to
18 be acting at the direction of a foreign government. They can
19 monitor the call in realtime and they can monitor the emails.
20 This is an incredibly powerful tool that the FBI has.

21 The evidence will show that the information the
22 defendant purported to receive from Sergei Millian about
23 Carter Page was put in the FISA application against Mr. Page.
24 And you will learn that on four separate occasions, a federal
25 judge approved that surveillance warrant in part because of

1 the defendant's lies and the information he attributed to
2 Mr. Millian. Importantly, despite this surveillance, the
3 evidence will show that Mr. Page was never charged with any
4 crime.

5 Now, why was the lie important? You will learn that
6 the FBI has an affirmative obligation to alert the Court about
7 any misrepresentations or errors that are contained in a FISA
8 warrant. So if the defendant had been truthful about
9 Mr. Millian and the allegations he attributed to Millian, the
10 government would have been under an obligation to go to the
11 Court and tell the Court about the misrepresentations the
12 government had made in each and every one of those four FISA
13 applications. Ladies and gentlemen, the government and the
14 FBI surveilled Mr. Page for nearly a year. But that never
15 happened. The FBI never corrected the error. The FBI never
16 corrected the information that allegedly came from Sergei
17 Millian. And, again, the FBI surveilled Mr. Page for a year,
18 in part, based on this defendant's lies.

19 The bottom line is that the evidence will show that
20 there was never a call with Sergei Millian. There was never a
21 call with someone this defendant believed to be Sergei
22 Millian. Emails will prove it and the phone records will
23 prove it, and those lies mattered.

24 Now, the defendant's lies against Mr. Millian form
25 the basis of Counts 2 through 5 of the indictment under review

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1 by you. So let's talk about another lie the defendant told
2 the FBI. The evidence will show that on June 15, 2017, the
3 defendant concealed another source of information by telling
4 the FBI that he had never spoken to an individual by the name
5 of Charles Dolan about anything specific in the Steele
6 dossier. The evidence will show that that was a lie. The
7 defendant had, in fact, spoken with Mr. Dolan over email about
8 something very specific, and that item ended up in the Steele
9 dossier. Indeed, in an August 19, 2016, email, the defendant
10 asked Mr. Dolan to provide information, truth, rumor or
11 allegation about Trump campaign manager, Paul Manafort. And
12 the defendant told Mr. Dolan he was working on a very
13 important project against Donald Trump. And you will learn
14 that the very next day Mr. Dolan delivered. Mr. Dolan did
15 provide the defendant with information about Paul Manafort.
16 And that information that Mr. Dolan provided ended up in a
17 Steele report two days later. You will see the defendant's
18 emails with Mr. Dolan, and you will see the Steele report that
19 reflects that information. You will see both of those.
20 Decide for yourself whether that information Mr. Dolan
21 provided mirrors the information two days later that appeared
22 in the Steele dossier.

23 Ladies and gentlemen, you will get a chance to hear
24 from Mr. Dolan in this case. So why was the defendant's lie
25 about Mr. Dolan important? Again, like Mr. Millian, why are

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1 we here? As an initial matter, you will learn that if the
2 defendant had been truthful about Mr. Dolan being a source for
3 the dossier, the FBI would have learned that Mr. Dolan was the
4 only current US-based source for the dossier. And you will
5 hear testimony that had the FBI known that Dolan was a source
6 for this information, it's likely they would have taken
7 additional steps to further understand his role in the
8 dossier.

9 Now why is that? Because even prior to the
10 defendant's lie about Mr. Dolan in June of 2017, the FBI had
11 more questions than they did answers on Charles Dolan. First,
12 you will hear testimony that Dolan was present in Moscow with
13 the defendant in June of 2016 at the very time this defendant
14 told the FBI he was collecting information for the Steele
15 dossier. And you'll see evidence that Mr. Dolan was also in
16 Moscow with the defendant in October of 2016 at a business
17 conference.

18 Second, you're going to learn that Mr. Dolan
19 maintained a business relationship with another individual who
20 the defendant used as a source for the Steele dossier. Third,
21 you're going to learn that Dolan maintained relationships with
22 several senior Russian government officials which he had
23 garnered through his 20-something years as a public relations
24 professional.

25 And, finally, you will learn that Charles Dolan was

1 a long-time Democratic political operative who had worked on
2 every U.S. presidential campaign from Jimmy Carter to the
3 present.

4 To that end, with all that information, you will
5 learn the FBI requested that Agent Helson asked the defendant
6 about Charles Dolan. And the evidence will show that on
7 June 15, 2017, Special Agent Helson asked the defendant
8 whether he had spoken with Mr. Dolan about anything, anything
9 specific in the dossier, and the defendant denied that he had
10 spoken with Mr. Dolan about anything specific in the dossier.

11 Ladies and gentlemen, this interview is recorded.
12 You're going to get to hear for yourself the defendant's lies.
13 And you will learn the context of Agent Helson's questioning
14 of the defendant.

15 Now, you're going to hear from four FBI witnesses
16 about Mr. Dolan. And you will learn through each one of them
17 that they had questions about Charles Dolan. And based on
18 those questions, you will learn that Supervisory Intelligence
19 Analyst Brian Auten and another FBI special agent, by the name
20 of Amy Anderson, that prior to the defendant's lie, the FBI
21 was trying to figure out what was Charles -- Charles Dolan's
22 role in the dossier.

23 What were his connections to the dossier? We have
24 all this information, but what were his connections? And you
25 will learn that that information and those connections

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1 triggered the FBI to ask the defendant about Charles Dolan.
2 You're also going to hear from a former FBI intelligence
3 analyst by the name of Brittany Hertzog. You will learn that
4 she was the analyst who conducted -- who collected information
5 from various FBI databases that demonstrated the defendant's
6 connection to Charles Dolan, his relationship to Charles
7 Dolan, and his relationship to another source of the
8 defendants.

9 The evidence will show that Ms. Hertzog, the former
10 FBI intelligence analyst, prepared a lengthy report about
11 these relationships; the defendant's relationship with Charles
12 Dolan, and Charles Dolan's relationship with Russian
13 government officials, and Charles Dolan's relationship with
14 another source of this -- from the dossier of this defendant.

15 Finally, you're going to hear from Special Agent
16 Kevin Helson, and I told you before, he was the defendant's
17 handling agent. You will learn that Agent Helson had so much
18 interest in Charles Dolan that he asked permission to
19 interview Mr. Dolan, but you will learn that the FBI didn't
20 interview Charles Dolan.

21 Agent Helson will explain to you why the defendant's
22 lie was important and what steps the FBI may have taken if
23 this defendant had been truthful about Charles Dolan's role as
24 a source for this Steele dossier.

25 Now, the information about Charles Dolan relates to

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1 Count 1 of the indictment. Ladies and gentlemen, throughout
2 this case, you will hear testimony that the FBI often relies
3 on human sources when conducting investigations. When those
4 sources lie, it corrupts the process and functions of the FBI.

5 You will learn that lies can cause the FBI to wield
6 their powers too aggressively, and you will also learn that
7 lies can cause the FBI to not act aggressively enough. And
8 you will see examples of both -- both of those situations here
9 in this trial. And you will learn that the FBI -- look, the
10 FBI should have taken certain actions in this case. And the
11 evidence will show that if they had taken those actions, they
12 may very well have uncovered the defendant's lies.

13 Now, ladies and gentlemen, you've been asked to
14 decide a very simple case. A lot of facts and a lot of
15 information, but ultimately, a simple case. You've been asked
16 to decide whether the defendant lied to the FBI and whether
17 those lies could have affected the actions of the FBI. This
18 case is about protecting the functions and integrity of our
19 government institutions.

20 Now, questions about what the FBI actually did or
21 failed to do in this case, are not something you have to
22 decide. Rather, what you will be asked to do, indeed, what is
23 your duty to do, is to determine whether the defendant made
24 false statements to the FBI that either had the natural
25 tendency to influence the actions of the FBI or was capable of

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1 influencing the actions of the FBI.

2 At the end of this trial, Judge Trenga is going to
3 instruct you on the law. Please listen to him very carefully.
4 The law the defendant is accused of violating is intended to
5 protect the government from both the real and potential
6 effects of materially false statements.

7 Importantly, it even covers material false
8 statements, whether or not they actually had any influence on
9 the government, and that makes sense. By way of analysis, the
10 bank robber doesn't get a free pass simply because the
11 security guards were asleep. You will hear evidence in this
12 case that the FBI should have done certain things, but they
13 simply didn't.

14 Now, after all the evidence is in, the government
15 will have a chance to speak with you again. But between now
16 and then, please do three things: First, please pay close
17 attention to the evidence, and I know you will, both at the
18 beginning of trial, all the way through the end of trial.
19 Second, please listen carefully to Judge Trenga's instructions
20 on the law. They are really important. And third, use your
21 common sense. The same common sense that each and every one
22 of you as Virginians use every single day.

23 Ladies and gentlemen, unlike your cell phones, you
24 didn't check your common sense at that courtroom door. If you
25 do all three of those things, the defendant will get a fair

1 trial, the government will get a fair trial, and I am
2 confident that each and every one of you will reach the only
3 conclusion that is consistent with both the facts and the law,
4 which is that the defendant is guilty as charged.

5 Thank you for your attention.

6 THE COURT: Thank you.

7 **OPENING STATEMENT**

8 MR. ONORATO: May it please the Court and government
9 counsel.

10 Ladies and gentlemen of the jury, good afternoon.
11 Let me be crystal clear from the outset, Igor Danchenko is not
12 guilty. Igor Danchenko committed no crime. During the course
13 of the next few days, you're going to agree and conclude that
14 Igor Danchenko did not lie to the FBI. Igor Danchenko did not
15 mislead the FBI. And finally, the government has no evidence
16 to come into this courtroom and argue with a straight face
17 that the statements you're going to hear about are false.

18 Indeed, the evidence is going to show the exact
19 opposite. His statements were truthful. I want to repeat
20 myself. The evidence is going to establish that Igor
21 Danchenko told government agents the truth when he was asked
22 about two simple things about the Steele dossier. The first
23 is whether he had talked, talked -- so listen to that word
24 "talked" -- to a man named Charles Dolan about anything in the
25 Steele dossier. He told the truth.

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1 Second, he was truthful when he said that he
2 received an anonymous phone call in July of 2016, and he
3 formed the subjective belief that it could have been a person
4 from a named Sergei Millian, who, in context, that's who he
5 concluded it could have been. The facts will show, not only
6 were his conclusions reasonable, but they are actually
7 probably correct. And if that wasn't enough, the government's
8 theory of materiality in this case is nonexistent.

9 My name is Danny Onorato. Along with my colleague
10 Stuart Sears, we represent Igor Danchenko. Ladies and
11 gentlemen of the jury, I submit to you that after you hear the
12 evidence and you apply the law, as Judge Trenga will instruct
13 you, there is only one fair verdict that must be rendered on
14 all counts, and that is: He is not guilty.

15 The story here is quite simple. The harder part for
16 you will be how to figure out how the prosecution wants you to
17 conclude that he's guilty based on evidence that falls his
18 way.

19 Here are the basics: Igor Danchenko was working as
20 a business analyst, he was put in touch with a fellow named
21 Christopher Steele, and the two had a business relationship
22 with Mr. Danchenko with work projects for Mr. Steele.

23 In late spring of 2016, Mr. Steele asked
24 Mr. Danchenko to get information related to the November 2016
25 presidential election. Mr. Danchenko gave that information to

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1 Mr. Steele, not knowing what Mr. Steele would do with that
2 information.

3 Six months later, some of that material provided by
4 Mr. Danchenko wound up -- wound up in what's called "the
5 Steele dossier." Within two weeks of that document being
6 published, the FBI contacted him, and he voluntarily agreed to
7 meet with them. So think about that. He went in, and he met
8 with them voluntarily.

9 And I want you to consider a false statement, which
10 you heard about 10 minutes ago from Mr. Keilty. He told you
11 that Mr. Danchenko was given immunity. That's a lie. He just
12 lied to you. You look at Government's Exhibit 118 that
13 they're going to admit.

14 And I read to you, it says [as read]: As a
15 preliminary matter, I must advise you that the government does
16 not intend by this letter to grant your client immunity from
17 prosecution.

18 And he just told you the opposite. So you think
19 about that when you consider the government's case.

20 At every point in this trial, the evidence is going
21 to show that Mr. Danchenko did not lie. With that in mind,
22 I'd like to give you a road map about what I'm going to talk
23 about, and I'll try to be brief.

24 So first of all, I'm going to give -- and it's on
25 your screens, I believe -- a brief overview of the charges of

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1 the law, background about the Crossfire Hurricane case,
2 information about the meetings with Mr. Danchenko and the FBI
3 that formed the basis of the allegations. I'm going to give
4 you some information about the tremendous and remarkable
5 service he provided to the United States of America, and then
6 I will conclude.

7 Number one, an overview of the charges and the law,
8 and as Mr. Keilty said, there are five counts. And so, for
9 Count 1, you must decide simply whether the government can
10 prove, knowing that it was untrue, okay, that Mr. Danchenko
11 willfully, knowingly, and intentionally lied, and that those
12 lies were material when he told an FBI agent named Kevin
13 Helson that he had not, quote, talked with a man named Charles
14 Dolan about anything specific in the Steele dossier. And I
15 want you to listen carefully to the evidence there. The
16 evidence is going to support showing that Mr. Danchenko is
17 innocent.

18 In other words, Mr. Danchenko answered that question
19 truthfully. And the law requires you to find him not guilty
20 based on that evidence. In other words, a truthful statement
21 to an FBI agent simply cannot be false. It cannot be a crime.
22 And that statement was not material or capable of influencing
23 any type of government investigation or decision, which the
24 judge will talk to you about later.

25 Counts 2 through 5 are likewise simple. And they

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1 are based on conversations with, again, Kevin Helson. And
2 here is what the government is intending to prove: Based on
3 the facts and circumstances that it was false when
4 Mr. Danchenko said that he believed -- he believed that he
5 received a telephone call from a person he identified from
6 Sergei Millian.

7 And what I heard Mr. Keilty say is they are going to
8 prove there was no phone call, and he said by cellular phone
9 records. But I didn't hear him mention anything about phone
10 apps because the government doesn't have phone app records.
11 And what he also said is that Mr. Danchenko didn't come
12 forward and provide phone app records to the FBI. Well, Judge
13 Trenga is going to tell you one thing, and it is the most
14 fundamental thing in the justice system. He doesn't have a
15 burden of proof. The special counsel does. And they have the
16 burden of proving the phone call didn't occur. He doesn't
17 have a burden of proving it did occur, and they can't do that.

18 And so, what Mr. Danchenko is going to tell -- what
19 you're going to hear from Mr. Danchenko, through the agents,
20 is that he came to that belief based upon common-sense facts.
21 Mr. Keilty told you to keep your common sense, and I invite
22 you to do that. When you hear that evidence, you're going to
23 conclude that he is not guilty of the remaining counts.

24 Okay. Backfire -- Crossfire Hurricane. So I didn't
25 quite follow what Mr. Keilty's point was, but prior to July of

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1 2016, a friendly foreign government warned the government that
2 a high-level policy person in Donald Trump's campaign named
3 George Papadopoulos suggestion -- suggested that Russian could
4 provide damaging information about Hillary Clinton and Barack
5 Obama. Had nothing to do with Igor Danchenko. And the
6 government's going to agree with that and the evidence is
7 going to show that. Immediately, the government started to
8 investigate.

9 They did investigate Papadopoulos. They did
10 investigate Manafort. They did investigate Carter Page, and
11 they did investigate Sergei Millian, and that was in the
12 August of 2016.

13 Now, I think Mr. Keilty told you that the FBI didn't
14 even meet with Mr. Danchenko until January of 2017. So
15 whatever the FBI did between August of 2016 and January of
16 2017, had nothing do with him, and it's irrelevant from this
17 case.

18 To sum it up, those investigations began completely,
19 and the undisputed evidence will show it, unrelated to the
20 opening Crossfire -- the opening of the Steele dossier
21 investigation, and unrelated to Crossfire Hurricane at the
22 time.

23 Now, information from the dossier did get passed
24 over to the government. They did begin investigating it in
25 September of 2016. And by December of 2016, they found out

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1 that Mr. Danchenko had been working with Mr. Steele.

2 So let's turn to point No. 4, and this is where we
3 start to talk about the interviews in 2017, Mr. Danchenko and
4 the Government. On January 10th of 2017, the Steele dossier
5 was published on a website called BuzzFeed, and it became
6 significant news at the time.

7 Two days later, you are going to see evidence that
8 two days later, FBI agents got together, and they said, we
9 want to go talk to Igor Danchenko, but we want to make him a
10 confidential human source. We want to work with Igor
11 Danchenko. He didn't even know that at the time.

12 The evidence is going to show that this is the
13 background leading up to his meeting with the FBI from January
14 24th to January 26th. He then corroborated with him
15 extensively for not one years, not two years, not three years,
16 but nearly four years, providing extraordinary cooperation to
17 the United States of America as a confidential human source.

18 The evidence will show that Mr. Danchenko was
19 stunned when he learned that portions of the information that
20 he gave to Mr. Steele were in the dossier. He didn't write
21 anything in the dossier. So the FBI asked him to meet, and he
22 went, and he met, and he was cooperative.

23 Nevertheless, when he went in that meeting, not
24 knowing exactly what he was going to be asked, he gave the FBI
25 truthful information. And Mr. Keilty told you you'll hear

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1 from Brian Auten. Brian Auten is an FBI Intel analyst, and he
2 met with Mr. Danchenko along with another agent named Steve
3 Somma for those three days. The evidence is going to show
4 that Auten is a supervisory intelligence analyst, and his role
5 is to kind of connect the dots by making inferences. That's
6 important in probability calculations when he gets facts and
7 he gets facts from witness interviews; he gets facts from open
8 source, you know, newspaper articles that we all read every
9 day, and that's going to be important related to the Dolan
10 count. He gets information from intelligence reports as well.
11 He also told you that Mr. Danchenko told him the same thing,
12 Danchenko is likewise an analyst.

13 And so, analysts look at facts and reach
14 conclusions. And the evidence is going to show that
15 Mr. Danchenko drew a reasonable belief based on facts and
16 circumstances presented to him with regard to Mr. Millian.

17 Agent Auten will tell you that the interview with
18 Mr. Danchenko was not, quote, designed to be a finished
19 intelligence product. He will also tell you Steve Somma, one
20 of the other agents, said not to probe or ask a lot of
21 follow-up questions with Mr. Danchenko, because the purpose of
22 the meeting was to get him to cooperate. And that reason is
23 simple, because you're going to hear evidence that the FBI has
24 problems recruiting sources with connections in that area of
25 the world, and it was important to get the cooperation of

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1 Mr. Danchenko.

2 FBI agent -- Analyst Auten will tell you that this
3 was not, quote, a major debriefing in his mind, and that Somma
4 said that they could follow up with him if they wanted to
5 later on. With that backdrop, with that backdrop, over the
6 course of the next three days, Analyst Auten, and Agent Somma
7 did not ask -- now, listen to me when I say this -- they did
8 not ask a single question about what is called Report 105.
9 And when you heard Mr. Keilty talk about Charles Dolan, that's
10 what they were talking about. It's going to be 105. The
11 government believes that that has to do with Mr. Dolan. You
12 heard me correctly. In that three-day interview where he was
13 supposed to tell the truth, they didn't ask a single question
14 about that.

15 How could that be relevant in any investigation?
16 And there's an answer why that question wasn't asked: Because
17 it was a widely-known open secret that that information was
18 all in the public domain.

19 Now, what are they going to focus this case on? It
20 really relates to the Millian counts. And although
21 Mr. Danchenko discussed that material on the 24th and 25th of
22 January, no charges stem from that interview. They stem from
23 charges -- from meetings later on where he repeats the same
24 information. So, really, you have to consider what happened
25 on the 24th and what Investigator Helson tells you later.

1 During this trial, you're going to hear and you're
2 going to see evidence that is going to eviscerate -- I say
3 eviscerate -- any claim that Mr. Danchenko was anything but
4 untruthful -- but truthful when he formed a subjective belief
5 that he received a phone call in July of 2016 from someone he
6 thought was Mr. Millian. And the evidence will show that was
7 the only fair reading of what Mr. Danchenko believed at the
8 time. The evidence is going to prove that he was -- he told
9 the government -- and no one is going to say, Hey,
10 Mr. Danchenko, who called you? He didn't say, Sergei Millian
11 called me. 100 percent, a thousand percent, he said, Look, I
12 got an anonymous phone call. He said I got an anonymous phone
13 call, I don't know who called me, but I'm connecting certain
14 facts, okay, facts known to him, facts that he told the FBI,
15 and I came to the conclusion that it probably could have been
16 Millian. That's what I believe, okay. So the answer to the
17 question was, I don't know who called me. But, he speculated,
18 and he speculated not to hinder the investigation, but,
19 rather, to help it. This information was designed to help the
20 agents. So on those days, he spoke truthfully, in the
21 simplest and plainest terms, why he believed that call was
22 from Millian.

23 Here's what the FBI was told: He said in May of
24 2016, a Russian journalist had a conversation with
25 Mr. Danchenko and that journalist said, Hey, you should talk

1 to Sergei Millian. There's no evidence that Mr. Danchenko
2 even knew who he was in May of 2016. There is going to be
3 undisputed evidence that evidence is not a lie, and it is, in
4 fact, true.

5 In May of 2016, that journalist asked a colleague of
6 his named Dmitri Zlodorev to see if Zlodorev could reach out
7 to Millian so that there could be a connection between
8 Mr. Danchenko and Mr. Millian. Again, there is indisputable
9 evidence that that happened. You're going to see concrete
10 evidence that those two facts occurred.

11 You're going the see concrete evidence that on July
12 21st, Mr. Danchenko sent an email to Mr. Millian, and he
13 requested an opportunity to meet with him in New York or
14 Washington, D.C. Mr. Danchenko reminded Millian that he had
15 also sent him a LinkedIn message. There is undisputable
16 evidence that that is true. He did not lie. Shortly
17 thereafter, Mr. Danchenko received an anonymous phone call,
18 had a discussion with someone for 10 to 15 minutes, as
19 Mr. Keilty said, and there was a discussion about potentially
20 meeting up in New York the following week.

21 Mr. Danchenko told the truth about that call. And
22 remember when I talked about the burden shifting? They have
23 to prove to you that a call was not completed via a mobile
24 app, you know, some type of mobile app that you use. Because
25 the evidence is going to show if you want to be anonymous,

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1 because you're not sure if you want to meet with someone, why
2 would you identify who you are if you're trying to feel that
3 person out? The evidence will show he didn't lie and they
4 have the burden of proving he didn't get a call, and they
5 can't do it.

6 Now, Mr. Danchenko told the agents that he traveled
7 to New York City, okay, in late July of 2016 with his
8 daughter. And guess what? There are records from Amtrak that
9 prove that on July 25th, he bought a train ticket after
10 getting the anonymous call; he traveled to New York City on
11 July 26th, and he remained there for two days. That was the
12 truth, and that is a lie, and the government cannot disprove
13 that.

14 Now, one thing that we agree on is that when
15 Mr. Millian -- when Mr. Danchenko was in New York, Mr. Millian
16 didn't appear for the meeting. Mr. Keilty told you that, and
17 I agree with him.

18 Now, the other thing that Mr. Danchenko told him is
19 that -- he said, Look, guys, after he didn't show up to that
20 meeting, I tried to pitch a real estate deal to Millian, so I
21 made up a real estate, I sent him an email in hopes that he
22 would contact me, and Millian never replied to them. And he
23 actually gave that email to the government in July -- in
24 January of 2017. The evidence is going to show that he told
25 the FBI the truth about everything.

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1 And based upon that evidence, Mr. Danchenko was not
2 incorrect in his subjective belief that the anonymous caller
3 could have been Mr. Millian. Based on these facts and
4 circumstances, he formed the belief that it was probably
5 Millian who was the anonymous caller, but he never said it
6 definitely was. And that's all the government hears. He said
7 I'm not sure. There are two different things. He drew a
8 commonsense conclusion based on facts, and his subjective
9 commonsense belief cannot be false. The evidence will show
10 that Mr. Danchenko represented those same facts to Agent
11 Helson over the course of four different meetings; and, again,
12 he's not guilty of those facts.

13 What you're going to find ironic, and it's going to
14 be one of the government's first witnesses, is that Brian
15 Auten, the Intel analyst, is going to say that Mr. Danchenko
16 after he was done with the debriefing, never thought that
17 Mr. Danchenko minimized or, rather, lied about who his sources
18 were from the dossier, okay. He drew the opposite conclusion
19 and he met with them. These guys didn't meet with him.
20 They've never met with him. He's going to tell you, based on
21 his discussions with them, and his questions of him, he
22 believed he was truthful. He drew the opposite conclusion
23 based on facts that the government is trying to prove. His
24 impression was, Look, maybe Danchenko was minimizing his
25 relationship with this guy Millian, but not fabricating it.

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1 Now, six years later -- now, six years later, playing Monday
2 morning quarterback, the special counsel wants to come in and
3 try to prove the exact opposite proposition which the evidence
4 doesn't support. And listen to this, okay, when you hear the
5 evidence presented during the course of the July timeframe
6 that Mr. Danchenko himself was unaware of, you're going to
7 have a stronger belief and conclusion that the caller was
8 probably Mr. Millian, stronger than the one that he had at the
9 time. The proof will be that he did not lie.

10 Now, with respect to Count 1, that's the Dolan
11 matter that they did not ask him anything about Number 105.
12 They're going to hear evidence that Special Agent Helson had
13 the most basic and rudimentary conversation with Mr. Danchenko
14 about Charles Dolan. And that's what forms the basis of this
15 charge. The evidence is going to be pretty simple. Helson
16 asked Mr. Danchenko whether he, quote, talked to Mr. Dolan
17 about anything specific in the dossier, okay. He asked him if
18 he talked about it. Danchenko replied that he had not talked
19 to Dolan about anything specific, maybe just generally.
20 Nothing specific, maybe just generally. That is it; nothing
21 more, nothing less.

22 Agent Helson never bothered to ask Mr. Danchenko a
23 simple clarifying question about, Wait a minute, when you
24 talked about something general about the dossier, what gives,
25 what was that? Okay. Never followed up on it. Now, again,

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1 some six years later, the special counsel team has come before
2 you with a convoluted theory based on the evidence, and
3 they're going to tell you, they're going to try to convince
4 you that that truthful answer is somehow false. And their
5 so-called proof is that they have a, quote, written, written,
6 okay, a written email exchange between Mr. Danchenko and
7 Mr. Dolan in August of 2016 on a topic that appears widely
8 known in the press.

9 The evidence will show that their claim fails for
10 commonsense reasons. First of all, the evidence will show
11 that when -- I'm talking right now; I'm not writing to you.
12 We will all agree with that. And so, that would be a lie if I
13 said I'm writing to you. But that's what the government is
14 going to try to prove to you in this case. The special
15 counsel will try to get you to take the meaning of "talk" and
16 twist it into something that it is not.

17 And the questions weren't asked properly, and that's
18 not his fault, because the law, as you'll hear it, requires
19 them to be precise in terms of what they want to know.
20 Special Agent Helson did not ask him whether there was
21 communication. And so, I'm going to invite you to do this,
22 because Mr. Keilty told you, Well, he was, you know,
23 cooperating with the government so he had an obligation to do
24 these things. You see if they produce a contract -- you see
25 if they produce a contract with Mr. Danchenko where they say,

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1 Mr. Danchenko, when we say did you talk to someone, I want to
2 know if you've ever emailed him, I want to know if you've ever
3 been to his house for dinner, everything else in the world, or
4 you just answer the question that's posed. Because they don't
5 have evidence. They don't have a piece of paper to state that
6 Mr. Danchenko's going to have the same understanding of what
7 they're asking.

8 Of course, the government cannot prove a plausible
9 or rational reason why there was no follow-up on this, and the
10 failure to simply follow up on that is not Mr. Danchenko's
11 fault.

12 Let's talk about Mr. Danchenko, what he did do with
13 the government and with Mr. Helson. The evidence at trial is
14 going to show that Igor Danchenko courageously, loyally, and
15 honestly served the national security interests of the United
16 States for four years. His accomplishments as an FBI source
17 are unparalleled. And you're going to hear evidence to
18 support that. These are going to come in the form of two
19 government witnesses. Kelvin Helson will state that he
20 provided critical intelligence to the Russian government's
21 efforts to conduct influence operations in the U.S. Brian
22 Auten agreed with this statement under oath. One of the
23 upshots of Crossfire Hurricane was that the FBI built a
24 relationship with Igor Danchenko. He provided the FBI into
25 insight into individuals, into areas it was otherwise lacking

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1 because of difficulty with which the FBI recruiting people
2 from that part of the world.

3 Agent Helson said that not only was he a productive
4 source, but that information, when asked a question, was
5 corroborated. And -- if you bear with me for one second.
6 When he was asked if that information was corroborated, and
7 excuse my words, Mr. Helson said, and I apologize, [as read]:
8 Holy shit. This is actually real. Helson observed that
9 Danchenko was able to suck in a lot of information, process
10 it, and give it back. I was like, wow, that's actually
11 important.

12 And lastly, on August 12th of 2019, Helson wrote in
13 a government report, and listen to this [as read]:
14 Mr. Danchenko's reporting will have serious national security
15 implications. He is reporting on a top five threat within
16 your division to another government agent. That is the man on
17 trial.

18 In sum, in order for this offset of Special Counsel
19 to prove this case beyond a reasonable doubt, you're going to
20 have to do the unthinkable, and something that is frankly
21 wrong. The evidence will have you defy common sense, logic,
22 and reality; things that you can't do as jurors.

23 You would have to redefine the common sense,
24 everyday use of the word "talk." Yes, they want you to
25 disregard the commonsense notion of what talking means, and

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1 that is in a oral communication. And they now want you to
2 find that "talking" means a writing. They are wrong.

3 In order to convict Mr. Danchenko of Counts 2 to 5,
4 they want you to suspend reality. They want you to become
5 mind readers, and they want you to go into Mr. Danchenko's
6 mind and how he interpreted facts that were presented to him.

7 Of course, the law doesn't let you rewrite the
8 dictionary with respect to Count 1. And likewise, the
9 government cannot, six years later, sustain its burden of
10 proof that Danchenko's beliefs were real based on undisputed
11 evidence.

12 The facts, the law, and principles of fundamental
13 fairness are the pillars of our criminal justice system. When
14 you apply the facts, the laws, and the evidence to this case,
15 there's simply only one verdict that you can unanimously reach
16 and that is a guilty -- or of -- that is a verdict that
17 Mr. Danchenko is not guilty of each and every charge.

18 Again, our jury system relies on you to do the right
19 thing and that's what we ask of you. Thank you.

20 THE COURT: Thank you, counsel. Ladies and
21 gentlemen, we're going to take a 15-minute recess before we
22 begin with the first witness. You're excused to the jury
23 room. Please do not discuss this case among yourselves.

24 (Jury excused.)

25 THE COURT: Who is the government's first witness?

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1 MR. DURHAM: Brian Auten, Your Honor.

2 THE COURT: How long do you anticipate his direct
3 testimony to be?

4 MR. DURHAM: I think that Mr. Auten's testimony,
5 direct and cross, is likely to consume at least the balance of
6 the day.

7 THE COURT: All right. All right. Thank you.

8 MR. DURHAM: Your Honor --

9 THE COURT: Yes.

10 MR. DURHAM: -- if I might be heard. I'm not sure
11 how to remedy this, but Mr. Onorato felt it necessary to say
12 that the jury -- that the government lied and talked about
13 immunity agreement.

14 Now, Counsel has been provided with a copy of a
15 document dated January 24, 2017. It's Government's
16 Exhibit 118. It's signed by folks from the National Security
17 Division as well as the defendant. And that document clearly
18 sets forth that the defendant was being provided information,
19 and was protected on provisions on Title 18, United States
20 Code, Section 6001, that section, which is immunity.

21 So for the defense counsel to stand here and tell
22 this jury that the government lied is highly inappropriate.
23 And I'll ask the Court to give instructions to the jury to
24 disregard that because it's untrue.

25 THE COURT: I'll review the letter. I'm going to

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1 read this letter. I will decide how to proceed on that.

2 Anything further? All right. Court is in recess.

3 (Recess.)

4 (Court proceedings resumed at 2:46 p.m.)

5 THE COURT: All right. I've looked through this
6 letter. I think the jury does need to be told something.

7 What do you propose the jury be told, Mr. Durham?

8 MR. DURHAM: The government would propose that
9 defense counsel stated that the government lied regarding an
10 immunity letter, and the evidence in this case will prove that
11 that's not the case.

12 And, in fact, Mr. Danchenko was given an immunity
13 letter pursuant to 18 U.S.C. Section 6001, so they should
14 disregard that comment by counsel because it's untrue.

15 MR. ONORATO: May I be heard, Your Honor?

16 THE COURT: Well, are you done, Mr. Durham?

17 MR. DURHAM: Yes.

18 THE COURT: All right.

19 MR. ONORATO: Mr. Keilty gave the impression that
20 Mr. Danchenko believed he had immunity, and my reading of that
21 letter says that he doesn't have immunity --

22 THE COURT: Well, it says he has use immunity. He
23 doesn't have transactional immunity. He has use immunity.
24 That's an immunity agreement.

25 MR. ONORATO: Correct. Well, in his mind, he can

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1 still be prosecuted. It's just that the government had to --

2 THE COURT: Well, you didn't phrase it in terms of
3 what Mr. Danchenko thought. You said the government lied
4 when --

5 MR. ONORATO: It was --

6 THE COURT: The government lied when -- when they
7 told the jury that they had provided him with an immunity
8 agreement.

9 It needs to be corrected. I don't want to prejudice
10 Mr. Danchenko because of his counsel's improper remarks, and
11 I'm trying to think of what I should say.

12 MR. ONORATO: Well, what I think is -- what I think
13 is fair is that -- there's a reading of the document by which
14 Mr. Danchenko did not believe that he was subject to. I mean,
15 Mr. Keilty told the jury that he was not the -- he could not
16 be prosecuted. And that --

17 THE COURT: No, no. He said he had an immunity
18 agreement. All right.

19 All right. I'm going to -- I'm going to tell the
20 jury.

21 MR. DURHAM: Your Honor, I'm just briefly --

22 THE COURT: Yeah.

23 MR. DURHAM: Also briefly. I know you don't want
24 nor do we want to hold the jurors up, but there are two
25 issues -- two additional -- not issues --

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1 THE COURT: Right.

2 MR. DURHAM: I just seek direction of the Court.
3 One, the defense will settle it, and, one, to prevent the
4 government from raising questions relating to the defendant
5 not providing emails.

6 THE COURT: Right.

7 MR. DURHAM: Well, defense counsel --

8 THE COURT: I know that they have very -- they have
9 an expansive view that may make all of that relevant. I
10 understand that.

11 MR. DURHAM: Okay. So work through those --

12 THE COURT: We'll pick it up when you present the
13 questions --

14 MR. DURHAM: Yes, sir.

15 THE COURT: -- to the witness.

16 MR. DURHAM: And then, similarly, with respect to
17 the prior counter intelligence case, the defendant elected in
18 his opening to start talking about Mr. Danchenko's
19 contributions to the country.

20 THE COURT: No, I understand.

21 MR. DURHAM: And so, that clearly opens the door.

22 THE COURT: I understand that point as well.

23 MR. DURHAM: Thank you.

24 MR. ONORATO: And, Your Honor, just briefly in
25 response. The government knew these issues. I mean,

1 Mr. Keilty actually knew that we were going to do this in
2 opening. They never objected. And so, I don't see how -- I
3 don't see how what -- what -- I don't see how that makes the
4 previous thing irrelevant, and then we turn it into a mini
5 trial.

6 THE COURT: All right. Let's bring the jury out.

7 MR. DURHAM: Thank you, Your Honor.

8 (Jury present.)

9 THE COURT: Please be seated. Ladies and gentlemen,
10 before we begin, I want to -- I want to advise you on
11 something you heard during opening statement by Mr. Onorato,
12 by both the prosecutor and Mr. Onorato. Mr. Keilty referenced
13 an immunity agreement that they had provided to Mr. Danchenko,
14 and Mr. Onorato characterized that as inaccurate and a lie.

15 As you will see from the document, the document --
16 that's -- Mr. Onorato's statement needs to be clarified, and
17 you need to be told that the agreement -- there's two things.
18 On the one hand, it does not provide what's called "total
19 immunity" from prosecution with respect to any crimes that may
20 be related to what they ask him about.

21 On the other hand, the agreement does, in fact,
22 provide an immunity to Mr. Danchenko from any prosecution
23 based on information that he provided. It's typically called
24 "use immunity." So while it didn't provide total immunity, it
25 does provide use immunity. And you need to -- I wanted to

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1 make that clarification for you. All right.

2 MR. DURHAM: Thank you, Your Honor.

3 THE COURT: All right. Call your first witness.

4 MR. DURHAM: We will call Brian Auten, Your Honor.

5 THE COURT: Agent Auten will come forward, please.

6 (BRIAN AUTEN, Government's witness, affirm.)

7 THE COURTROOM CLERK: Thank you.

8 (Witness seated.)

9 DIRECT EXAMINATION

10 MR. DURHAM: May I proceed, Your Honor?

11 THE COURT: Yes.

12 BY MR. DURHAM:

13 Q. Sir, would you state your name for the record and spell
14 your last name.

15 A. Brian James Auten, A-U-T-E-N.

16 Q. Mr. Auten, I'm going to ask you be sure to keep your
17 voice up so that the jurors can hear your responses, okay?

18 A. I will do that.

19 Q. If I should ask you some question that is convoluted and
20 you don't understand, just let me know, and I'll rephrase it,
21 okay?

22 A. Will do.

23 Q. Will you tell the ladies and gentlemen of the jury how
24 you are employed?

25 A. I work for the FBI as a supervisory intelligence analyst.

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1 Q. And for approximately how long have you been working for
2 the FBI?

3 A. I have worked for the FBI since January of 2005.

4 Q. Please explain, if you would, to the jurors what your
5 basic educational background is?

6 A. So I have a bachelors of art in history. I have a
7 masters degree in national security studies, and I have a
8 doctorate in international politics and strategics studies.

9 Q. In order to become a intelligence analyst with the FBI,
10 did you require any training beyond those education
11 accomplishments?

12 A. Not to get into the FBI, no.

13 Q. Well, after you joined the FBI, did you receive any
14 specialized training?

15 A. Yes, after I joined the FBI, I went for, in effect,
16 training down in Quantico.

17 Q. And explain just briefly, if you would, to the jurors
18 what that training involved.

19 A. So it was approximately -- I want to say 12-13 weeks of
20 training. It covers anywhere from writing skills to
21 analytical method, learning the different tools, different FBI
22 authorities, and the like.

23 Q. Just so the jurors have an understanding, is there a
24 difference between FBI Intelligence Analyst and an FBI Special
25 Agent?

1 A. Yes. They are two completely different job series.

2 An FBI Special Agent is most of what you see on
3 television with respect to carrying a badge, having a weapon.

4 An intelligence analyst is more of a supporting role
5 that bridges a lot of what the investigations are going on in
6 the field, and then what is going on within the Intelligence
7 Community as a whole.

8 Q. Now, have you held more than one position within the FBI
9 since the time you first joined?

10 A. I joined as a line analyst and then became a supervisor.

11 Q. And describe, if you would, or explain to the jurors when
12 you started out as a line analyst and then when you became a
13 supervisory intelligence analyst?

14 A. So I started as a line analyst in January of 2005. I
15 stayed a line analyst until -- I believe it was July of 2015.
16 And in January of 2015, I became a supervisor.

17 Q. Would you describe to the jurors, sir, generally
18 speaking, what is it that an analyst does and then what does a
19 supervisory analyst do?

20 A. So an analyst will do any number of things. It's looking
21 through case information, looking through information
22 collected by the special agents in the course and scope of an
23 investigation. You'll hear people talking about "connecting
24 the dots." An analyst is about trying to come up with
25 judgments that will assist the FBI in the Intelligence

1 Community and moving the FBI's mission forward.

2 Q. All right. Now, I want to begin, if I might, with asking
3 some background -- background questions, context to be of
4 assistance to putting some of your testimony in context. All
5 right.

6 First of all, will you tell the ladies and gentlemen
7 of the jury where within the FBI, that is in its structure,
8 were you assigned in late July, early August of 2016?

9 A. I was assigned in the Counterintelligence Division in the
10 FBI.

11 Q. And at that time, would you have been serving as under
12 the acting role of the supervisory intelligence analyst?

13 A. At that point in the middle of 2016, I was serving as a
14 supervisor.

15 Q. Do you recall, sir, whether or not, at any point in time,
16 you became aware of an FBI investigation, which was code-named
17 Crossfire Hurricane?

18 A. Yes.

19 Q. How did you first become aware of that?

20 A. I was told by my immediate -- actually, not immediate
21 supervisor, but a section chief by the name of Jonathan Moffa,
22 who talked to me about the case. It was either the 1st or 2nd
23 of August in 2016.

24 Q. And do you remember when Crossfire Hurricane was formally
25 opened by the FBI?

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1 A. Formally opened in a couple days before 1st or 2nd of --
2 of August 2016?

3 Q. So it would be a fair statement that you got -- you were
4 assigned to Crossfire Hurricane within a matter of days with
5 it being opened?

6 A. Correct.

7 Q. And then, what, if any, role did you, yourself, play with
8 the Crossfire Hurricane investigation?

9 A. So I was asked in August of 2016 to help lead the
10 analysts in the Crossfire Hurricane investigation at that
11 point.

12 Q. Describe, if you would, to the ladies and gentlemen of
13 the jury, again, just by way of background, general
14 understanding, how was the Crossfire Hurricane team
15 structured?

16 A. So the Crossfire Hurricane team was structured -- it was
17 an integrated combination of analysts and agents. It was
18 structured whereby the -- the authority structure was done
19 both on the agent side and the analyst side, or one might say
20 the operational side and the analytical side.

21 The analysts -- the line analysts reported to me. I
22 reported to, again, Jonathan Moffa was his name, who was a
23 section chief at the time, and then Jonathan Moffa reported up
24 to, at that point, it was Deputy Assistant Director Bill
25 Priestap.

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1 And on the agent side, it was my operational
2 counterpart by the name of Joe Pientka. Joe reported up
3 through Peter Strzok, who was DAD, and then up to Assistant
4 Director Priestap.

5 Q. Okay. And just for the jury, is a DAD a deputy
6 assistant --

7 A. Sorry, yes, deputy assistant director, and AD is an
8 assistant director.

9 Q. And, again, just in terms of context on a places matter,
10 was this investigation being done by a particular division of
11 the FBI?

12 A. So it was -- dominantly, it was out of the
13 counterintelligence division, but it was being run out of
14 headquarters.

15 Q. Okay. So this wasn't out in the field office; this was
16 all being done at the Hoover building in Downtown Washington?

17 A. That is correct.

18 Q. And with respect to the reporting chain, you indicated
19 that Mr. Moffa and Mr. Strzok both reported to Bill Priestap?

20 A. That is correct.

21 Q. And then where did Mr. Priestap direct -- report? I'm
22 sorry.

23 A. Mr. Priestap would have reported to Deputy Director
24 McCabe, Andrew McCabe.

25 Q. And then above that?

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1 A. It would have reported to the director, Director Comey.

2 Q. Okay. And to your personal knowledge, when this
3 investigation was going on, particularly in its beginning part
4 and continuing on from there, was this all being reported up
5 to the director?

6 A. My understanding was yes, it was.

7 Q. Okay. Now, with regard to Crossfire Hurricane itself,
8 how would you describe it? Was it an open file? How did it
9 get opened?

10 A. So Crossfire Hurricane, the best way I like to explain it
11 is what's called an umbrella investigation. So you open up an
12 investigation based upon material that came in to us, to the
13 FBI; and out of that investigation, there were a number of
14 several investigations that were opened up out of it.

15 Q. So it's kind of, as you say, the umbrella case?

16 A. Correct.

17 Q. And that was opened based on what?

18 A. That was opened based on information that came from a
19 friendly foreign government.

20 Q. And the investigation [sic] that came from the friendly
21 foreign government was, essentially, what? Explain that to
22 the jurors so they have some understanding.

23 A. Sure. The friendly foreign government had provided
24 information that the Trump team had received the suggestion
25 that Russia could assist the Trump team to help with respect

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1 to releasing information anonymously that would benefit both
2 the Clinton campaign and president --

3 Q. Which team?

4 A. Sorry. Provided information for the Trump team that
5 would be detrimental to Hillary Clinton and to President
6 Obama.

7 Q. Friendly foreign government with a suggestion of some
8 kind of suggestion?

9 A. Yes.

10 Q. And the FBI opened that up to say full investigation?

11 A. That is correct.

12 Q. From day one?

13 A. Correct.

14 Q. And then you made reference to -- I'm not sure if you
15 called them files subfiles -- how many files were opened under
16 that umbrella?

17 A. So the umbrella investigation was opened, and then there
18 were four main files, four main investigations opened up under
19 the umbrella investigation.

20 Q. Do you recall what those four files were?

21 A. Who the individuals were?

22 Q. Yes, sir.

23 A. Yes. One was Carter Page, one was George Papadopoulos,
24 one was Paul Manafort, and one was Michael Flynn.

25 Q. And with respect to the information that caused Crossfire

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1 Hurricane to be opened in the first sense, is that it's from
2 the friendly foreign government, do you recall whether or not
3 there was somebody who was reported to have talked about this
4 suggestion -- that was a suggestion?

5 A. Yes. The information from the friendly foreign
6 government indicated that George Papadopoulos had given that
7 information.

8 Q. So he's one of the four files that were opened?

9 A. That is correct.

10 Q. Okay. And describe or explain to the jurors, if you
11 would, what, if any, role that you played with respect to the
12 umbrella case or any of the four files under it.

13 A. So for all of the investigation -- the umbrella
14 investigation as well as the four sub cases -- I was helping
15 to lead the analysts who were working together with the
16 special agents on those cases.

17 Q. I asked you about the opening of Crossfire Hurricane, and
18 you said it was opened to a full investigation, correct?

19 A. Correct.

20 Q. Would you explain to the jurors, again, by way of
21 background, are there different levels at which the FBI will
22 open or look at particular matters?

23 A. Yes. There are really three levels. You have what would
24 be considered a threat assessment, which would be, for lack of
25 a better term, a lower level of looking at something; and then

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1 there are two kinds of what would be called predicated
2 investigations. One type is a preliminary investigation, and
3 one type is a full investigation.

4 Q. And in this regard as to files or subfiles, the four
5 subfiles, were those opened, to your recollection, as full or
6 preliminary or assessments?

7 A. To my recollection, those were full.

8 Q. All four opened immediately as full investigations,
9 correct?

10 A. That is my recollection.

11 Q. Okay. So Carter Page would have been one of those?

12 A. Correct.

13 Q. Would you explain to the jurors, if you would, whether or
14 not, depending upon the level at which a matter is open, that
15 the bureau has the same investigative tools that it could use?

16 A. No. There are investigative tools that are allowed at
17 the full investigation that aren't allowed at the preliminary
18 investigation.

19 Q. So with respect to all four of the subfiles, including
20 Mr. Page, those were all opened as full, correct?

21 A. Correct.

22 Q. Explain to the jurors, then, what tools, investigative
23 tools, the FBI had available at that time as a result of
24 opening a full investigation as opposed to some lesser level
25 of --

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1 A. With a full investigation, you are able to use the
2 Foreign Intelligence Surveillance Act, or FISA.

3 Q. And are court authorized FISAs, essentially, the most
4 powerful tool that the FBI has available and --

5 A. I would say one of.

6 Q. So, again, by the way of background, and I need help in
7 explaining that, what is a FISA? First of all, what does FISA
8 stand for? That's an acronym, correct?

9 A. Right, FISA is an acronym. It stands for the Foreign
10 Intelligence Surveillance Act.

11 Q. Is it a particular federal statute that lays out what can
12 and can't be done?

13 A. Correct.

14 Q. And then what kind of court authorization might be
15 required; is that a fair statement?

16 A. Fair statement.

17 Q. So in that connection, you said that this case was being
18 run out of the counterintelligence division of the FBI
19 headquarters, correct?

20 A. Correct.

21 Q. Does the FBI have a criminal division as well?

22 A. Yes, it does.

23 Q. So if the jurors, for example, have heard about wiretaps
24 or things of that sort, maybe T3s or the like, is that on the
25 counterintelligence side or is that on the criminal side?

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1 A. For a T3, or what would be called Title III or T3, that
2 was on the criminal side.

3 Q. We're talking about counterintelligence where the FISA
4 statute issues, correct?

5 A. That is correct.

6 Q. Again, just for background for the jurors, with respect
7 to the FBI, can the FBI, on its own, just go start to surveil
8 people electronically without court authorization?

9 A. No.

10 Q. In getting authorization to do that, on the
11 counterintelligence side, to use the FISA tool, what does the
12 FBI have to do?

13 A. The FBI has to determine probable cause and to be able to
14 go to the FISC, or the Foreign Intelligence Surveillance
15 Court.

16 Q. And do you know, based on your own personal knowledge in
17 connection with Crossfire Hurricane, whether or not at any
18 point in time the FBI went to the FISA court to seek
19 permission, authorization to conduct any kind of FISA
20 surveillance?

21 A. Yes.

22 Q. What's the basis of your knowledge?

23 A. I was on the team and I -- involved with providing
24 information that went into the application.

25 Q. Now, I want to focus a little bit more narrowly at this

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1 point and ask you about the Carter Page investigation,
2 specifically.

3 Do you recall, sir, whether you played any role in
4 the Carter Page investigation?

5 A. I was supervising my analysts who were involved embedded
6 in doing analysis on -- for the Carter Page investigation, and
7 I'd also reviewed the footnotes and a bit of ad hoc review of
8 the application itself, and I -- there was involvement that
9 way.

10 Q. Okay. Now, you told the jurors that the investigation
11 started at the end of July; you got involved in the next
12 couple of days, correct?

13 A. Correct.

14 Q. Would you tell the ladies and gentlemen of the jury
15 whether or not the FBI, as relates to Carter Page, almost
16 immediately started work on trying to put together a FISA
17 application for Mr. Page?

18 A. There was discussion fairly early on about giving the
19 FISA.

20 Q. All right. Before I ask the details of that, do you know
21 whether or not the FBI tried to put together information on
22 Mr. Papadopoulos that you mentioned, to do a FISA on
23 Papadopoulos?

24 A. There was talk about a FISA on Mr. Papadopoulos as well.

25 Q. And could they get there?

1 A. No.

2 Q. And how about you made reference to Mr. Manafort; do you
3 know whether or not the bureau made an attempt to put together
4 a FISA application on Mr. Manafort?

5 A. I don't recall any discussion about a FISA for
6 Mr. Manafort.

7 Q. How about Michael Flynn?

8 A. No, I don't recall any discussion it was Michael Flynn
9 either.

10 Q. Okay. So worked on trying to put something together on
11 Papadopoulos; didn't go anywhere, correct?

12 A. Correct.

13 Q. And they worked on Carter Page?

14 A. Correct.

15 Q. Now, I want to ask you about the investigation related to
16 Carter Page prior to the date of September 19th, all right?
17 Do you recall whether or not September 19th of 2016 was a
18 significant date for the Carter Page investigation?

19 A. Yes.

20 Q. Now, what was it about September 19th that was of
21 significance based on your personal knowledge?

22 A. That was the date that the Crossfire Hurricane team
23 received the information that is collectively known as the
24 Steele dossier.

25 Q. Okay. So prior to September -- prior to September 19th

1 of 2016, had the FBI been successful in putting anything
2 together for a FISA application on Carter Page or not?

3 A. So the FBI had put material together, but had not
4 actually achieved the ability to go in front of the court
5 and -- and secure.

6 Q. And that inability, in fact, was because they hadn't been
7 able to put together probable cause to go to a federal judge
8 to ask for a FISA warrant, right?

9 A. That was my understanding.

10 Q. So --

11 MR. ONORATO: I'm just going to object. The witness
12 doesn't have firsthand knowledge. He's speculating and I
13 think you should strike that.

14 MR. DURHAM: Well, I can clarify.

15 BY MR. DURHAM:

16 Q. Is that based on your personal knowledge, prior to
17 September 19th, they had not been able to put it together?

18 A. I am aware that they had not been able to go in front of
19 the court with anything.

20 Q. Okay. So September 19th arrives, and remind the jurors
21 what happened on September 9th [sic] of 2016?

22 A. September 19th of 2016, the Crossfire Hurricane team
23 began to receive the reports that are -- some of the reports
24 that are collectively known as the Steele dossier.

25 Q. Now, the jurors are going to hear -- the jury is going to

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1 hear a lot about the Steele dossier. Let me ask you, what
2 is -- what is that? What's parochially known as the Steele
3 dossier? Is it a single report? Is it made up of many
4 reports? Describe it to the jurors.

5 A. It is a set of reports that were -- originated, came to
6 the FBI via a -- well, information that came to the FBI
7 originating from Christopher Steele's organization or
8 businesses -- or his business intelligence.

9 Q. All right. And let's drill down just a little bit on
10 that. With respect to the Steele dossier, you made reference
11 to Christopher Steele, correct?

12 A. Yes.

13 Q. Is Christopher Steele a United States citizen?

14 A. No, he is not.

15 Q. Where is Christopher Steele from?

16 A. He is from the U.K.

17 Q. And with respect to Christopher Steele, is he an
18 associate of a particular business entity?

19 A. Yes.

20 Q. And what was that business entity?

21 A. Orbis Business Intelligence.

22 Q. And with respect to Orbis Business Intelligence, do you
23 know what kind of work they did?

24 A. A number of things with respect to analysis, legal work
25 for banks, things of that sort.

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1 Q. All right. Now, you told the jurors that the information
2 from the Steele reports, you say, started to come in, correct?

3 A. Correct.

4 Q. I'm going to drill down a little bit on that.

5 Did the FBI, to your personal knowledge, receive all
6 the Steele reports at the same time?

7 A. No.

8 Q. Describe to the jurors how they started to come in.

9 A. So initially, they came in -- well -- the reports came in
10 early on, and then the Crossfire Hurricane team received them
11 later. I believe there were two reports that came in to us at
12 that point. And then, we started to receive other reports
13 across from other different entities. Not just from -- not
14 just from sources, but from journalists and the like.

15 Q. So let's get down a little bit more detail about that.

16 You've told the jurors that the reports didn't
17 initially come to the Crossfire Hurricane folks, correct?

18 A. Correct.

19 Q. How, based on your personal participation in the
20 investigation, did they first come in?

21 A. My understanding is this actually comes from the IG
22 report. And my understand -- sorry.

23 Q. Okay. You don't have to testify upon that report.

24 A. Okay. Okay.

25 Q. Do you know whether or not, or at a point in time prior

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1 to the Crossfire Hurricane team getting the reports, whether
2 some of those reports -- this just calls for a "yes" or "no."

3 A. Right.

4 Q. Had been received by anybody in the FBI?

5 A. Yes.

6 Q. Okay. And do you know who that person was?

7 A. Mike Gaeta.

8 Q. And is Mike Gaeta someone that you worked with during the
9 course of the Crossfire Hurricane proceedings?

10 A. Yes, for a time.

11 Q. Well, at the time that Mike Gaeta got -- where is Mike
12 Gaeta located, if you recall?

13 A. In Rome.

14 Q. All right. So do you have personal knowledge as to who
15 Gaeta got them from?

16 A. Yes.

17 Q. And who is that?

18 A. That would be from Christopher Steele.

19 Q. Okay. So Christopher Steele visited Gaeta in Rome,
20 correct?

21 A. Correct, yes.

22 Q. And therefore, it takes some period of time to get from
23 Rome to the Crossfire Hurricane team?

24 A. Correct.

25 Q. And that's in September of 19th of 2016?

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1 A. Correct.

2 Q. Once those reports have been -- let me -- you also told
3 the jurors that some of the reports came in subsequent to the
4 initial reporting, correct?

5 A. Correct.

6 Q. Did you make reference to the reports having been given
7 to journalists?

8 A. Yes.

9 Q. What's the basis of your knowledge for that?

10 A. Understood that they came from journalists, and I believe
11 that there was discussion among the team that some come in.

12 Q. Okay. With respect to what the FBI got directly from
13 Steele, did you, yourself, have occasion to see that
14 reporting?

15 A. Yes.

16 Q. And what, if any, involvement did you then have, sir, in
17 the preparation process relating to FISA application being put
18 together to cover Carter Page?

19 A. So my analysts help to gather material, and to assist
20 with providing language for the application.

21 Q. And once the -- once the Steele dossier reporting started
22 coming in, do you recall, sir, whether or not the FBI was able
23 to move ahead to put together a FISA application to submit to
24 a federal judge on the FISA court?

25 A. The FISA was submitted after receipt of this deal

1 reporting, yes.

2 Q. Do you recall, sir, whether or not any information from
3 the Steele reports were included in the FISA application that
4 now could move forward?

5 A. Yes.

6 Q. And what's the basis of your knowledge that the
7 information from the dossier reports were then included in the
8 FISA application?

9 A. I've read the FISA applications.

10 Q. All right. Do you recall offhand, as you're here now,
11 when that FISA application was submitted to the FISA court?

12 A. It was October 21st, I believe, 2016.

13 Q. All right. So, now, I want to focus your attention on
14 the period of time between September 19th and October 21st,
15 okay?

16 Let me ask you, sir, first, whether or not -- what,
17 if any, efforts you are personally aware of were undertaken by
18 the FBI to verify or corroborate any of the allegations that
19 were contained in those dossier reports that the FBI was
20 including in a FISA application on a United States citizen.

21 A. Myself and my analysts were -- were busy attempting to go
22 through the material to look through FBI systems to determine
23 whether or not we could verify, corroborate, confirm, or
24 disconfirm the information in those reports.

25 Q. And between September 19th of 2016 and October 21st, when

1 the FBI submitted the FISA application, were you able to
2 confirm or corroborate in any of the FBI system the very
3 serious allegations that were contained in dossier reports?

4 A. No.

5 Q. A separate part from the FBI checking its data banks, its
6 files, do you recall whether or not the FBI, to your personal
7 knowledge, inquired of other members of the Intelligence
8 Community to see whether any of those other members of the
9 Community might have information that would corroborate the
10 information in the dossier?

11 A. Yes.

12 Q. And to -- do you have any personal knowledge?

13 A. I do.

14 Q. And what can you tell the jurors about whether or not any
15 of the intelligence agencies that the FBI contacted for
16 corroborative information produced any corroborative
17 information?

18 A. We did receive information back from a number of
19 different agencies.

20 Q. Then, as to the information that you received back from
21 the agencies, did they corroborate the specificity of specific
22 allegations that were contained in the dossier reports?

23 A. Not corroborating the specific allegations, no.

24 Q. Do you have any personal knowledge whether or not between
25 September 19th of 2016 and October 21st of 2016, whether or

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1 not any attempts -- this calls for a "yes" or "no" -- were any
2 attempts made by the FBI to meet with Christopher Steele to
3 try to vet this reporting that was in the dossier reports that
4 had been received up to that point in time?

5 A. Yes.

6 Q. What's the basis of your knowledge?

7 A. I went to actually help to interview Christopher Steele.

8 Q. Did you go alone or did you go with other persons?

9 A. No, I went with other persons.

10 Q. And who else did you go with?

11 A. I went with Mike Varacalli, who is a special -- a
12 supervisory special agent. I went with -- Mike Gaeta was
13 there, Special Agent. Ben Guessford was there as well,
14 Special Agent, and myself.

15 Q. And how about who is the actual applicant on the -- that
16 first initial FISA application, the October 21st?

17 A. The actual affiant?

18 Q. Yes, If you know.

19 A. I believe his first name is Brandon. I can't remember
20 his last name.

21 Q. Okay. At that time, bureau protocol of the affiant, the
22 person signing the thing, wasn't actually the most active
23 participant, correct?

24 A. Correct.

25 Q. Do you remember -- do you remember an individual by the

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1 name of Steve Somma?

2 A. Yes.

3 Q. And who is Steve Somma?

4 A. Steve Somma was one of the agents who was on the
5 Crossfire Hurricane team.

6 Q. And did Somma go with you as well to meet with -- Mr.
7 Steele or not?

8 A. No, he did not.

9 Q. Okay. So it was yourself, Mr. Varacalli, and Mr. Gaeta?

10 A. Mr. Gaeta and then Mr. Guessford.

11 Q. And Mr. Guessford. Okay.

12 So when did that occur?

13 A. The beginning of October 2016.

14 Q. All right. So several weeks before the application was
15 actually submitted?

16 A. Correct.

17 Q. Did you, yourself, have any particular focus for the
18 meetings that you had with Mr. Steele in early October of
19 2016?

20 A. My main role was to ask about Christopher Steele's
21 sources, and any type of information that would help us to
22 understand and better understand and better corroborate the
23 material that we received.

24 Q. Okay. So to help the jury out here, you were interested
25 in the sources of the information, correct?

1 A. Correct.

2 Q. And you are interested in corroborative information?

3 A. Correct.

4 Q. Okay. So any other focus other than those two generally
5 that you can recall?

6 A. Other focus would be to, again, see if Mr. Steele could
7 provide any other information that would help to move this
8 case forward.

9 Q. Let me ask you this first about corroborative
10 information. When you and Mr. Varacalli, and Mr. Gaeta, and
11 Mr. Guessford met with Christopher Steele in early October of
12 2016, did Christopher Steele provide any corroborative
13 information for the information that was contained in his
14 reports, in the dossier reports?

15 A. Not for the allegations, no.

16 Q. Do you recall, sir, whether or not in that regard, if the
17 FBI when they met with Mr. Steele in early October of 2016,
18 offered Mr. Steele any type of incentive to provide
19 corroborative information?

20 MR. ONORATO: Objection.

21 THE COURT: Let me see counsel.

22 (Side bar.)

23 THE COURT: What's the objection?

24 MR. ONORATO: So the objection is they are going to
25 say -- I think the answer to the question is going to be they

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1 offered him a million dollars or some extraordinary amount of
2 money. They didn't provide proper information. So --

3 MR. DURHAM: Your Honor, this was offered because
4 Counsel clearly has indicated he's going to make an issue out
5 of what the agent, at various points in time, said to
6 Mr. Danchenko. For example, in January and then with the LA
7 Times when Mr. Danchenko was meeting with Mr. Helson.

8 The government wants to present, in crystal clear
9 terms, to this jury that from the very beginning the FBI was
10 inquiring about any corroborative information, any source of
11 information, who the sub-sources were, what kind of
12 information or evidence they might have that is corroborative.
13 And it's all part of the particular pattern by the same
14 people.

15 THE COURT: I'm going to let it in.

16 MR. ONORATO: The only point to make, Your Honor, is
17 that why didn't they just ask Agent Auten whether he was of
18 (indiscernible) with Mr. Danchenko.

19 THE COURT: I'm assuming Mr. Durham is going to get
20 to that. I'm going to let it in.

21 MR. DURHAM: Thank you, Your Honor.

22 (Open court.)

23 BY MR. DURHAM:

24 Q. So, let me ask you again: Do you recall whether or not
25 when you and the other FBI personnel met with Mr. Steele in

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1 early October and he wasn't able to provide any corroborative
2 information at all regarding the substantive claims in the
3 dossier, whether or not the FBI offered Mr. Steele some type
4 of incentive to be able to provide any corroborative
5 information of what was in those reports?

6 A. Yes, it did.

7 Q. And what was it -- tell the ladies and gentlemen of the
8 jury what it is that the FBI offered Mr. Steele for any
9 corroborative information.

10 A. Mr. Steele was offered anywhere up to a million dollars
11 for any information, documentary, physical evidence, anything
12 of that sort which could help to prove the allegations.

13 Q. At any time when you were overseas meeting with Steele in
14 early October, did he provide anything?

15 A. He did not.

16 Q. At any time after the October meeting with Mr. Steele and
17 after the million dollars-plus had been offered as an
18 incentive to provide corroborative information for what was in
19 those reports, did he provide any corroborative information?

20 A. No.

21 Q. You had indicated that a second principle purpose or
22 focus of the meeting was to try to identify the sourcing of
23 the information, correct?

24 A. Correct.

25 Q. Explain to the jurors why you and your colleagues were

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1 interested in the sourcing.

2 A. Well, the sourcing is important because the reports have
3 significant allegations, individuals who are mentioned in the
4 reports, and the key to be able to track back exactly whether
5 or not the information is accurate, true, whether or not the
6 individuals who are mentioned in the reports have the accesses
7 to actually have the information, whether it is in the
8 reports, etc.

9 Q. And was the FBI -- well, let me retract and ask you
10 personally: Were you personally only interested in drilling
11 down on, trying to get source of information in early October
12 of 2016, or was that a continuing concern on your part?

13 A. That was a continuing concern.

14 Q. How about your colleagues, were they similarly
15 continually interested in trying to develop source
16 information?

17 A. Yes.

18 Q. To the best of your ability, did you try to elicit or
19 learn from people that you were meeting with, talking to about
20 the dossier, what the sourcing was?

21 A. Yes.

22 Q. Any doubt in your mind about that?

23 A. No.

24 Q. Do you recall any instance in which you met with anybody
25 trying to develop information about the sourcing, where the

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1 person seemed confused about what you were asking?

2 MR. ONORATO: Your Honor, I'm going to object.

3 THE COURT: I'm going to sustain that objection. Go
4 ahead.

5 BY MR. DURHAM:

6 Q. So you talked to Mr. Steele about sourcing. Do you
7 recall whether or not Mr. Steele, in early October of 2016
8 provided you or your colleagues with the names of any of the
9 sources?

10 A. Sources, no.

11 Q. Do you recall, sir, whether or not he provided any
12 information at that time concerning the types of persons as
13 opposed to the persons' names?

14 A. Yes. There were source characterizations, but no source
15 names.

16 Q. But not any of the sources themselves?

17 A. No.

18 Q. Did you learn in October of 2016 whether there were
19 multiple sources who were behind the information or who had
20 provided the information in the reports or if there was a
21 principle source?

22 A. Our --

23 MR. ONORATO: I'm going to object as to hearsay.
24 I'm not sure where this is going.

25 THE COURT: Okay. Go ahead. Establish a

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1 foundation.

2 MR. DURHAM: Yes, Your Honor.

3 BY MR. DURHAM:

4 Q. Without telling us what Mr. Steele may have said about
5 that --

6 A. Okay.

7 Q. -- do you recall, sir, after the meeting in early October
8 of 2016 with Mr. Steele, whether or not you and your
9 colleagues began to undertake any particular effort to try to
10 identify?

11 A. Yes. I would say that we were attempting to identify all
12 of the potential sources that we could file those reports.

13 Q. And did you have any -- some understanding as to whether
14 there was a principle source?

15 A. Eventually, yes.

16 Q. Okay. And what can you tell the jurors about that, that
17 is the sourcing of the dossier reports? What can you tell the
18 jurors about what you were able to determine?

19 A. Well, eventually, what we -- the FBI was able to
20 determine by late December of 2016 was that it was one
21 particular individual who was talking to other individuals for
22 material that were in the reports.

23 Q. With respect to the October meeting with Steele before
24 the FBI applied to the FISA court for coverage on a United
25 States citizen, he had not provided any source information to

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1 you other than maybe by position, not by name?

2 A. Source characterizations, yes.

3 Q. Let me ask you this: With respect to your meeting with
4 Mr. Steele in early October of 2016, do you recall whether or
5 not the name Sergei Millian came up?

6 A. Yes.

7 Q. And how did that come up?

8 A. Sergei Millian's name came up as --

9 MR. ONORATO: Your Honor, I'm going to object.

10 THE COURT: Overruled. Go ahead.

11 BY MR. DURHAM:

12 Q. With respect to Sergei Millian, whatever you learned from
13 Mr. Steele in October of 2016, what, if anything, did you and
14 your colleagues do regarding Sergei Millian?

15 A. Out of what we learned from Steele or from -- or what
16 came up before --

17 Q. Based on what you knew. Let's not worry about hearsay
18 from Steele.

19 A. No, no. I mean --

20 Q. What did you learn?

21 A. Millian's name came up in the course and scope of the
22 investigation prior to us talking to Mr. Steele.

23 Q. Okay. So -- and this just calls for a yes or no. Did
24 you have a -- in your meetings with Steele, did Sergei
25 Millian's name come up?

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1 A. Yes.

2 Q. Okay. So you discussed what you discussed with him, that
3 is, you discussed with Steele? I'm not asking what Steele
4 said to you.

5 A. Sergei Millian's name came up in the discussion.

6 Q. All right. Now, you told the jurors at this point no
7 corroborative information and no source information given up
8 by Steele. Do you recall whether or not Mr. Steele provided
9 any other information to you about, not sources for the
10 dossier, but people who might be knowledgeable about some of
11 these matters relating to the Trump campaign and Russian?

12 A. Yes.

13 Q. Do you remember who any of those persons -- those names
14 were?

15 A. Those names included Charles Dolan, Stephen Kupka, and
16 there was one other -- I can't remember, sorry.

17 Q. If you heard it, would you know?

18 A. Yes.

19 Q. What about Greg Harley?

20 A. Yes, Greg Harley, yes.

21 Q. So Charles Dolan, Stephen Kupka, and Greg Harley?

22 A. Yes.

23 Q. All right. But they weren't identified as sources?

24 A. Correct.

25 Q. Okay. At the time that the FBI completed its visit with

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1 Mr. Steele in October of 2016, had the FBI been able to
2 identify or confirm the identity of Steele's primary
3 sub-source -- Steele's primary source?

4 A. No.

5 Q. And the same question relating, not to the primary
6 source, but to the primary source's sub-sources; have you been
7 able to confirm the identity of any of those persons?

8 A. No.

9 Q. Now, you've told the jurors that the bureau, the FBI, had
10 not been able to corroborate information from the dossier
11 reporting, but some of it -- some of that information was
12 included in the FISA application, correct?

13 A. Correct.

14 Q. And what is the basis of your knowledge that this
15 uncorroborated information went into the FISA application?

16 A. Again, I've read the applications.

17 Q. Do you remember which portions of the reporting went into
18 the FISA application?

19 A. I don't know if I could rattle off all, you know, each
20 and every -- each and every example or portion, but --

21 Q. Fair enough. I'm going to ask the court security
22 officer, if you would, to provide you with a binder. I'd ask
23 you to take a look at what we've premarked as Government's
24 Exhibit 109 for identification.

25 A. Yes.

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1 MR. DURHAM: May I just -- Your Honor, may I just
2 consult with counsel for a moment?

3 THE COURT: Yes.

4 (Counsel confers.)

5 BY MR. DURHAM:

6 Q. 109, would it be a fair statement that there are a couple
7 different versions in there?

8 A. Correct, yes.

9 MR. DURHAM: Your Honor, this is the matter that
10 defense counsel and the government raised to the Court today.
11 Would it be helpful to the Court if we were to provide
12 additional copies to Your Honor?

13 THE COURT: Yes.

14 MR. DURHAM: Okay. Your Honor, in looking at the
15 two versions -- Your Honor, we previously provided copies to
16 counsel, but I don't think they have it in their binder for
17 some reason, so we're trying to just get an additional copy if
18 the Court will bear with us.

19 THE COURT: All right.

20 (A pause in the proceedings.)

21 MR. ONORATO: So, Your Honor, this is a document
22 that we discussed this morning in terms of -- the Court made
23 the ruling before we go too further.

24 THE COURT: Well, I'm not clear what role that it's
25 going to play for this witness. Why don't you ask the

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1 question.

2 MR. DURHAM: Yes, Your Honor.

3 BY MR. DURHAM:

4 Q. Sir, looking at Government's Exhibit 109 -- well, first,
5 look at the whole document. Are you familiar with that
6 document?

7 A. Yes, I am.

8 Q. With respect to that document, what is it?

9 A. It is one of the Orbis reports. It's listed as company
10 intelligence report 2016/095.

11 Q. Okay. And with respect to that document that's in front
12 of you, does it contain information, number one, that was
13 subsequently taken and used in the FISA application that was
14 submitted to a federal judge on October 21st of 2016?

15 A. Yes, I do recognize some of the language.

16 Q. And with respect to the information that's contained in
17 Government's Exhibit 101, which, again, is dossier report
18 number 2016/095, are you familiar with that information, that
19 is, something that's normal to you from having used it
20 previously?

21 A. What -- am I familiar with what's in this report?

22 Q. Yes, sir.

23 A. I am, yes.

24 Q. Okay. Do you recall, sir, and we're going a little bit
25 out of order here, but just to maybe set up a little bit more

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1 of a stage, at some point in time, did you have occasion to
2 talk to Mr. Danchenko?

3 A. Yes.

4 Q. And with respect to the Government's Exhibit 109, did you
5 have occasion to show that to Mr. Danchenko?

6 A. Not show it to Mr. Danchenko, but to discuss it with
7 Mr. Danchenko.

8 Q. To -- I'm sorry.

9 A. Not to show it to Mr. Danchenko, but to discuss it with
10 Mr. Danchenko.

11 Q. Okay. And at the time you talked with Mr. Danchenko --
12 and, again, we're skipping ahead a little bit here -- did
13 Mr. Danchenko have his own set of the Steele dossier reports?

14 MR. ONORATO: I'm going to object.

15 THE COURT: Sustained. You need to lay a
16 foundation. You need to lay a foundation.

17 MR. DURHAM: Yes, Your Honor.

18 BY MR. DURHAM:

19 Q. Were you -- were you -- at a subsequent time, you and a
20 colleague met with Mr. Danchenko, correct?

21 A. Correct.

22 Q. And you interviewed him?

23 A. Correct.

24 Q. At that time, when you personally interviewed him, this
25 would have been in January of 2017, we'll talk about it in

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1 more detail shortly, but when you met with him, at that time,
2 did he have a copy of the dossier reports with him?

3 A. My recollection is that he had a copy of it with him.

4 Q. Right. And with respect to the set of dossier reports he
5 had with him, to your recollection, maybe you recall, maybe
6 you don't, did he have -- were there markings, that is
7 handwritten markings, on the dossier reports?

8 A. I recall that he had a document -- dossier with marks on
9 it.

10 MR. DURHAM: We're off of 109, Your Honor. There
11 are two versions -- I think there are two versions sort of
12 competing, redacted versions.

13 THE COURT: All right. I don't think we're there
14 yet with this witness. I'm going to reserve on that -- on
15 that exhibit.

16 MR. DURHAM: Okay.

17 THE COURT: Let me see counsel at the bench.

18 MR. DURHAM: Yes, Your Honor.

19 (Side bar.)

20 THE COURT: At this point is that the recalls that
21 Mr. Danchenko had documents and the dossier with some writings
22 on it. He hasn't specifically identified this document nor
23 has he identified any specific information that he reviewed it
24 from this document. And I think that's necessary before this
25 document really becomes relevant. All right.

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1 MR. DURHAM: Just to let the Court know where
2 government is going on this. What we're principally
3 interested in, at this point, we'll get to later in his
4 testimony, broader than that. What we are principally
5 interested in right now is the -- if I might --

6 THE COURT: This is your version?

7 MR. DURHAM: Is this information that we've
8 prepared. That's the information I want to ask him about
9 right now.

10 THE COURT: Okay.

11 MR. DURHAM: Perhaps what we can do is we could
12 offer that version now --

13 THE COURT: This one.

14 MR. DURHAM: -- and then if we get to the second
15 part then --

16 THE COURT: All right. Let's do that.

17 MR. ONORATO: My assumption is that you want to say
18 that this information went into the FISA.

19 MR. DURHAM: FISA.

20 MR. ONORATO: We have no objection to that.

21 THE COURT: What I will do is I'll admit the
22 defendant's version and then if there's a proper foundation,
23 we'll supplement it.

24 MR. DURHAM: Okay. Maybe we will mark this as 109A
25 and we'll mark it 109B, if it's admitted later.

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1 THE COURT: That's fine. All right.

2 MR. DURHAM: Thank you.

3 THE COURT: Should I hold on to those? Are these
4 your copies or mine?

5 (Discussion off the record.)

6 (Open court.)

7 MR. DURHAM: Perhaps if --

8 THE COURT: Let me give these to you. I put an A
9 next to the one you wanted to use. That's admitted.

10 MR. DURHAM: Your Honor, may I ask permission for
11 the court security officer to provide to the witness what
12 we've marked, with the Court's assistance, of course, as
13 Government's Exhibit 109A?

14 THE COURT: Yes.

15 MR. DURHAM: May I proceed, Your Honor?

16 THE COURT: Yes.

17 BY MR. DURHAM:

18 Q. Sir, looking at what's marked as Government Exhibit 109A.
19 Again, what is that?

20 A. This is a company intelligence report 2016/095.

21 Q. And with respect to the -- is that a complete copy or
22 does that have some information, which for now, is blacked
23 out?

24 A. This is a redacted copy.

25 Q. Okay. With respect to what you're looking at,

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1 Government's Exhibit 109A, can you tell ladies and gentlemen
2 of the jury whether or not it contains information which the
3 FBI then used in the Carter Page FISA application that was
4 submitted to a federal judge on October 21 of 2016?

5 A. Yes, it does.

6 MR. DURHAM: I'm going to offer 109A as an exhibit,
7 Your Honor.

8 THE COURT: All right. Without objection, 109A is
9 admitted.

10 (Government's Exhibit No. 109A admitted into evidence.)

11 MR. DURHAM: All right. With the Court's
12 permission, I'm going to ask that the court security officer
13 pull that up on the monitors for the jury.

14 THE COURT: Yes. Yes. It may be published.

15 (Exhibit published.)

16 BY MR. DURHAM:

17 Q. Now, Mr. Auten, the jurors can now see Government's
18 Exhibit 109A so they can read it. But for purposes of the
19 written record --

20 MR. DURHAM: Wondering if we could just have one
21 moment just see if we could maybe blow that up. Court
22 security officer, could you blow that up for the jurors?

23 BY MR. DURHAM:

24 Q. Okay. So for our purposes here, the jurors can see it so
25 they can read for themselves, but for the written record, can

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1 you read into the record what 109 is, starting at the top.

2 A. 109 is Company Intelligence Report 2016/095.

3 Q. And then, with respect to the next line, what the heading
4 is.

5 A. [As read]: Russia/U.S. Presidential Election: Further
6 Indications of Extensive Conspiracy Between Trump's Campaign
7 Team and the Kremlin.

8 Q. Now, there's a particular paragraph, it's Paragraph No. 1
9 in the document, that the jurors are seeing, correct?

10 A. Correct.

11 Q. And read that into the record, if you would.

12 A. [As read]: Detail 1, speaking in confidence to a patriot
13 in late of July 2016. Source E, an ethnic Russian close
14 associate of republican US presidential candidate, Donald
15 Trump, admitted that there was a well-developed conspiracy of
16 cooperation between them and the Russian leadership. This was
17 managed on the Trump side by the republican candidate's
18 campaign manager, Paul Manafort, who was using foreign policy
19 advisor, Carter Page, and others as intermediaries. The two
20 sides had a mutual interest in defeating democratic
21 presidential candidate Hillary Clinton, whom president Putin
22 apparently both hated and feared.

23 Q. Now, with respect to that information, what is that --
24 the information contained in Paragraph 1, was that information
25 incorporated in large part FISA application against Carter

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1 Page?

2 A. Yes, there were portions of it that were incorporated in
3 the FISA, yes.

4 Q. And with respect to this report, had the FBI been able to
5 corroborate anything, any of that information?

6 A. At that time, not corroborating the main allegations, no.

7 Q. And, in fact, at that time, other than the dossier report
8 saying this, the FBI didn't have any evidence of that,
9 correct, nothing to corroborate that?

10 A. Not that I recall, no.

11 Q. Now, you were the person that had, probably, the most
12 knowledge about the materials matters at the time, correct?

13 A. I don't know if I would say the most knowledge, I was one
14 of them that had knowledge.

15 Q. Okay. Do you recall, sir, whether or not, you told the
16 jurors that the dossier material came in and started to come
17 in on September 19, correct?

18 A. Correct.

19 Q. This information was included in the FISA application,
20 correct?

21 A. Correct.

22 Q. Do you recall, sir, whether or not this information, this
23 allegation, which had not been corroborated in any way when
24 the application was submitted in October, right, was that an
25 important part of the FISA application that was filed against

1 the United States citizen Carter Page?

2 A. So, I would not be in a position to make that assessment.
3 I'm not a lawyer so I wouldn't be able to judge with respect
4 to where this cuts with respect to probable cause.

5 Q. Okay. And my question was whether or not that played a
6 significant part. I didn't ask you if it was -- what role
7 played in probable cause.

8 Was this an important piece of information that was
9 included in that application?

10 A. Yes, it was.

11 Q. And it was uncorroborated?

12 A. Correct.

13 Q. It was submitted to the -- with that information, that
14 the jurors are looking at 109A was submitted to a federal
15 judge in federal court, to the best of your knowledge, did the
16 FBI have any information in its data banks that was
17 corroborative of that assertion?

18 A. Not to my recollection.

19 Q. Now, I want to focus your attention even more
20 specifically, if I might, on certain parts of that. You told
21 the jurors that in early October, you and the FBI had gone to
22 London, correct?

23 A. Correct. Can you go back again, please?

24 Q. I'm sorry. I said London. You went overseas, correct?

25 A. Correct.

1 Q. It was actually a city other than London?

2 A. That is correct.

3 Q. Okay. And do you recall whether or not -- withdrawn.

4 You had told the jurors also that the name Millian
5 had come up when you were over there, correct?

6 A. Correct.

7 Q. Now, this just calls -- so that's yes, but you can't tell
8 us what Mr. Steele said, okay? So I'm not asking you to tell
9 us what Steele said.

10 But will you tell the jurors whether or not the FBI
11 took some action -- I started to touch on this before -- once
12 you returned from overseas after having spoken to Mr. Steele.

13 A. Yes, we continued to try and vet the material and
14 continue to do searches and the like, mining open source,
15 mining classified material to see if we can corroborate.

16 Q. Okay. Now, Sergei Millian in October of 2016, was that a
17 name that was familiar to you?

18 A. Yes.

19 Q. Was he a person, to your knowledge, who had interacted
20 with the FBI?

21 A. Yes.

22 Q. Do you recall, again, to your personal knowledge, whether
23 or not Sergei Millian had some type of a relationship --

24 MR. ONORATO: Objection.

25 THE COURT: Let me hear -- let me hear the question.

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1 MR. DURHAM: Whether or not Mr. Auten has personal
2 knowledge if Mr. Millian had some type of relationship with
3 the FBI.

4 THE COURT: All right. Overruled, you may answer.

5 A. Yes.

6 BY MR. DURHAM:

7 Q. And what was that relationship?

8 A. Mr. Millian, at one time, had been a source.

9 Q. When you say "source," that's the same thing as
10 confidential human source, correct?

11 A. That is correct.

12 Q. In common parlance, might be known as an informant?

13 A. In common parlance, yes.

14 Q. And do you remember for how long Mr. Millian had been a
15 confidential human source for the FBI?

16 A. I don't recall that.

17 Q. Do you recall or do you know in German what the nature of
18 the assistance was that Millian provided?

19 A. I know where he had provided the assistance. I don't
20 know exactly what type of assistance it had been.

21 Q. Okay. So you know that he has helped as a CHS?

22 A. Correct.

23 Q. For a period of time?

24 A. Correct.

25 Q. And you said you knew where he was providing that

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1 information?

2 A. Correct.

3 Q. And where was that?

4 A. I believe it was the Atlanta -- the Atlanta field office.

5 Q. Okay. Do you know, again, personal knowledge, do you
6 know whether or not at some point in time Millian's status as
7 a CHS ended, he was closed?

8 A. Yes.

9 Q. And why was it closed, if you know?

10 A. I believe it was closed because he moved out of the area
11 of responsibility for the Atlanta field office.

12 Q. Now, with respect to Mr. Millian, you heard about Millian
13 from Steele, you knew he had a relationship with the bureau,
14 correct?

15 A. Correct.

16 Q. Do you recall whether or not Mr. Millian was involved
17 with any kind of -- with any particular business entity?

18 A. Yes.

19 Q. And what was that?

20 A. It was the Russian American Chamber of Commerce, if I
21 recall correctly.

22 Q. Okay. So he's -- do you remember what his role was, his
23 position was?

24 A. I want to say president, potentially.

25 Q. So Mr. Millian was the president of the Russian American

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1 Chamber of Commerce, correct?

2 A. Yes.

3 Q. And he had been a bureau informant?

4 A. Yes.

5 Q. With respect to Mr. Millian, do you recall, sir, whether
6 or not, again, your personal knowledge based on your personal
7 participation in these matters, if Mr. Millian had a
8 particular view of Mr. Trump?

9 A. With respect to what I knew when?

10 Q. Let's say in October of 2021.

11 A. I don't recall whether I knew in October of -- whether I
12 knew he had a particular position on the president.

13 Q. So this just calls for a yes or no: At some point in
14 time, did you learn whether or not Mr. Millian had a
15 particular perspective on the Trump candidacy?

16 A. Yes, at some point, I did.

17 Q. And what was Mr. Millian's view; is he a supporter of
18 Mrs. Clinton, is he a supporter of Trump, he was someplace in
19 between? What do you recall?

20 A. I recall he was a supporter of Trump.

21 Q. He was a Trump supporter, correct?

22 A. Correct.

23 Q. And he had been a bureau informant, correct?

24 A. Correct.

25 Q. Do you recall, sir, based on his name having come up when

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1 you were overseas talking to Steele -- and I think you had
2 indicated some things that happened before that -- he was a
3 person of interest, correct?

4 A. Correct.

5 Q. Would you tell the ladies and gentlemen of the jury
6 whether or not -- again, to your personal knowledge -- whether
7 or not the bureau opened some file on Mr. Millian?

8 A. Yes.

9 Q. And was that a matter investigated by the Bureau?

10 A. Yes.

11 Q. And to your personal knowledge, was it at some point
12 closed?

13 A. Yes.

14 Q. Were any charges brought against Millian?

15 A. No.

16 Q. Was there any wrongdoing in terms of him assisting in the
17 interference in some way with the 2016 presidential election?

18 A. No.

19 Q. The -- Millian's name had been provided to you by Steele
20 in October, correct?

21 A. Correct.

22 Q. Do you know if Mr. Millian has dual citizenship? Do you
23 know whether he does or he doesn't?

24 A. I don't know offhand whether he does or doesn't.

25 Q. Do you recall -- or do you know whether or not

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1 Mr. Millian any longer resides in the United States?

2 A. My understanding is that he doesn't.

3 MR. ^ : objection.

4 THE COURT: I'll let him answer. Go ahead.

5 BY MR. DURHAM:

6 Q. The Court said you can answer.

7 A. My understanding is that he's currently residing outside
8 of the United States.

9 Q. And do you know if he's been outside of the United States
10 for a number of years now?

11 A. That is my understanding.

12 Q. Okay. Do you recall -- this just calls for a yes or no
13 as well, and then I'll ask you a follow-up question -- do you
14 recall, sir, whether or not -- again, to your personal
15 knowledge -- not what somebody told you, but to your personal
16 knowledge -- at any time after you had been meeting with
17 Mr. Steele, did you personally receive any information about
18 Millian supposedly having provided some of the information
19 contained in the Steele dossier reports?

20 A. Could you clarify that, please?

21 Q. Absolutely. I'm sorry. That was probably way too
22 convoluted.

23 Aside from Mr. Steele, all right -- after you've met
24 with Steele, your colleagues have met with Steele in early
25 October 2016 --

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1 A. Right.

2 Q. -- where Millian's name came up, right, do you recall
3 whether or not you at any time received -- you personally
4 received information about Millian having purportedly provided
5 information that was contained in dossier reports?

6 A. I don't recall that.

7 Q. Do you recall whether or not you met with Mr. Danchenko
8 in January of 2017?

9 A. Yes, I do recall that.

10 Q. And did Mr. Danchenko raise Mr. Millian's name when you
11 met with him in January of 2017?

12 A. Yes, he did.

13 Q. But other than Steele and now Mr. Danchenko in January of
14 2017, do you recall anybody else saying that Mr. Millian was
15 somehow tied to the information that showed up in the dossier?

16 A. Not to my recollection.

17 Q. And if that were to have happened, somebody else was
18 talking about that, you would recall that, wouldn't you?

19 A. I believe so, yes.

20 Q. To your personal knowledge and recollection, was any of
21 the Millian information that was contained in that dossier
22 report 2016/095 included, not just the initial FBI submission,
23 FISA submission in October of 2016, but was it also contained
24 in subsequent applications submitted to a federal judge?

25 A. Yes, it was.

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1 Q. To continue surveillance on Carter Page, a United States
2 citizen, correct?

3 A. Correct.

4 MR. DURHAM: I'd ask that the court security officer
5 please show the witness Government's Exhibit 1205. Oh, I'm
6 sorry you have the whole book.

7 THE WITNESS: 1205.

8 BY MR. DURHAM:

9 Q. Do you have 1205 in front of you?

10 A. I do, yes.

11 Q. Do you recognize what 1205 is?

12 A. Yes, I do.

13 Q. What is Government's Exhibit 1205?

14 A. It is a copy of the -- well, the first page is a copy of
15 the verified application to the Foreign Intelligence
16 Surveillance Court, dated October 21, 2016.

17 Q. As you look at Government's Exhibit 1205, what's the
18 first page?

19 A. The first page is listed as a verified application with a
20 docket number.

21 Q. And do you recognize that form, that was ^ FISA
22 application ^ prepared and submitted to federal judges to
23 review, that's basically the format, correct?

24 A. I do recognize this format, yes.

25 Q. And then if you go through the balance of the pages,

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1 would you tell us what they are?

2 A. Yes. Page 20 has -- it is redacted, but it has an
3 unredacted portion.

4 Q. And with respect to the portion that's on page 20, do you
5 recognize it?

6 A. I do recognize it, yes.

7 Q. And do you know where that information came from?

8 A. So the -- it is quoted in citing, which would have been
9 report 095.

10 Q. Coming straight out of the Steele report, correct?

11 A. There's language from that report in this, yes.

12 Q. Okay. And then what's the next page of 1205?

13 A. Next one is an execution of -- or, sorry, a certification
14 page regarding the Carter Page FISA.

15 Q. In this instance, who signed that?

16 A. It is signed at the top by Director James Comey.

17 Q. All right. What's the next page?

18 A. The next page is an approval form that is redacted in
19 part.

20 Q. ^ this will be on signature or name?

21 A. It only bears the name of the actual subject.

22 Q. Okay. And what's the next page?

23 A. The next page is a signature page that would be the --
24 I'm not sure what you would call this, whether it was an
25 additional certification. I can't recall exactly.

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1 Q. All right. And then continuing.

2 A. Continuing is, again, a page that has material -- there
3 are some lines here and the subject's name is on those.

4 Q. Go on. And what's the balance of Government's
5 Exhibit 1205?

6 A. I'm sorry?

7 Q. What's containing the balance, the additional pages of
8 1205?

9 A. This would be the primary order and warrant.

10 Q. And is that signed by a federal judge, the second to the
11 next page?

12 A. Yes, that's correct.

13 MR. DURHAM: Your Honor, the government -- with that
14 foundation laid, we would offer 1205. I believe that the
15 parties have agreed that this is essentially redacted. This
16 entire application. It's pages that the witness has
17 identified.

18 THE COURT: Any objection?

19 MR. ONORATO: No, Your Honor.

20 THE COURT: Without objection, Government's
21 Exhibit 1205 is admitted.

22 (Government's Exhibit No. 1205, was received into evidence.)

23 MR. DURHAM: I would ask to put up Government's
24 Exhibit 1205. And if you would, if you could blow up the top
25 half of the page for the jurors, and then we can go to the

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1 bottom.

2 BY MR. DURHAM:

3 Q. Sir, you had indicated or told the jurors that with
4 respect to 1205, this is the verified application, correct?

5 A. Correct.

6 Q. And all government work has numbers on it, so in this
7 instance, it's Docket Number 16-1182, correct?

8 A. Correct.

9 Q. And is this the copy of the application, the FISA
10 application, that was submitted to the FISA court on Carter
11 Page?

12 A. Yes.

13 Q. And you recognize this is what these forms typically look
14 like, correct?

15 A. Correct.

16 Q. I'd ask that you go to page -- it's the second to third
17 page, but it has page 20 -- and I'd ask that you blow it up.

18 And, again, the jurors can see this, but for the
19 written record, will you read into the record the portion of
20 the exhibit you were referring to?

21 A. Yes. It starts off with a parenthesis U, which stands
22 for unclassified. According to information provided by
23 sub-source redacted. There was a, quote, well-developed
24 conspiracy of cooperation between them, bracket, assessed to
25 be individuals involved in the Candidate 1's campaign and a

1 Russian leadership. Sub-source redacted.

2 Q. Closed quote?

3 A. Closed quote.

4 Q. That's taken right out of the report, isn't it?

5 A. Yes.

6 Q. Okay. Can you keep reading?

7 A. [As read:] Sub-source redacted reported that the
8 conspiracy was being managed by Candidate 1's then-campaign
9 manager, who was using, among others, foreign policy advisor
10 Carter Page as an intermediary.

11 Q. Now, the jurors are looking at the first line where it
12 makes reference, According to information provided by
13 sub-source, and then it's redacted out, right?

14 A. Correct.

15 Q. It would be a fair statement that what's redacted out is
16 Source E?

17 A. Well, sub-source --

18 Q. Oh, I'm sorry, I'm sorry. That's right, that would be
19 the primary source?

20 A. Correct.

21 Q. And you learned the primary source was who? Steele's
22 primary sub-source was who?

23 A. Well, eventually, we learned --

24 MR. ONORATO: Your Honor, can we approach?

25 THE COURT: Yes.

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1 (Side bar.)

2

3 MR. ONORATO: So the information is redacted.

4 THE COURT: Right.

5 MR. ONORATO: And the notion is that he's going to
6 try to prove that Steele said something about Danchenko for
7 the truth of the matter asserted. I don't see why we need to
8 go beyond what the statement of the record is and that the
9 information that came from dossier 95 is within the document.

10 MR. DURHAM: I have a more fundamental objection to
11 my question.

12 THE COURT: Okay.

13 MR. DURHAM: Which is I said "sub-source C" which is
14 Millian, Your Honor. So I would sustain his objection, if I
15 were Your Honor.

16 THE COURT: Okay.

17 MR. ONORATO: You agree that it is E, is that the
18 idea? Your position is that it's sub-source E?

19 THE COURT: What's redacted?

20 MR. KEILTY: I don't think it's sub-source E.

21 MR. DURHAM: I'm pretty sure it's sub-source.

22 THE COURT: All right.

23 MR. ONORATO: Why don't we just say that the
24 language mirrors dossier 95 and then we move on. I thought
25 you were going to go down with the primary source.

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1 THE COURT: All right. Good.

2 (Open court.)

3 MR. DURHAM: Okay. If we could just put that back
4 up, please, sir.

5 BY MR. DURHAM:

6 Q. So we just got back on track here. So the language that
7 you just read into the record for the jury -- well, the jury
8 can read it ^ for the written record -- that comes straight
9 out of the dossier 216/095 that the jurors have looked at
10 previously?

11 A. There are portions of this that come from that, yes.

12 Q. Does that portion also contain the dossier information
13 from 095?

14 A. Yes.

15 Q. 095 relating to Carter Page's supposed role?

16 A. Yes, it does.

17 Q. On October 21, 2016, did the bureau have any information
18 to corroborate?

19 A. At that point, no.

20 Q. For the benefit of the jurors, was that FISA application
21 that was submitted to the FISA court and contained that
22 information relating to a well-coordinated conspiracy of
23 cooperation, was that granted by the Court based on what the
24 FBI had included in the application?

25 A. The application was accepted by the Court in the totality

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1 of what was in the application, yes.

2 Q. And that happened, again, on what date?

3 A. If I recall, it's October 21, 2016.

4 Q. On October 21 of 2016, to your knowledge, was Carter Page
5 an American citizen?

6 A. Yes.

7 Q. Would you tell the ladies and gentlemen of the jury,
8 after the bureau had submitted the FISA application on Mr.
9 Page on October 21 of 2016, if there were additional
10 applications made to the FISA court to continue that coverage
11 on Mr. Page?

12 A. Yes.

13 Q. And do you recall how many additional applications were
14 submitted?

15 A. There were three renewals.

16 Q. Do you recall, based on your knowledge of this case,
17 whether or not the bureau continued to include that same
18 information that's on page 20 of the original -- of the
19 initial application and in the subsequent FISA applications?

20 A. It was carried over into subsequent applications.

21 Q. Do you recall, sir, what the dates of the subsequent
22 orders were?

23 A. One was January of 2017, one was, if I recall correctly,
24 April of 2017, and then the other one was June of 2017.

25 Q. Are there any documents that might refresh your

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1 recollection as to the exact dates in those respective months?

2 A. Sure.

3 Q. I would ask you to take a look, if you would, sir, at
4 Government's Exhibit 1206, 1207 and 1208. And see if that
5 refreshes your recollection as to when the additional FISA
6 applications were submitted and approved.

7 A. The first renewal was on January 12 of 2017 per the date
8 stamp in 1206.

9 Q. All right. And if you would, in looking at -- while
10 you're going through it, just to be more expeditious about it,
11 would you indicate whether or not on that 1206, the
12 January 12, 2017, whether or not it contains the same language
13 relating to the -- the same language coming from the dossier
14 report 95?

15 A. Yes, on Pages 21 and 22.

16 Q. So that's one. But you indicated there was one in April,
17 correct?

18 A. Correct. That's listed in 1207.

19 Q. Does that refresh your recollection as to the date in
20 April?

21 A. Yes, I believe this says -- it's the -- the time stamp is
22 hard to read, but I believe it is April 7th or some -- it's
23 difficult to read actually.

24 Q. Perhaps if you just thumb through the document and get to
25 the signature page of the court's order, there will be more

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1 clarity.

2 A. Yes, it is date stamped the -- April 7, 2017.

3 Q. And as to Government's Exhibit 1207, the April 7
4 submission, would you indicate or tell the jurors whether or
5 not, once again, that same dossier information is included?

6 A. Yes, it is.

7 Q. Now, what pages, again, are the April 7th?

8 A. Pages 22 to 23.

9 Q. And then you said there was some applications submitted
10 in June of 17. Is there anything in Government's Exhibit 1208
11 that would refresh your recollection as to the exact date?

12 A. Yes, the time stamp is very difficult to read, but on
13 Page 100, it lists a signature of the Deputy Attorney General
14 of the United States with the date of 6/29/17, and it is time
15 stamped on Page 20, 6/29/2017.

16 Q. Okay. And with respect then to the information coming
17 from the dossier report, is that also in the June 29
18 application?

19 A. Yes, it is.

20 Q. And on what pages?

21 A. Page 24.

22 MR. DURHAM: Your Honor, we would move 1206, 1207,
23 1208. Again, these are redacted versions of the -- it has the
24 cover page and then the respected pages that Mr. Auten is
25 talking about.

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1 THE COURT: Any objection?

2 MR. ONORATO: No objection.

3 THE COURT: Without objection, Government Exhibits

4 1206, 1207, and 1208 -- is that correct -- are admitted.

5 (Government's Exhibits 1206, 1207 and 1208 were admitted into
6 evidence.)

7 MR. DURHAM: Perhaps Ms. Arsenault could just
8 quickly show the jurors the first page of each of those
9 exhibits, and blow it up, and then show the respective pages
10 reflecting, the dossier report information.

11 THE COURT: Yes.

12 BY MR. DURHAM:

13 Q. Okay. So that's the January 12 version, correct? That's
14 1206. That's identical language, correct?

15 A. Correct.

16 Q. And perhaps we can show the jurors. Same language?

17 A. Correct.

18 Q. And then 1208 from June 29th. Okay. Same language?

19 A. Same language.

20 Q. At any point in time between October 21 of 2017 and
21 June 29 of 2017, aside from that information being in the
22 dossier report, the Steele dossier report, had the bureau been
23 able to corroborate that information?

24 A. No.

25 Q. At the end of the period of surveillances, October 21 of

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1 '16, and then -- what was it -- a 90-day order in June, so
2 you're down another 90 days beyond that?

3 A. Correct.

4 Q. At the end of all of that surveillance with the FBI using
5 its most powerful investigative tool, was Carter Page charged
6 with any wrongdoing?

7 A. No, he was not.

8 Q. Now, I want to ask you: During that same time period
9 October 21 of '16, through the Page investigation, to your
10 knowledge, does the FBI -- was it backed in its efforts to try
11 to corroborate or confirm the information in the report?

12 A. I'm sorry. I missed the first part of that.

13 Q. Sure. There's not a well -- let me ask it this way.

14 Between October 21 of 2016 and when the FBI
15 submitted its fourth FISA applications on a United States
16 citizen, did the FBI continue to try to corroborate
17 information?

18 A. Yes, it did.

19 Q. It was never able to -- it didn't corroborate. That
20 information came from that dossier report, correct?

21 A. Correct.

22 Q. And is -- what efforts were taken by the FBI during that
23 period of time to try to corroborate that information?

24 A. Multiple investigative steps, analysis, and the like.

25 Q. You continued -- you said you had coordinated databases?

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1 A. Correct.

2 Q. Nothing?

3 A. Not confirming or corroborating that information, no.

4 Q. You had said, prior to (indiscernible), the initial FISA,
5 that you talked to intelligence partners in the United States,
6 anything they provided that was corroborative with --

7 A. Not corroborating -- excuse me. Not corroborating that
8 information.

9 Q. Would it be a fair statement that you and others made
10 additional trips to overseas to try to talk to Mr. Steele and
11 others to try to locate or identify corroborative information?

12 A. Are you talking in general people going over -- I mean --

13 Q. You, yourself, did you go over at all?

14 A. I did go over.

15 Q. And did -- were you able to get any corroborative
16 information through those efforts?

17 A. No.

18 Q. Now, I want to focus your attention not just on the --
19 trying to corroborate or finding corroborative information
20 during that period of time, you told the jury that when you
21 met with Steele in early October 2016, the second primary
22 focus of your effort was to try to identify sources.

23 It's important, you indicated, correct me if I'm
24 wrong, it's important to try to identify sources so they can
25 go to the sources and find out whether or not the information

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1 is valid or not. Fair statement?

2 A. Fair statement.

3 Q. Through your efforts to try to identify sources -- when I
4 say "your," I'm talking specifically to your participation in
5 the investigation -- did your efforts to identify sources of
6 the information whether it's contained in the various dossier
7 reports continue or did it stop?

8 A. It continued.

9 Q. Now, I want to ask you whether or not any of those
10 efforts bore fruit -- that just calls for a "yes" or "no"?

11 A. Yes.

12 Q. You mentioned before earlier to the jurors that at some
13 point in time, you succeeded in identifying Mr. Steele's
14 primary source, correct?

15 A. Correct.

16 Q. And tell the jurors whether or not you personally
17 participated in that effort or did somebody just tell you
18 that?

19 A. No, I was able to personally identify.

20 Q. And with respect to your personally identifying the
21 primary source of the Steele reporting, who did that person
22 turn out to be?

23 A. Mr. Danchenko.

24 Q. And when, if you recall, approximately or maybe with
25 specificity, when was it that you identified Mr. Danchenko as

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1 Steele's primary source?

2 A. If I recall correctly, we had a preliminary
3 identification on the 20th of December, 2016.

4 Q. And did you continue those efforts?

5 A. Yes.

6 Q. And I'll cut to the chase. Were you able to confirm
7 that, in fact, it was Igor Danchenko that was the primary
8 source for Steele?

9 A. Yes.

10 Q. Now, with respect to Igor Danchenko, was December of
11 2016 -- was that the first time that you had heard of someone
12 by the name of Igor Danchenko?

13 MR. ONORATO: Your Honor, I'm going to object and
14 ask to approach.

15 THE COURT: All right. Let's do it.

16 (Side bar.)

17 THE COURT: If he says, yes, what's your next
18 question?

19 MR. DURHAM: The next question will be, "When had
20 you first heard of Igor Danchenko?" And then we will intend
21 to carry out that there was, well, I should say by way of
22 background, this witness is personally involved in that
23 earlier investigation and we've counselled him not to say
24 anything about him pitching anybody for classified information
25 or what informants had said what he knows of those

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1 counterintelligence investigation. He knows that it was
2 closed and he knows why it was closed, but I'm not going to
3 inquire: Why do you think he was a spy? I might like to --

4 THE COURT: I understand. I'm going to postpone it
5 until I hear the cross. And then on rebuttal we'll see what
6 he says. All right.

7 MR. DURHAM: So I get when the objection came
8 because I think I asked -- I asked the question is this the
9 first time you heard of Igor Danchenko. So when -- I'm
10 trying -- can you just check to see what the question posed
11 was, where the objection was raised?

12 MR. ONORATO: It may not have been the first time or
13 that's the impression I got and that's why I'm asking.

14 (Court reporter inquires of the Court.)

15 THE COURT: I think I'll let you bring out that he
16 had previously heard his name.

17 And then your next question is, what, when; right?

18 MR. DURHAM: I will follow whatever direction -- the
19 Court's direction.

20 THE COURT: I understand. And it complicates the
21 issue for me. I'm going to hold off. I'm going to hear what
22 the cross is, all right. And when we come back, I'll allow
23 you to ask: Whether you heard his name and in any one
24 context, I think, he can say in connection with --

25 MR. DURHAM: What if I do this, Your Honor: Have

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1 you previously heard his name? And he says "Yes," and so,
2 we'll come back to that later.

3 THE COURT: Right. I'm going to go ahead -- I'm
4 going to let you answer that question and then I'm going to
5 take a 20-minute break.

6 (Open court.)

7 BY MR. DURHAM:

8 Q. Sir, let me -- just before the quick exit break here, let
9 me ask you, prior to December 2016, was Igor Danchenko a name
10 you were familiar with?

11 A. Yes.

12 THE COURT: Thank you, Mr. Durham.

13 Ladies and gentlemen, we're going to take a
14 20-minute recess at this time. You're excused to the jury
15 room. Please do not discuss this case among yourselves.

16 (Jury dismissed.)

17 THE COURT: All right. Court will stand in recess.

18 (Recess.)

19 (Court proceedings resumed at 4:42 p.m.)

20 THE COURT: Anything before we bring the jury out?
21 All right. Let's bring the jury out.

22 MR. ONORATO: Your Honor, do you have an idea of
23 what time you're going to break this evening?

24 THE COURT: Probably around quarter to 6:00.

25 (Jury present.)

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1 THE COURT: Please be seated. All right.

2 Mr. Auten, you remain under oath.

3 Mr. Durham.

4 MR. DURHAM: Proceed, Your Honor? Thank you.

5 BY MR. DURHAM:

6 Q. Mr. Auten, just before we took the afternoon break, you
7 had indicated that you personally identified Mr. Danchenko as
8 the primary source for Christopher Steele, correct?

9 A. Correct.

10 Q. And how did you do that?

11 A. Through a number of searches through databases, a number
12 of making connections of existing material that we had.

13 Q. But that didn't happen until December?

14 A. That's correct.

15 Q. And do you recall, sir, whether or not the FBI makes any
16 kind of a decision after you had identified the defendant as
17 the person who's the primary source, to approach him?

18 A. Yes.

19 Q. What can you tell the jurors about that?

20 A. He was approached in mid-January 2017.

21 Q. And is that something that you did or others did in the
22 first instance?

23 A. Others did, but I was involved with communications about
24 it, et cetera.

25 Q. Would you tell the juror what, if any, role that you

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1 played, then, in connection with Mr. Danchenko being
2 interviewed in January of 2017?

3 A. I was one of two individual FBI employees who interviewed
4 Mr. Danchenko in January of 2017.

5 Q. So let's set the stage for that.

6 Do you recall how much earlier in January of 2017 it
7 was that agents approached Mr. Danchenko?

8 A. I want to say it was mid-January.

9 Q. All right. And after he had been approached, what
10 happened next?

11 A. There was some -- time had elapsed between the time that
12 he was approached and the time that we were able to have the
13 interview.

14 Q. And do you know what was happening during that interim
15 period of time?

16 A. I know there was some back-and-forth about how to set
17 that interview up.

18 Q. All right. And do you know who was involved in the
19 back-and-forth?

20 A. From the FBI side, I believe it was, if my recollection
21 serves, the deputy assistant director at that time, Jennifer
22 Boone.

23 Q. And then how about with respect to the intelligence side,
24 you were involved in it and --

25 A. I was involved and Special Agent Steve --

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1 (Court reporter clarification.)

2 Q. So this poor lady has to take all this down, so if I can
3 just finish the question, it makes it easier to take it down,
4 okay?

5 So Mr. Moffa was involved, correct?

6 A. Yes.

7 Q. Okay. And then above Mr. Moffa, do you know who else was
8 involved in this matter?

9 A. People would have been briefed up above Moffa.

10 Q. Do you know how far up in the bureau chain it went?

11 A. I do not.

12 Q. Now, with respect to the January interviews itself, do
13 you recall the date on which the interviews occurred?

14 A. I believe the first interview occurred on the 24th of
15 January.

16 Q. And was it one day or more than one day of interviews?

17 A. It was three days of interviews.

18 Q. And were they full days, part days? What can you tell
19 the jury about that?

20 A. If I recall correctly, they were part days.

21 Q. And it gives us a sense, like, say it was, you know,
22 three mornings, three afternoons, it was more scattered than
23 that? What's your best recollection?

24 A. No. My best recollection is that it was three
25 afternoons.

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1 Q. Three afternoons. So then January 24th, 25th, and 26th
2 of 2017, correct?

3 A. Correct.

4 Q. Now, you have told the jurors that you were one of two
5 people who were doing the interview; is that right?

6 A. Two FBI employees, yes.

7 Q. Okay. So let me ask you these -- this series of
8 questions, then. Since you were involved in setting this up,
9 did you have some kind of a game plan, that is what it is that
10 you were trying to elicit from Mr. Danchenko?

11 A. We were there to go through to determine, you know, who
12 the sub-sources were in these reports and what he could tell
13 us about the reports in general.

14 Q. All right. You told the jurors earlier this afternoon
15 that when you worked through with Steele, you wanted to obtain
16 corroboration of the allegations, if you could, and you wanted
17 to do this sourcing, correct?

18 A. Correct.

19 Q. How about corroboration in January of 2017, are you
20 looking to corroborate some of the more serious or most
21 serious allegations in that dossier?

22 A. Yes, if possible.

23 Q. So same focus, what it is that you're trying to get out
24 of this session, correct?

25 A. Correct.

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1 Q. Now, tell the ladies and gentlemen of the jury, you're
2 there and the second person, FBI personnel, was who?

3 A. Special Agent Steve Somma.

4 Q. Okay. Tell the jurors what Mr. Somma's role was,
5 generally, in connection with Crossfire Hurricane and this
6 part of the investigation?

7 A. Mr. Somma was the case agent that was handling, at this
8 point in time, the Carter Page investigation.

9 Q. So you told the jurors that there were the four files,
10 that each of the four files had, essentially, a case agent or
11 a leader or somebody who's principally responsible on the
12 operations or special agent side?

13 A. Correct, yes.

14 Q. And that was Somma as related to Carter Page?

15 A. At that time, yes.

16 Q. Okay. So you and Mr. Somma are there. Anybody else
17 present?

18 A. Yes.

19 Q. Who was that?

20 A. On each day, there was an individual from the Department
21 of Justice's National Security Division, or NSD.

22 Q. Do you remember offhand who any of those persons were?

23 A. The first day, it was David Laufman, and the second day
24 was last name of Scott; first name, I can't remember right
25 offhand.

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1 Q. Richard?

2 A. Yes, that's it, Richard Scott.

3 Q. Okay. Do you recall whether there was anybody -- or,
4 obviously, Mr. Danchenko was there for this affair, correct?

5 A. Correct.

6 Q. So Mr. Danchenko, yourself, Mr. Somma, and then Mr. Scott
7 and/or Mr. Laufman, correct?

8 A. Correct.

9 Q. Anybody else there?

10 A. Yes.

11 Q. And who else was there?

12 A. Mr. Danchenko's attorney.

13 Q. Okay. So Mr. Danchenko's represented by counsel; is that
14 correct?

15 A. Correct.

16 Q. And with respect to that session with his counsel
17 present, do you have a recollection as to whether or not there
18 was a letter -- an immunity letter that was signed by
19 Mr. Laufman, by the defendant, by the defendant's lawyer?

20 A. I don't have a clear recollection of that letter.

21 Q. What can you tell the jurors about it? Do you remember
22 that there was a letter?

23 A. I recall that there was a letter, yes.

24 Q. And do you recall, sir, whether or not that was a
25 document that was uploaded into the bureau record file?

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1 A. Subsequently, it was uploaded into the bureau's record
2 file, yes.

3 Q. I would ask that you take a look at Government's
4 Exhibit 118, please. Do you have that?

5 A. I do.

6 Q. Looking at that, there are people who signed this,
7 correct?

8 A. That is correct.

9 Q. And who signed it on the back of page 2?

10 A. On the back of page 2, it was signed by David H. Laufman,
11 who is listed as chief of the Counterintelligence and Export
12 Control Section of the National Security Division of DOJ.

13 Q. And how about on the third page, who signed it?

14 A. Third page, two individuals signed it. Mr. Danchenko
15 signed and dated it, and Mr. Mark Schamel, who is listed as
16 his attorney signed and dated it.

17 Q. Is there dates, handwritten dates there?

18 A. 1/24/2017 by both signatures.

19 Q. And is that the date of the first interview with
20 Mr. Danchenko in January of 2017?

21 A. Yes, that was the first date.

22 Q. Oh, so he was present, correct?

23 A. Correct.

24 Q. He did have a lawyer with him, correct?

25 A. Correct.

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1 Q. And do you remember that there was a letter -- you
2 can't -- you don't have the specific recollection of this
3 being the letter, correct?

4 A. Correct.

5 Q. But you recognize Laufman, Mr. Danchenko, and a lawyer,
6 correct?

7 A. Correct.

8 MR. DURHAM: We'd move 118 as a full exhibit, Your
9 Honor --

10 THE COURT: All right.

11 MR. DURHAM: -- subject to, if there's an objection
12 to connection, we'll put it on through a records custodian.

13 MR. ONORATO: There's no objection.

14 THE COURT: Without objection, 118 is admitted.
15 (Government's Exhibit No. 118, was admitted into evidence.)

16 MR. DURHAM: Okay. Then I'd ask, with the Court's
17 permission, for Ms. Arsenault to pull that letter up.

18 THE COURT: Yes.

19 MR. DURHAM: Ms. Arsenault, if you would, blow up
20 for the jurors on page 1, the top portion of that document.

21 BY MR. DURHAM:

22 Q. And so, Mr. Auten, again, just for purpose of the written
23 record because the jurors can see this, what's the date of
24 this letter?

25 A. January 24, 2017.

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1 Q. And who is the letter to?

2 A. The letter is to Mr. Igor Danchenko.

3 Q. In care of his lawyer?

4 A. Correct.

5 Q. And then it goes on -- would you read the first couple of
6 paragraphs into the record?

7 A. "Dear Mr. Schamel, as you are aware, the Federal Bureau
8 of Investigation in coordination with the National Security
9 Division of the U.S. Department of Justice, collectively 'the
10 government', is conducting an investigation which we seek the
11 cooperation of your client, Igor Danchenko. As a preliminary
12 matter, I must advise you that the government does not intend
13 by this letter to grant your client immunity from prosecution.
14 That is, the government will retain its right to prosecute
15 your client for all crimes of any nature that may have been
16 committed by your client. We are, however, sensitive to your
17 concerns about your client's Fifth Amendment constitutional
18 right to remain silent and not to incriminate himself in any
19 criminal wrongdoing."

20 Q. And then read on from there -- so you blow up the bottom
21 paragraph.

22 A. "Accordingly, the government proposes the following
23 agreement: One, your client agrees to supply complete and
24 truthful information and testimony to all persons in this
25 matter as well as in any other proceeding, including court

1 proceedings related to or the growing out of this
2 investigation. Your client must answer all questions
3 concerning the subject matter of this investigation and must
4 not withhold any information. Your client must neither
5 attempt to protect any person or entity through false
6 information or omission nor falsely implicate any person or
7 entity."

8 Q. Okay. You just -- stop there. This document was signed
9 on January 24th, before you started interviewing
10 Mr. Danchenko, correct?

11 A. I don't have a clear recollection of when it was signed
12 on the 24th.

13 Q. Okay. Well, with respect to the exhibit itself, the
14 first paragraph says [as read]: Your client agrees to supply
15 complete and truthful information and testimony to all persons
16 in this matter as well as any other proceeding including court
17 proceedings related to or growing out of this investigation.

18 Now, am I reading the next part correctly? [As
19 read]: Your client must answer all questions concerning the
20 subject matter of this investigation and must not withhold any
21 information.

22 Did I read that that properly -- correctly?

23 A. Yes.

24 Q. And the next sentence says [as read]: Your client must
25 neither attempt to protect any person or entity through false

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1 information or omission or falsely implicate any person or
2 entity.

3 Did I read that correctly?

4 A. Yes.

5 Q. If you go to the next paragraph, would you read
6 Paragraph 2 into the written record, please?

7 A. 2, [as read]: "In return for your client's cooperation
8 in this matter, the government agrees that your client shall
9 receive protections coextensive with and limited by those
10 conferred for testimony given pursuant to a compulsion order
11 issued under the provisions of Title 18 U.S. Code,
12 Section 6001, et seq. That is such information or any other
13 information directly or indirectly derived from, it may not be
14 used directly or indirectly against your client in any
15 criminal case exception in a prosecution for perjury, for
16 giving a false statement, and/or for obstruction of justice
17 that may result from any statement, testimony, or other
18 information he provides pursuant to this agreement. However,
19 if your client violates any terms or conditions of this
20 agreement, then the government reserves its right in its
21 discretion to avoid this agreement and use it -- use against
22 him in a criminal proceeding either directly or indirectly,
23 any information or testimony provided by him to law
24 enforcement authorities, the grand jury, or elsewhere during
25 the course of his cooperation in this matter."

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1 Q. Now, going back to the first page in the second
2 paragraph -- second numbered paragraph. It reads [as read]:
3 In return for your client's cooperation in this matter, the
4 government agrees that your client shall receive protections
5 coextensive with and limited by those conferred for testimony
6 given pursuant to a compulsion order issued under the
7 provisions of Title 18 U.S. Code, Section 6001, et seq.

8 Correct?

9 A. Correct.

10 Q. Do you know, sir, whether or not Title 18 United States
11 Code, Section 6001, et seq., is the immunity provisions of the
12 federal statutes?

13 A. I would not be able to rattle that off.

14 MR. DURHAM: I would ask the Court to take judicial
15 notice of the fact that Title 18 of the United States Code,
16 Section 6001, et seq., relates to immunity.

17 THE COURT: Counsel.

18 MR. ONORATO: Your Honor, no objection subject to
19 clarification.

20 THE COURT: All right. Court will judicially note
21 that that section retains the judicial --

22 MR. DURHAM: Thank you, Your Honor. Does Your Honor
23 just give a brief instruction concerning what "judicial
24 notice" means?

25 THE COURT: Yes. Judicial notice means that the

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1 Court has recognized the sufficient proof. Its recognition
2 that this statute relates to judicial immunity. You may
3 accept that without any further proof, but you should give it
4 such weight as you deem appropriate.

5 BY MR. DURHAM:

6 Q. Okay. I'm going to ask Ms. Arsenault that you would just
7 blow up as much they can so I'm sure I can read it, and I
8 think the jurors can read it. Paragraph No. 1.

9 Now, sir, I know you previously read this, and the
10 jury has heard it twice now. I want to ask you, though, about
11 your interview of Mr. Danchenko on January 24th and 25th and
12 26th of 2017.

13 With respect to what is contained in this letter, do
14 you recall, sir, what, if anything, you and/or Special Agent
15 Somma said to Mr. Danchenko and his counsel along the lines of
16 what's contained in this agreement, that is Mr. Danchenko had
17 to answer all questions concerning the subject matter of
18 the -- this investigation and must not withhold any
19 information.

20 Is that consistent or inconsistent with the
21 information that you personally were present or -- and giving
22 to Mr. Danchenko for those January interviews?

23 A. I'm sorry. I missed the latter part of that.

24 Q. Sure. What's contained in this letter, Government's
25 Exhibit 118 in Paragraph 1 concerning the requirement that

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1 Mr. Danchenko must not withhold any information, and that
2 Mr. Danchenko must not attempt to protect any person or entity
3 through false information or omission, or falsely implicate
4 any person or entity, is that consistent with what you and
5 Somma made known to the defendant and his attorney was
6 expected in January of 2017?

7 A. I don't have a clear recollection of what admonitions
8 were given to Mr. Danchenko at the beginning of the interview.

9 Q. Okay. Well, how about during the course of the
10 interview, what do you recall about what Mr. Danchenko's
11 obligations were or what the expectations were?

12 A. I mean, the expectations we were there to talk about the
13 reports. We were there to talk about his involvement with the
14 reports. We were there to talk about the sub-sources. And
15 the expectation was that that's what we would talk about.

16 Q. Okay. Now, I had asked you earlier this afternoon about
17 the three-day interview. I've asked you questions -- remember
18 we had to jump ahead a little bit and asked about when
19 Mr. Danchenko was interviewed in January. Specifically, I
20 asked you about the dossier reports.

21 Do you recall that?

22 A. I do , yes.

23 Q. And I think I had asked you, but I'll ask you again just
24 to be certain. Did Mr. Danchenko bring anything to that
25 interview report with him?

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1 A. I recall that he had a copy of the reports.

2 Q. And I believe I also asked you but will confirm, with
3 respect to those reports, those weren't yours, you didn't
4 provide those to him, he brought those on his own?

5 A. That is correct.

6 Q. And you saw there was at least some writing that was on
7 those dossier reports?

8 A. That is my recollection, yes.

9 Q. Explain to the jurors, if you would, sir, what process
10 you then follow -- when I say "you," you and Mr. Somma,
11 whether it was you asking the questions, Somma asking the
12 questions. Explain to the jurors what process was for that
13 interview on January 24th?

14 A. The January 24th interview, I believe Mr. Somma and I
15 went somewhat back and forth asking questions. I believe we
16 started off by asking biographical information, and kind of
17 going through Mr. Danchenko's life, work history, et cetera.

18 Q. Okay. So when you first sat down with the defendant and
19 his lawyer, did you make any note as to whether or not
20 Mr. Danchenko spoke English?

21 A. I don't recall making any note about him speaking
22 English. My recollection is that it was clear he did speak
23 English.

24 Q. Okay. I mean, it was inartfully -- the question was
25 inartfully posed.

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1 Does Mr. Danchenko speak English?

2 A. He spoke English during that interview, so, yes.

3 Q. And was he -- does he speak good English?

4 A. To my --

5 Q. Do you have any difficulty communicating with you?

6 A. To my recollection, he spoke good English, yes.

7 Q. All right. But to your recollection, at any point during
8 the course of the three days of interview, did Mr. Danchenko
9 appear to be confused about what he was being asked?

10 A. I don't recall that, no.

11 Q. Would you -- describe for the jurors, sir, whether this
12 was a formal Q and A. Like, for example, you're on the
13 witness stand and I'm asking you questions, and you're giving
14 answers or was the atmospherics different than that?

15 A. The atmospherics were different.

16 Q. Then describe those atmospherics to the jurors.

17 A. It was sitting across the table from one another. It was
18 much more of a conversational style of interview. It was a
19 very typical interview that way.

20 Q. And would you describe it as being free-flowing?

21 A. I think free-flowing may be a bit -- I don't know if I
22 would call it free-flowing because we were asking questions
23 and Mr. Danchenko was answering questions. And then that
24 might spur follow-on questions. So but I wouldn't say it was
25 free-flowing.

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1 Q. Okay. Did Mr. Danchenko appear to have difficulty
2 answering your questions or understanding your questions?

3 A. Not to my recollection, no.

4 Q. And was formal courtroom language being used or was it
5 colloquial, you know, as you say, conversational?

6 A. It was conversational.

7 Q. Do you recall, sir, based on the three days, again, as
8 you describe it, as they were really three half days, right,
9 or thereabouts?

10 A. Yes.

11 Q. Yes. During that period of time, did you come to an
12 understanding of approximately how much of the information in
13 the dossier reports had been provided to Steele by Danchenko?

14 A. We didn't have a good kind of percentage breakdown or
15 anything of that sort. It was a sizable amount from what I
16 recall.

17 Q. What can you share with the jurors about whether it was
18 significant portion of the information that that was contained
19 in all of these reports that Mr. Steele provided to the FBI,
20 and the FBI then used at least in the Carter Page
21 applications.

22 A. So my recollection is that the way things were described
23 with respect to how Mr. Danchenko described the reports to us
24 during the interview was that it was his view that these
25 reports included some of his material, some of his analysis,

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1 Mr. Steele's material, and then material that he wasn't able
2 to identify.

3 Q. Okay. I'm going to ask you to take a look, if you would,
4 sir, at Government's Exhibit 1502 for identification.

5 A. Okay.

6 Q. And do you recognize what that document is?

7 A. This is a LinkedIn -- it looks like a LinkedIn message.

8 Q. And does it identify who the LinkedIn persons are?

9 A. Yes, it's from Igor Danchenko.

10 Q. Okay. And who is Mr. Danchenko communicating with in
11 that instance?

12 A. I'm going to butcher the last name. Anastasia
13 Gnezditskaia.

14 Q. Why don't you do this? Why don't you spell the name for
15 the court reporter? It'll be a lot easier.

16 A. From Mr. Igor Danchenko to Anastasia, A-N-A-S-T-A-S-I-A.
17 And it's Gnezditskaia, G-N-E-Z-D-I-T-S-K-A-I-A. The date of
18 it is October 11, 2020.

19 Q. October 11, 2020.

20 MR. DURHAM: Your Honor, at this time --

21 MR. ONORATO: I'm going to object to hearsay.

22 THE COURT: I'm sorry.

23 MR. DURHAM: We'll lay a foundation. We haven't
24 moved it yet.

25 THE COURT: All right.

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1 MR. DURHAM: At this time, we would, Your Honor, ask
2 that the stipulation, which has been marked as Government's
3 Exhibit 1800 be admitted. Specifically, it's a stipulation
4 between the parties relating to LinkedIn records.

5 THE COURT: All right. Do you want to read it in --
6 do you want to read it into the record?

7 MR. ONORATO: Do they have a record -- I just
8 question its admissibility because it's from 2020. It has
9 nothing to do with --

10 MR. DURHAM: We'll tie it up. We'll tie it up.
11 Don't worry.

12 THE COURT: All right. All right.

13 MR. DURHAM: So the stipulation no objection?

14 THE COURT: All right. Do you want to read it into
15 the record?

16 MR. DURHAM: Is that the Court --

17 THE COURT: Yes.

18 MR. DURHAM: -- will do it, the witness, or would
19 you prefer Counsel do it?

20 THE COURT: You can read it.

21 Ladies and gentlemen, you're about to hear what's
22 referred to as "stipulation." A stipulation is simply an
23 agreement between the parties as to what's contained in the
24 stipulation. You may accept as adequate proof of what's
25 stated without any further proof, but it's ultimately up to

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1 you whether or not to accept it and what weight to give it.

2 MR. DURHAM: Thank you, Your Honor.

3 Ladies and gentlemen, the Government's Exhibit 18,
4 which Ms. Arsenault, I think, can put up on the monitor for
5 you. I mean, 1800. I'm sorry.

6 THE COURT: Is it Exhibit 1800?

7 MR. DURHAM: 1800, yes, Your Honor.

8 THE COURT: All right.

9 MR. DURHAM: Okay. This is in the matter of United
10 States versus Igor Y. Danchenko, Criminal No. 1:21-cr-245,
11 parenthesis, (AJT), close parenthesis.

12 [As read]: It is hereby stipulated and agreed by
13 and between the undersigned parties that, if called to
14 testify, a records custodian from LinkedIn would testify as
15 follows:

16 Paragraph No. 1, Government's Exhibits 1500 and 1502
17 are true and accurate copies of the contents of the LinkedIn
18 account "Igor Danchenko" controlled by Igor Danchenko.

19 Paragraph No. 2, Government's Exhibits 1500 and 1502
20 are true and accurate copies of authentic business records of
21 LinkedIn that were made at or near the time of the acts and
22 events recorded in them by a person with knowledge and were
23 prepared and kept in the course of LinkedIn's regularly
24 conducted business activity. And it was the regular practice
25 of LinkedIn to make such business records, and the source of

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1 the information or the method and the circumstances of
2 preparation are trustworthy. The parties stipulate to the
3 authenticity of Government's Exhibits 1500 and 1502.

4 Paragraph No. 4, This stipulation is admissible as
5 evidence at trial.

6 And it's dated today -- it's dated, Alexandria,
7 Virginia, October 11, 2022, and signed by Mr. Keilty and
8 Mr. Onorato.

9 BY MR. DURHAM:

10 Q. Sir, with respect, then, to the Government's
11 Exhibit 1502, that's a LinkedIn message, correct?

12 A. Correct.

13 Q. Now, the date of the Government's Exhibit 1502, you
14 indicated was, again, what?

15 A. It was October 11, 2020.

16 Q. Okay. So -- and I want to ask this: You're talking
17 to -- you and Mr. Somma are talking to Mr. Danchenko in
18 January of 2017, correct?

19 A. Correct.

20 Q. At some point in time, do you recall, sir, whether or not
21 an entity known as BuzzFeed publicly published the dossier?

22 A. Yes.

23 Q. Do you recall -- that's based on your personal knowledge,
24 correct?

25 A. That is.

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1 Q. This became a big deal, right, when BuzzFeed published
2 this stuff?

3 A. Yes, it did.

4 Q. At some point in time after January of 2017, when
5 Mr. Danchenko was being interviewed by you, do you recall
6 whether or not the fact that Mr. Danchenko was the primary
7 sub-source became public?

8 A. Much later.

9 Q. Right, like in 2020, right, in the fall of 2020?

10 A. Maybe. Maybe even the summer of 2020 or something of
11 that sort.

12 Q. It was 2020 when it became publicly known that
13 Mr. Danchenko had been the primary sub-source, correct?

14 A. Again, I don't have a clear recollection of the date, but
15 around that time.

16 MR. DURHAM: We'd offer 1505, Your Honor, as a full
17 exhibit.

18 THE COURT: Any objection?

19 MR. ONORATO: Objection. Can we approach?

20 THE COURT: I'm sorry?

21 MR. ONORATO: Objection. Can be approach?

22 THE COURT: Yes.

23 (Side bar.)

24 THE COURT: What's the objection?

25 MR. ONORATO: Sorry, Judge. There hasn't been

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1 adequate foundation laid that Mr. Danchenko had every single
2 page of (indiscernible) release of the Steele dossier, whether
3 he had reviewed it all at the time of the interview with Mr.
4 Auten. And then, subsequently three years later having him
5 reviewed it and (indiscernible) statements, I don't see how
6 that's relevant.

7 THE COURT: All right. I'm going to admit it.

8 MR. DURHAM: It's a statement against the party
9 opponent.

10 THE COURT: Right.

11 MR. ONORATO: It's an admission, but I guess the
12 problem is the time, right. He doesn't know whether
13 Mr. Danchenko had read. So the idea is that he didn't tell
14 you, at least 100 percent of it, and there's no proof that he
15 read 80 percent of it -- that he had every page of it.

16 THE COURT: Well, this is a statement from a party
17 omission from Danchenko so I'm admitting it.

18 (Open court.)

19 MR. DURHAM: Your Honor, the government will move
20 1502 as a full exhibit.

21 THE COURT: All right. Over objection, the
22 Government Exhibit 1502 is admitted.

23 (Government's Exhibit No. 1502, was admitted into evidence.)

24 MR. DURHAM: Ms. Arsenault, if you would put it on
25 the screen. The font is particularly small here, so whatever

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1 you can do to blow it up so that -- maybe blow it up in
2 halves. Okay.

3 BY MR. DURHAM:

4 Q. Now, looking at Government's Exhibit 1502, essentially,
5 which is broken into two pieces, right, make it easier to
6 read, so the jurors can see this, but would you read it into
7 the record so the trial record is complete, sir?

8 A. The content box?

9 Q. Yes, sir.

10 A. Yes. "I collected some 80 percent of raw Intel and half
11 the analysis for the Chris Steele dossier."

12 Q. Okay. So I said yes to the content box. Let's start at
13 the left on the first row. Its broken up on the monitor, but
14 left of the exhibit itself. There's a conversation --

15 A. Conversation ID?

16 Q. All right. And then that appears to be not English under
17 that. It looks like Russian or --

18 A. I'm not exactly sure what that conversation ID
19 represents.

20 Q. Okay. But lots of letters and numbers, correct?

21 A. Yes.

22 Q. And then what's the next box?

23 A. Conversation title.

24 Q. Is that -- does that have information or no?

25 A. That box is blank.

1 Q. And who's this from?

2 A. From Igor Danchenko.

3 Q. And the profile URL reads how?

4 A. [As read]: [Https://www.linkedin.com/IN/](https://www.linkedin.com/IN/), all one word, Igor
5 Danchenko.

6 Q. So this is a similar profile -- this is a LinkedIn
7 account for Igor Danchenko, correct?

8 A. That is what it seems, yes.

9 Q. And it's to a particular person Anastasia and then a very
10 difficult name for some of us to pronounce, correct?

11 A. Correct.

12 Q. And then you told the jurors earlier, when we were laying
13 the foundation for this document, there's a particular date on
14 this, correct?

15 A. Correct.

16 Q. And, again, for the written record, since the jurors can
17 see it on the monitor, what's the date and time reflected in
18 that box?

19 A. The date is October 11, 2020, and the time is 18:25:25
20 UTC.

21 Q. And then there's a subject column, correct?

22 A. Correct.

23 Q. That's blank?

24 A. Correct.

25 Q. And then would you then read again what the content of

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1 Mr. Danchenko's LinkedIn message to Anastasia is on
2 October 11th of 2020 at six- -- what is it? 18:25:25 --
3 6:25:25 p.m.?

4 What's his message, his own words?

5 A. The content box reads, "Yes, I collected some 80 percent
6 of raw Intel and half the analysis for the Chris Steele
7 dossier and went through debriefings with the FBI on the
8 collusion matters, period."

9 Q. So Mr. Danchenko's own words, he was responsible not just
10 for dossier report 95; he's responsible for 80 percent of what
11 showed up in the Steele dossier?

12 Is that what those words say?

13 THE COURT: Sustained. Objection sustained.

14 (Counsel confers.)

15 BY MR. DURHAM:

16 Q. Oh, I'm sorry. He was responsible for 80 percent of the
17 raw intelligence and half the analysis for the Christopher
18 Steele dossier, correct?

19 A. Correct.

20 Q. Those were his words?

21 A. Those were his words.

22 Q. Would that be consistent or inconsistent with the
23 impression or an understanding that you had from Mr. Danchenko
24 when you and Mr. Somma and others met with him in January of
25 2017?

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1 A. Again, we didn't have an understanding of a percentage or
2 anything of that sort of the material. A large portion that
3 was Mr. Danchenko's, but Mr. Danchenko described the documents
4 as not only his work but others as well.

5 Q. Sure. This 20 percent of the raw intelligence that
6 wasn't his. 80 percent of it he claims is his, correct?

7 A. In this, correct.

8 Q. Okay. Now, again, when you first met, sat down with
9 Mr. Danchenko in January of 2017, what was the focus of what
10 you were attempting to elicit from Mr. Danchenko?

11 A. It was twofold. We were trying to get corroboration as
12 well as understanding the sourcing.

13 Q. Do you recall, sir, when you were going through the
14 interviews with Mr. Danchenko, were you and/or Mr. Somma
15 making use after use of the dossier reports?

16 A. To my recollection, we didn't actually bring the dossier
17 reports with us. We had notes that we had taken, if I recall
18 correctly. But -- and there was some reasons for that I won't
19 get into, but --

20 Q. Is that classification issues?

21 A. There was some classifications issues involved, yes.

22 Q. Okay. So you didn't -- you didn't have your copies
23 actually there?

24 A. To my recollection, no. Well, to my recollection, either
25 that or we had the printout from the BuzzFeed material, but we

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1 actually did not have the material that had been given to us.

2 Q. Okay. So just -- so you didn't bring what you, the FBI,
3 had gotten from Steele or the press or journalists that had
4 been leaked to, correct?

5 A. Correct.

6 Q. But you did bring BuzzFeed?

7 MR. ONORATO: Objection, that's not the testimony.

8 A. I don't recall whether or not we had notes or whether we
9 had the BuzzFeed material.

10 BY MR. DURHAM:

11 Q. Okay. Okay. Fair enough.

12 But would it be the fair statement that you went
13 through those reports of the dossier with Mr. Danchenko?

14 A. Yes.

15 Q. And, in fact, you wrote that up, didn't you?

16 A. Yes.

17 Q. And when I say "you," I mean you wrote up the report
18 of --

19 A. Correct.

20 Q. -- that three-day interview?

21 A. Correct.

22 Q. And with respect to the reporting that you wrote up, will
23 you tell the ladies and gentlemen of the jury, you know, how
24 particularly careful you were about what was said and done
25 during that interview?

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1 A. I believe I was very careful about what was said in that
2 interview and wrote up based upon my notes.

3 Q. Okay. Do you recall, sir, whether or not at some point
4 in time after that three-day interview in January of 2017
5 whether the bureau, whether the FBI, decided it was going to
6 approach Mr. Danchenko about becoming a confidential human
7 source?

8 A. I recall that there was talk about that, yes.

9 Q. So it's clear to the jurors, what, if any, role did you
10 play in that?

11 A. I did not play a role in that.

12 Q. All right. And you described to the jurors that you
13 are -- you are the supervisory intelligence analyst, correct?

14 A. Correct.

15 Q. So bringing Mr. Danchenko on as a human source, that was
16 operations, that would be Special Agents?

17 A. Yes, that is correct.

18 Q. Do you know, however, whether or not -- based on personal
19 knowledge, do you know whether or not that happened, that is,
20 the FBI opened Mr. Danchenko as a confidential human source?

21 A. Yes, I know that.

22 Q. And with respect to the opening of Mr. Danchenko as a
23 confidential human source, let me withdraw that.

24 Even prior to actually approaching Mr. Danchenko in
25 January of 2017, that was the FBI's plan, wasn't it, to see if

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1 they could get him -- bring him on as CHS?

2 A. Yes, that was part of the thinking.

3 Q. And you wanted to bring him on -- the bureau wanted to
4 bring him on for what purpose?

5 A. To get as much information as we could to corroborate or
6 understand the sourcing of this material.

7 Q. Right. And, in fact, when this was all laid out -- when
8 this plan was all laid out to approach Mr. Danchenko, that was
9 the sole purpose to concentrate on the dossier, get
10 corroboration to do the sourcing?

11 A. Yes.

12 Q. Okay. And so, he -- he's approached, and you recall one
13 way or the other what -- did he come on as a CHS or no?

14 A. Yes, he did come on as a CHS.

15 Q. Now, for the benefit of the jury, when Mr. Danchenko was
16 signed up as a confidential human source for the FBI, what was
17 the status of the Crossfire Hurricane investigation itself?
18 How was it staffed and how was it being run?

19 A. So when Mr. Danchenko was brought on as a CHS, the
20 Crossfire Hurricane setup had changed from the first -- I like
21 to kind of break them down into Crossfire 1.0, Crossfire 2.0,
22 and Crossfire 3.0.

23 This was during, what I could call, Crossfire 2.0
24 which was approximately November 2016, December 2016 up
25 through March of 2017.

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1 Q. Okay. And so, was it Crossfire Hurricane personnel that
2 wanted to deal with Mr. Danchenko as a CHS or was it others?

3 A. My understanding, at the time, was that Mr. Somma might
4 be involved with that.

5 Q. Okay. And did it actually play out that way?

6 A. Eventually, no.

7 Q. Okay. And tell the jurors what happened with respect to
8 the handling of Mr. Danchenko as a confidential human source
9 for the Federal Bureau of Investigation?

10 A. Mr. Danchenko was subsequently a confidential human
11 source out of the Washington Field Office. Mr. Somma had gone
12 back to New York.

13 Q. Tell the -- he left -- Somma left Washington, went back
14 to New York, somebody else took over?

15 A. Correct.

16 Q. And that person who took over, do you recall who that
17 person was?

18 A. That was Special Agent Kevin Helson.

19 Q. Okay. So Kevin Helson was assigned to the Washington
20 field office, correct?

21 A. Yes.

22 Q. And did he have a particular expertise or area in which
23 he worked?

24 A. Yes.

25 Q. And what was that?

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1 A. Russian counterintelligence.

2 Q. Okay. So Helson comes on. He's going to be the handler.
3 When he did take over -- he, Mr. Helson, did take over, was
4 the Crossfire Hurricane personnel -- were they cut out of this
5 or what was the relationship between Crossfire Hurricane, you,
6 Somma and company, and then Special Agent Helson?

7 A. No, there was back-and-forth between Mr. Helson and Mr.
8 Helson's embedded analyst as well as the analyst on my team.

9 Q. And, indeed, when this -- this arrangement was initially
10 set up, do you recall, sir, whether or not Helson was to pose
11 questions for Mr. Danchenko on behalf of the Crossfire
12 Hurricane people?

13 A. In some cases, yes.

14 Q. And what would be the typical basis on which the
15 Crossfire Hurricane people would provide questions that they
16 wanted to pose to Mr. Danchenko to answer?

17 A. That was typically done via email.

18 Q. Okay. And then, what subject matters? I mean, give the
19 jurors a feel for why you were feeding questions to Helson.
20 When I say "you," let me withdraw that.

21 Were you involved -- personally involved in that,
22 giving direction or questions to Special Agent Helson or is
23 that others that did that?

24 A. I believe on occasion I was.

25 Q. In fact, you were one of the principal contacts for

1 Helson, weren't you?

2 A. One of.

3 Q. Okay. So you and your colleagues would pose questions
4 for Helson to ask Mr. Danchenko, correct?

5 A. That is my recollection, yes.

6 Q. And the questions that you were posing, when I say "you,"
7 your group, the Crossfire Hurricane group, were posing for
8 Mr. Danchenko, were those dossier specific, where it's
9 corroborative information you were looking for or sourcing
10 information?

11 A. That is my recollection, yes.

12 Q. Did you ever get any corroborating information back?

13 A. Corroborating information on the --

14 Q. From Mr. Danchenko and the dossier reports?

15 A. Oh, with respect to the allegations in the dossier
16 reports?

17 Q. Yes.

18 A. No.

19 Q. And, in fact, would it be a fair statement that members
20 of your team -- and then, going into director Mueller engaged
21 in this --

22 MR. ONORATO: Your Honor, I'm just going to object a
23 little bit to the leading nature of the question.

24 THE COURT: Yes, it is -- it is getting a little
25 excessive.

1 BY MR. DURHAM:

2 Q. That's fair. That's fair.

3 Do you recall, sir, with respect to the matter on
4 which this investigation was being carried out by the
5 Crossfire Hurricane folks, whether or not people were assigned
6 specific tasks? That just calls for a "yes" or "no."

7 A. Yes.

8 Q. Do you recall, sir, what some of those tasks were?

9 A. Yes.

10 Q. What were some of those tasks?

11 A. Well, the Crossfire Hurricane team was broken up into
12 specific areas of focus and so -- analysts and agents would
13 work on the specific cases involved, and also other related
14 aspects.

15 Q. Okay. Did you work with a Special Agent in the FBI by
16 the name of Amy Anderson?

17 A. Yes.

18 Q. And did she have a specific task when she came on,
19 whether it was Crossfire Hurricane at the time or it folded
20 into the Mueller matter?

21 A. Yes.

22 Q. What was her specific task?

23 A. Her specific task dealt with validation of what we
24 call the dossier validation.

25 Q. Right. Tried to see if there's -- if you could prove

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1 anything in there was true or false, correct?

2 A. Correct.

3 Q. And how about an individual by the name of Brittany
4 Hertzog?

5 A. Yes.

6 Q. What was Ms. Hertzog's position with the bureau?

7 A. She was an intelligence analyst.

8 Q. And did she have a specific role?

9 A. Yes, she was assisting Ms. Anderson on -- on validating
10 material from the dossier.

11 Q. During the course, then, of the time that Mr. Helson --
12 the initial parts of Mr. Helson was working with
13 Mr. Danchenko, that foundation, would you feed questions to
14 Mr. Helson to put to Mr. Danchenko concerning sourcing for the
15 dossier?

16 A. Yes.

17 Q. And for any corroboration?

18 A. Correct.

19 Q. And other than posing questions about the dossier, do you
20 remember -- do you have any personal knowledge about anything
21 else that Crossfire Hurricane was giving to Special Agent
22 Helson to ask about?

23 A. I don't recall any specifics regarding outside of dossier
24 verification at that time.

25 Q. Okay. Now, you told the jurors earlier, I think twice,

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1 that in October, you and others had gone overseas to meet with
2 Steele as you were looking for -- the folks on these two
3 principal points. And you mentioned --

4 MR. ONORATO: Your Honor, I'm going to object to
5 asked and answered.

6 THE COURT: Why don't you just give him some
7 background for his question. Go ahead.

8 BY MR. DURHAM:

9 Q. You mentioned Mr. Steele would not identify any of the
10 sources, but he did provide you with the name of Sergei
11 Millian, correct?

12 A. That was one of the names he provided, yes.

13 Q. During the January 2017 three-day interview with
14 Mr. Danchenko, do you recall whether you and the Agent Somma
15 inquired about Sergei Millian?

16 A. Mr. Millian's name came up during the course of the -- of
17 the three-day interview.

18 Q. And would you explain to the jury what, if anything, you
19 asked the defendant about Source E who appeared in the dossier
20 report 95?

21 A. Yes. We asked on report 95 as one of the topics of
22 conversation during that three-day interview.

23 Q. Now, with respect to that matter, Source E Pearson
24 dossier report?

25 A. In 95, yes.

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1 Q. Do you recall, sir, whether or not during that
2 January 2017 interview whether there's -- what the discussion
3 was about Mr. Millian?

4 A. My recollection is that we asked Mr. Danchenko. This was
5 one of the reports we asked specifically about, and this is
6 where information came up regarding Mr. Danchenko telling us
7 about interactions with Sergei Millian.

8 Q. Okay. So I want to walk through this slowly, and I know
9 Your Honor wants to break about -- in about 15 minutes, and
10 we'll try to get to a proper point for that.

11 The first day of the interview is January 24, 2017,
12 correct?

13 A. Correct.

14 Q. Do you recall, sir, what, if anything, Mr. Danchenko told
15 you and Somma on January 24th concerning any contact with
16 Sergei Millian?

17 A. So I believe it was the 24th that we discussed this
18 report, and at that time, Mr. Danchenko talked about how he
19 had received contact information for Mr. Millian brokered
20 through to Russian journalists in the Washington, D.C. area.

21 Q. Okay. And do you recall what, if anything, Mr. Danchenko
22 said about his own reaching out to Millian?

23 A. My recollection is that he had attempted to reach out, I
24 think, once or twice and then had, at that point, turned
25 around and had had a 10- to 15-minute telephone call with an

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1 individual who he thought was Sergei Millian.

2 Q. Okay. You said that you reached out once or twice. Let
3 me be very particular about this.

4 Would it help you to see on a report you had
5 prepared on this?

6 A. Yes.

7 Q. I think this is -- I'm not sure if this is in your book
8 or not? Is Government's Exhibit 100 in your book?

9 A. Excuse me. 100?

10 Q. Yes, Government's Exhibit 100. I believe it is in your
11 book.

12 MR. DURHAM: But I'd ask the Court's permission,
13 Your Honor, to have the court security officer just provide a
14 copy of relevant portions of the report to the witness.

15 THE COURT: All right.

16 BY MR. DURHAM:

17 Q. I'd ask you to take a look at that, and specifically for
18 the first interview, the January 24th of 2017, and see if that
19 refreshes the particulars of what Mr. Danchenko said about
20 this.

21 A. Yes, it does.

22 Q. Okay. So the first time you talked to him about it on
23 January 24th, what was it that Mr. Danchenko said regarding
24 his reaching out to Millian?

25 A. Mr. Danchenko on the 24th indicated that he had reached

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1 out to Millian via email twice.

2 Q. And did he indicate whether or not Millian ever
3 responded?

4 A. He indicated he never received a response from the first
5 attempt. But after the second attempt, he received a very
6 strange phone call from a Russian male, who he believed to be
7 Millian.

8 Q. Okay. And with respect to that strange phone call that
9 he said he had gotten -- it was a Russian male, is that what
10 you said?

11 A. Yes.

12 Q. Did the person identify himself?

13 A. No.

14 Q. Do you recall, sir, what, if anything, Mr. Danchenko told
15 you and Somma concerning what that person had to say?

16 A. He said the two of them talked for a bit, and then they
17 tentatively agreed to meet in person in New York City at the
18 end of July.

19 Q. Okay. Well, we'll be very particular about that as well.
20 Did he say that they talked for a bit or did he talk -- tell
21 you approximately how long they spoke?

22 A. The way I have it written down here in my -- in the
23 actual EC is that the two of them talked for a bit.

24 Q. Okay. And that call was -- did he say when that call was
25 received?

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1 A. Circulate July 2016.

2 Q. So there are two emails, correct?

3 A. Correct.

4 Q. And on the 24th, did he indicate whether the anonymous
5 call came between the two emails or after the second email?

6 A. He said after the second attempt.

7 Q. And it was from an anonymous caller, according to
8 Mr. Danchenko?

9 A. He said -- he said it was a Russian male who he believed
10 to be Millian, but who never identified himself.

11 Q. Okay. Did you, to the best of your recollection, go back
12 to that issue at any point after the 24th of January?

13 A. Yes, we did.

14 Q. All right. And why did you do that?

15 A. Personally, I can say I felt this to be a very strange
16 part of the interview, and so I believe we needed some
17 clarification.

18 Q. And what did you find strange about it?

19 A. It was peculiar that it was a -- what appeared to be a
20 short phone call. It was unclear exactly how the information
21 that was in report 95 had come out of the very short phone
22 call like this, and so, I felt like we needed to get some more
23 clarification.

24 Q. And so, do you recall who led the -- well, withdrawn.
25 So what did you do -- after the 24th, what did you do?

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1 A. So we went back to it in a subsequent interview.

2 Q. And when you say "subsequent interview," which interview
3 was it?

4 A. I believe it was the 25th.

5 MR. DURHAM: I ask, again, Your Honor, permission to
6 have the court security officer provide the witness with a
7 document --

8 THE COURT: Yes.

9 MR. DURHAM -- that might help him refresh his
10 recollection.

11 THE COURT: Yes.

12 THE WITNESS: Yes.

13 BY MR. DURHAM:

14 Q. And does that refresh your recollection?

15 A. Yes.

16 Q. What was the date you raised it -- this issue or question
17 further on this point with Mr. Danchenko?

18 A. It was the 25th.

19 Q. The very next day?

20 A. Correct.

21 Q. And on the 25th, what did Mr. Danchenko say concerning
22 the call?

23 A. Mr. Danchenko said that he had emailed Millian in either
24 June or July of 2016, but it was after Danchenko's trip, his
25 trip to Russia in June. He didn't receive a response from

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1 that email that says it was at that point that he had received
2 a telephone call from an unidentified Russian male. He
3 thought it was Millian, but the individual never identified
4 himself, and said they talked for about 15 minutes, and then
5 arranged to meet together in New York City.

6 Q. Okay. So the first day he said that he sent two emails
7 and then they got this call, correct?

8 A. Correct.

9 Q. The second day you went back to it because you thought
10 the way it was presented it was peculiar, correct?

11 A. Correct.

12 Q. And now it was after the first email, correct?

13 A. Correct.

14 Q. And it was a 10- or 15-minute call?

15 A. Correct.

16 Q. And then he told you that they arranged to meet in New
17 York?

18 A. Correct.

19 Q. Do you recall, sir, whether or not, with respect to
20 Mr. Danchenko, did he share with you, to the best of your
21 recollection, that with respect to arrange and to meet in New
22 York, that he already had plans to -- that he was going to New
23 York the next week, did he share that with you?

24 A. I don't recall that specifically being shared.

25 Q. Well, was your impression that you thought that somehow

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1 in this phone call they arranged to meet in New York as
2 opposed to Mr. Danchenko was going to be in New York the
3 following week?

4 A. Yes, the way that I have it written up on Page 36
5 indicates that he -- Mr. Danchenko remembered they made plans
6 to meet in New York City, and that Mr. Danchenko had offered
7 to come up any time Mr. Millian was available.

8 Q. So if it were the case that Mr. Danchenko was going to be
9 in New York anyway, that would be different than the way it
10 was conveyed to you on January 25th?

11 A. The way -- I mean, this is the way it is conveyed.

12 Q. Do you recall, sir, whether or not any time on January
13 24, 25 or 26, if Mr. Danchenko provided any documents to the
14 FBI?

15 A. Yes, he did.

16 Q. And what do you recall about that, what can you tell the
17 jurors about that?

18 A. I recall on the second day, Mr. Danchenko -- so on the
19 25th, Mr. Danchenko brought a number of documents that we
20 walked through with him during the course and scope of the
21 interview.

22 Q. Okay. And do you recall, sir, whether or not after that
23 date, after January 26th, that lasted three days, did he
24 provide any additional documents that you recall?

25 A. I recall there were text messages that were subsequently

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1 provided.

2 Q. Okay. And did those come to you, to Somma or somebody
3 else?

4 A. I believe those came -- I don't recall exactly who those
5 came to.

6 Q. And do you remember with respect to a text message or an
7 email what -- who the parties were to the email?

8 A. I believe the text messages and the parties involved a
9 woman by the last name of Podevadova, P-O-D-E-V-A-D-O-V-A.

10 Q. Do you recall, sir, whether or not Mr. Danchenko provided
11 a document after the 26th, shortly after January 26th, an
12 email exchange that was in Russian?

13 A. Yes.

14 Q. Do you recall whether or not the bureau, at the time the
15 Crossfire Hurricane people, did they have that translated?

16 A. I don't recall whether they did or not.

17 Q. Do you recall ever learning that the exchange reflected
18 in that email was between Mr. Danchenko and a fellow by the
19 name of Zlodorev?

20 A. Yeah, later on, yes.

21 Q. How much later in time did you learn that?

22 A. I don't have a recollection of exactly how much later.

23 Q. And how did it come about that you learned that?

24 A. I believe that email was uploaded to SENTINEL.

25 Q. Okay. For the jurors, SENTINEL is one of the FBI's

1 databases?

2 A. Right. SENTINEL is the system of record for the FBI. So
3 if there are -- case information is uploaded for record
4 purposes into a system as known as SENTINEL.

5 Q. Now, you told the jurors that the first day Mr. Danchenko
6 told you he had sent the two emails to Millian, no response.
7 And then he got the call, correct?

8 A. Correct.

9 Q. This next day, he tells you he sent one email, and then
10 he gets the call, correct?

11 A. Correct.

12 Q. Did he make any mention of when it was that
13 (indiscernible), the second email that was sent?

14 A. No, on the second day, he did not indicate that.

15 Q. Okay. Let's take a look at Page 37, and see if that
16 refreshes your recollection.

17 A. Oh, okay. Yes.

18 Q. Now, having looked at Page 37, tell the ladies and
19 gentlemen of the jury whether his -- his -- what he told you
20 about the contact with Millian remained consistent or was
21 inconsistent?

22 A. I'm sorry. Inconsistent with what?

23 Q. With the first day.

24 A. Okay. So it was -- so what he said in the second day,
25 with respect to the number of emails, was not consistent.

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1 Q. All right. And how so, why wasn't it consistent?

2 A. The first day, he said he emailed twice. The second day,
3 he said he emailed once.

4 Q. And did he say with respect to the second email, the one
5 in September, not in July, not in August, the one in
6 September?

7 A. Yes, on the second day, he talked about a follow-up email
8 with Millian in September.

9 Q. Do you recall, sir, whether or not -- when you were
10 participating in this part of the investigation, if you ever
11 saw the emails that Mr. Danchenko said that he sent to
12 Mr. Millian?

13 A. No, I don't recall seeing those.

14 Q. If you had seen those at the time, that is what
15 Mr. Danchenko had actually said to Millian, you would remember
16 that, wouldn't you?

17 A. Yes.

18 Q. Have you subsequently seen them?

19 A. Yes.

20 Q. And you remember those?

21 A. Yes.

22 MR. DURHAM: Your Honor, this might be a good place
23 to break.

24 THE COURT: All right. I think so. It's been a
25 long day. We're going to go ahead and recess until tomorrow

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1 morning. We're going to start at 9:30. So, again, please
2 make whatever travel arrangements necessary to try to get to
3 the courthouse around 9:15, and we'll try to begin at 9:30
4 promptly.

5 Again, please do not discuss this case either among
6 yourselves or with anyone outside the courtrooms. Your
7 friends and family will no doubt be curious about how you've
8 spent your time today. Simply tell them you're under
9 instructions from the judge not to discuss the case in any
10 fashion.

11 Also, don't communicate on any social media, whether
12 it's Facebook or LinkedIn, or any of those matters about what
13 you did today. And also, please do not undertake any research
14 on your own about anything you may have heard here in the
15 courtroom that you may be curious about. Simply isolate
16 yourself from outside sources or information about this case.
17 And that would include any TV or radio reports that you may
18 find yourself exposed to. Just try to absence yourself from
19 those or remove yourself from those, if and when you find
20 yourself confronted with them.

21 So with those comments, I will excuse you until
22 tomorrow morning.

23 (Jury dismissed.)

24 THE COURT: All right. How much longer do you think
25 we have on direct?

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1 MR. DURHAM: I would say between an hour -- 60 or 90
2 minutes, Your Honor.

3 THE COURT: All right. All right. Anything before
4 we recess?

5 MR. ONORATO: No.

6 THE COURT: All right. I'll see counsel at
7 9 o'clock tomorrow. All right. Court stands in recess.

8
9 **(Proceedings adjourned at 5:44 p.m.)**

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CERTIFICATE OF REPORTER

I, Tonia Harris, an Official Court Reporter for the Eastern District of Virginia, do hereby certify that I reported by machine shorthand, in my official capacity, the proceedings had and testimony adduced upon the Jury Trial in the case of the **UNITED STATES OF AMERICA versus IGOR Y. DANCHENKO**, Criminal Action No.: 1:21-cr-245, in said court on the 11th day of October, 2022.

I further certify that the foregoing 170 pages constitute the official transcript of said proceedings, as taken from my machine shorthand notes, my computer realtime display, together with the backup tape recording of said proceedings to the best of my ability.

In witness whereof, I have hereto subscribed my name, this October 12, 2022.



Tonia M. Harris, RPR
Official Court Reporter



Office of the Inspector General U.S. Department of Justice

OVERSIGHT ★ INTEGRITY ★ GUIDANCE



Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation

Oversight and Review Division 20-012

December 2019

All information contained herein is unclassified
Date: 12/8/2019 BY: C28W34B64
This redacted version only



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Background

The Department of Justice (Department) Office of the Inspector General (OIG) undertook this review to examine certain actions by the Federal Bureau of Investigation (FBI) and the Department during an FBI investigation opened on July 31, 2016, known as "Crossfire Hurricane," into whether individuals associated with the Donald J. Trump for President Campaign were coordinating, wittingly or unwittingly, with the Russian government's efforts to interfere in the 2016 U.S. presidential election. Our review included examining:

- The decision to open Crossfire Hurricane and four individual cases on current and former members of the Trump campaign, George Papadopoulos, Carter Page, Paul Manafort, and Michael Flynn; the early investigative steps taken; and whether the openings and early steps complied with Department and FBI policies;
- The FBI's relationship with Christopher Steele, whom the FBI considered to be a confidential human source (CHS); its receipt, use, and evaluation of election reports from Steele; and its decision to close Steele as an FBI CHS;
- Four FBI applications filed with the Foreign Intelligence Surveillance Court (FISC) in 2016 and 2017 to conduct Foreign Intelligence Surveillance Act (FISA) surveillance targeting Carter Page; and whether these applications complied with Department and FBI policies and satisfied the government's obligations to the FISC;
- The interactions of Department attorney Bruce Ohr with Steele, the FBI, Glenn Simpson of Fusion GPS, and the State Department; whether work Ohr's spouse performed for Fusion GPS implicated ethical rules applicable to Ohr; and Ohr's interactions with Department attorneys regarding the Manafort criminal case; and
- The FBI's use of Undercover Employees (UCEs) and CHSs other than Steele in the Crossfire Hurricane investigation; whether the FBI placed any CHSs within the Trump campaign or tasked any CHSs to report on the Trump campaign; whether the use of CHSs and UCEs complied with Department and FBI policies; and the attendance of a Crossfire Hurricane supervisory agent at counterintelligence briefings given to the 2016 presidential candidates and certain campaign advisors.

OIG Methodology

The OIG examined more than one million documents that were in the Department's and FBI's possession and conducted over 170 interviews involving more than 100 witnesses. These witnesses included former FBI Director Comey, former Attorney General (AG) Loretta Lynch, former Deputy Attorney General (DAG) Sally Yates, former DAG Rod Rosenstein, former Acting AG and Acting DAG and current FBI General Counsel Dana Boente, former FBI Deputy Director Andrew McCabe, former FBI General Counsel James Baker, and Department attorney Bruce Ohr and his wife. The OIG also interviewed Christopher Steele and current and former employees of other U.S. government agencies. Two witnesses, Glenn Simpson and Jonathan Winer (a former Department of State official), declined our requests for voluntary interviews, and we were unable to compel their testimony.

We were given broad access to relevant materials by the Department and the FBI. In addition, we reviewed relevant information that other U.S. government agencies provided the FBI in the course of the Crossfire Hurricane investigation. However, because the activities of other agencies are outside our jurisdiction, we did not seek to obtain records from them that the FBI never received or reviewed, except for a limited amount of State Department records relating to Steele; we also did not seek to assess any actions other agencies may have taken. Additionally, our review did not independently seek to determine whether corroboration existed for the Steele election reporting; rather, our review was focused on information that was available to the FBI concerning Steele's reports prior to and during the pendency of the Carter Page FISA authority.

Our role in this review was not to second-guess discretionary judgments by Department personnel about whether to open an investigation, or specific judgment calls made during the course of an investigation, where those decisions complied with or were authorized by Department rules, policies, or procedures. We do not criticize particular decisions merely because we might have recommended a different investigative strategy or tactic based on the facts learned during our investigation. The question we considered was not whether a particular investigative decision was ideal or could have been handled more effectively, but rather whether the Department and the FBI complied with applicable legal requirements, policies, and procedures in taking the actions we reviewed or, alternatively, whether the circumstances surrounding the decision indicated that it was based on



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inaccurate or incomplete information, or considerations other than the merits of the investigation. If the explanations we were given for a particular decision were consistent with legal requirements, policies, procedures, and not unreasonable, we did not conclude that the decision was based on improper considerations in the absence of documentary or testimonial evidence to the contrary.

The Opening of Crossfire Hurricane and Four Related Investigations, and Early Investigative Steps

The Opening of Crossfire Hurricane and Four Individual Cases

As we describe in Chapter Three, the FBI opened Crossfire Hurricane on July 31, 2016, just days after its receipt of information from a Friendly Foreign Government (FFG) reporting that, in May 2016, during a meeting with the FFG, then Trump campaign foreign policy advisor George Papadopoulos "suggested the Trump team had received some kind of suggestion from Russia that it could assist this process with the anonymous release of information during the campaign that would be damaging to Mrs. Clinton (and President Obama)." The FBI Electronic Communication (EC) opening the Crossfire Hurricane investigation stated that, based on the FFG information, "this investigation is being opened to determine whether individual(s) associated with the Trump campaign are witting of and/or coordinating activities with the Government of Russia." We did not find information in FBI or Department ECs, emails, or other documents, or through witness testimony, indicating that any information other than the FFG information was relied upon to predicate the opening of the Crossfire Hurricane investigation. Although not mentioned in the EC, at the time, FBI officials involved in opening the investigation had reason to believe that Russia may have been connected to the WikiLeaks disclosures that occurred earlier in July 2016, and were aware of information regarding Russia's efforts to interfere with the 2016 U.S. elections. These officials, though, did not become aware of Steele's election reporting until weeks later and we therefore determined that Steele's reports played no role in the Crossfire Hurricane opening.

The FBI assembled a Headquarters-based investigative team of special agents, analysts, and supervisory special agents (referred to throughout this report as "the Crossfire Hurricane team") who conducted an initial analysis of links between Trump campaign members and Russia. Based upon this

analysis, the Crossfire Hurricane team opened individual cases in August 2016 on four U.S. persons—Papadopoulos, Carter Page, Paul Manafort, and Michael Flynn—all of whom were affiliated with the Trump campaign at the time the cases were opened.

As detailed in Chapter Two, the Attorney General's Guidelines for Domestic Operations (AG Guidelines) and the FBI's Domestic Investigations Operations Guide (DIOG) both require that FBI investigations be undertaken for an "authorized purpose"—that is, "to detect, obtain information about, or prevent or protect against federal crimes or threats to the national security or to collect foreign intelligence." Additionally, both the AG Guidelines and the DIOG permit the FBI to conduct an investigation, even if it might impact First Amendment or other constitutionally protected activity, so long as there is some legitimate law enforcement purpose associated with the investigation.

In addition to requiring an authorized purpose, FBI investigations must have adequate factual predication before being initiated. The predication requirement is not a legal requirement but rather a prudential one imposed by Department and FBI policy. The DIOG provides for two types of investigations, Preliminary Investigations and Full Investigations. A Preliminary Investigation may be opened based upon "any allegation or information" indicative of possible criminal activity or threats to the national security. A Full Investigation may be opened based upon an "articulable factual basis" that "reasonably indicates" any one of three defined circumstances exists, including:

An activity constituting a federal crime or a threat to the national security has or may have occurred, is or may be occurring, or will or may occur and the investigation may obtain information relating to the activity or the involvement or role of an individual, group, or organization in such activity.

In Full Investigations such as Crossfire Hurricane, all lawful investigative methods are allowed. In Preliminary Investigations, all lawful investigative methods (including the use of CHSs and UCEs) are permitted except for mail opening, physical searches requiring a search warrant, electronic surveillance requiring a judicial order or warrant (Title III wiretap or a FISA order), or requests under Title VII of FISA. An investigation opened as a Preliminary Investigation may be converted subsequently to a Full Investigation if



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information becomes available that meets the predication standard. As we describe in the report, all of the investigative actions taken by the Crossfire Hurricane team, from the date the case was opened on July 31 until October 21 (the date of the first FISA order) would have been permitted whether the case was opened as a Preliminary or Full Investigation.

The AG Guidelines and the DIOG do not provide heightened predication standards for sensitive matters, or allegations potentially impacting constitutionally protected activity, such as First Amendment rights. Rather, the approval and notification requirements contained in the AG Guidelines and the DIOG are, in part, intended to provide the means by which such concerns can be considered by senior officials. However, we were concerned to find that neither the AG Guidelines nor the DIOG contain a provision requiring Department consultation before opening an investigation such as the one here involving the alleged conduct of individuals associated with a major party presidential campaign.

Crossfire Hurricane was opened as a Full Investigation and all of the senior FBI officials who participated in discussions about whether to open a case told us the information warranted opening it. For example, then Counterintelligence Division (CD) Assistant Director (AD) E.W. "Bill" Priestap, who approved the case opening, told us that the combination of the FFG information and the FBI's ongoing cyber intrusion investigation of the July 2016 hacks of the Democratic National Committee's (DNC) emails, created a counterintelligence concern that the FBI was "obligated" to investigate. Priestap stated that he considered whether the FBI should conduct defensive briefings for the Trump campaign but ultimately decided that providing such briefings created the risk that "if someone on the campaign was engaged with the Russians, he/she would very likely change his/her tactics and/or otherwise seek to cover-up his/her activities, thereby preventing us from finding the truth." We did not identify any Department or FBI policy that applied to this decision and therefore determined that the decision was a judgment call that Department and FBI policy leaves to the discretion of FBI officials. We also concluded that, under the AG Guidelines and the DIOG, the FBI had an authorized purpose when it opened Crossfire Hurricane to obtain information about, or protect against, a national security threat or federal crime, even though the investigation also had the potential to impact constitutionally protected activity.

Additionally, given the low threshold for predication in the AG Guidelines and the DIOG, we concluded that the FFG information, provided by a government the United States Intelligence Community (USIC) deems trustworthy, and describing a first-hand account from an FFG employee of a conversation with Papadopoulos, was sufficient to predicate the investigation. This information provided the FBI with an articulable factual basis that, if true, reasonably indicated activity constituting either a federal crime or a threat to national security, or both, may have occurred or may be occurring. For similar reasons, as we detail in Chapter Three, we concluded that the quantum of information articulated by the FBI to open the individual investigations on Papadopoulos, Page, Flynn, and Manafort in August 2016 was sufficient to satisfy the low threshold established by the Department and the FBI.

As part of our review, we also sought to determine whether there was evidence that political bias or other improper considerations affected decision making in Crossfire Hurricane, including the decision to open the investigation. We discussed the issue of political bias in a prior OIG report, *Review of Various Actions in Advance of the 2016 Election*, where we described text and instant messages between then Special Counsel to the Deputy Director Lisa Page and then Section Chief Peter Strzok, among others, that included statements of hostility toward then candidate Trump and statements of support for then candidate Hillary Clinton. In this review, we found that, while Lisa Page attended some of the discussions regarding the opening of the investigations, she did not play a role in the decision to open Crossfire Hurricane or the four individual cases. We further found that while Strzok was directly involved in the decisions to open Crossfire Hurricane and the four individual cases, he was not the sole, or even the highest-level, decision maker as to any of those matters. As noted above, then CD AD Priestap, Strzok's supervisor, was the official who ultimately made the decision to open the investigation, and evidence reflected that this decision by Priestap was reached by consensus after multiple days of discussions and meetings that included Strzok and other leadership in CD, the FBI Deputy Director, the FBI General Counsel, and a FBI Deputy General Counsel. We concluded that Priestap's exercise of discretion in opening the investigation was in compliance with Department and FBI policies, and we did not find documentary or testimonial evidence that political bias or improper motivation influenced his decision. We similarly found that, while the formal documentation opening each of the four individual investigations was approved by Strzok (as required by the DIOG), the



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decisions to do so were reached by a consensus among the Crossfire Hurricane agents and analysts who identified individuals associated with the Trump campaign who had recently traveled to Russia or had other alleged ties to Russia. Priestap was involved in these decisions. We did not find documentary or testimonial evidence that political bias or improper motivation influenced the decisions to open the four individual investigations.

Sensitive Investigative Matter Designation

The Crossfire Hurricane investigation was properly designated as a "sensitive investigative matter," or SIM, by the FBI because it involved the activities of a domestic political organization or individuals prominent in such an organization. The DIOG requires that SIMs be reviewed in advance by the FBI Office of the General Counsel (OGC) and approved by the appropriate FBI Headquarters operational section chief, and that an "appropriate [National Security Division] official" receive notification after the case has been opened.

We concluded that the FBI satisfied the DIOG's approval and notification requirements for SIMs. As we describe in Chapter Three, the Crossfire Hurricane opening was reviewed by an OGC Unit Chief and approved by AD Priestap (two levels above Section Chief). The team also orally briefed National Security Division (NSD) officials within the first few days of the investigations being initiated. We were concerned, however, that Department and FBI policies do not require that a senior Department official be notified prior to the opening of a particularly sensitive case such as this one, nor do they place any additional requirements for SIMs beyond the approval and notification requirements at the time of opening, and therefore we include a recommendation to address this issue.

Early Investigative Steps and Adherence to the Least Intrusive Method

The AG Guidelines and the DIOG require that the "least intrusive" means or method be "considered" when selecting investigative techniques and, "if reasonable based upon the circumstances of the investigation," be used to obtain information instead of a more intrusive method. The DIOG states that the degree of procedural protection the law and Department and FBI policy provide for the use of a particular investigative method helps to determine its intrusiveness. As described in Chapter Three, immediately after opening the investigation, the

Crossfire Hurricane team submitted name trace requests to other U.S. government agencies and a foreign intelligence agency, and conducted law enforcement database and open source searches, to identify individuals associated with the Trump campaign in a position to have received the alleged offer of assistance from Russia. The FBI also sent Strzok and a Supervisory Special Agent (SSA) abroad to interview the source of the information the FBI received from the FFG, and also searched the FBI's database of CHSs to identify sources who potentially could provide information about connections between individuals associated with the Trump campaign and Russia. Each of these steps is authorized under the DIOG and was a less intrusive investigative technique.

Thereafter, the Crossfire Hurricane team used more intrusive techniques, including CHSs to interact and consensually record multiple conversations with Page and Papadopoulos, both before and after they were working for the Trump campaign, as well as on one occasion with a high-level Trump campaign official who was not a subject of the investigation. We found that, under Department and FBI policy, although this CHS activity implicated First Amendment protected activity, the operations were permitted because their use was not for the sole purpose of monitoring activities protected by the First Amendment or the lawful exercise of other rights secured by the Constitution or laws of the United States. Additionally, we found that under FBI policy, the use of a CHS to conduct consensual monitoring is a matter of investigative judgment that, absent certain circumstances, can be authorized by a first-line supervisor (an SSA). We determined that the CHS operations conducted during Crossfire Hurricane received the necessary FBI approvals and that, while AD Priestap knew about and approved of all of the operations, review beyond a first-level FBI supervisor was not required by Department or FBI policy.

We found it concerning that Department and FBI policy did not require the FBI to consult with any Department official in advance of conducting CHS operations involving advisors to a major party candidate's presidential campaign, and we found no evidence that the FBI consulted with any Department officials before conducting these CHS operations. As we describe in Chapter Two, consultation, at a minimum, is required by Department and FBI policies in numerous other sensitive circumstances, and we include a recommendation to address this issue.

Shortly after opening the Carter Page investigation in August 2016, the Crossfire Hurricane team discussed the possible use of FISA-authorized



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electronic surveillance targeting Page, which is among the most sensitive and intrusive investigative techniques. As we describe in Chapter Five, the FBI ultimately did not seek a FISA order at that time because OGC, NSD's Office of Intelligence (OI), or both determined that more information was needed to support probable cause that Page was an agent of a foreign power. However, immediately after the Crossfire Hurricane team received Steele's election reporting on September 19, the team reinitiated their discussions with OI and their efforts to obtain FISA surveillance authority for Page, which they received from the FISC on October 21.

The decision to seek to use this highly intrusive investigative technique was known and approved at multiple levels of the Department, including by then DAG Yates for the initial FISA application and first renewal, and by then Acting Attorney General Boente and then DAG Rosenstein for the second and third renewals, respectively. However, as we explain later, the Crossfire Hurricane team failed to inform Department officials of significant information that was available to the team at the time that the FISA applications were drafted and filed. Much of that information was inconsistent with, or undercut, the assertions contained in the FISA applications that were used to support probable cause and, in some instances, resulted in inaccurate information being included in the applications. While we do not speculate whether Department officials would have authorized the FBI to seek to use FISA authority had they been made aware of all relevant information, it was clearly the responsibility of Crossfire Hurricane team members to advise them of such critical information so that they could make a fully informed decision.

The FBI's Relationship with Christopher Steele, and Its Receipt and Evaluation of His Election Reporting before the First FISA Application

As we describe in Chapter Four, Steele is a former intelligence officer [REDACTED] who, in 2009, formed a consulting firm specializing in corporate intelligence and investigative services. In 2010, Steele was introduced by Ohr to an FBI agent, and for several years provided information to the FBI about various matters, such as corruption in the International Federation of Association Football (FIFA). Steele also provided the FBI agent with reporting about Russian oligarchs.

In 2013, the FBI completed the paperwork allowing the FBI to designate Steele as a CHS. However, as described in Chapter Four, we found that the FBI and Steele held significantly differing views about the nature of their relationship. Steele's handling agent viewed Steele as a former intelligence officer colleague and FBI CHS, with obligations to the FBI. Steele, on the other hand, told us that he was a businessperson whose firm (not Steele) had a contractual agreement with the FBI and whose obligations were to his paying clients, not the FBI. We concluded that this disagreement affected the FBI's control over Steele during the Crossfire Hurricane investigation, led to divergent expectations about Steele's conduct in connection with his election reporting, and ultimately resulted in the FBI formally closing Steele as a CHS in November 2016 (although, as discussed below, the FBI continued its relationship with Steele through Ohr).

In June 2016, Steele and his consulting firm were hired by Fusion GPS, a Washington, D.C., investigative firm, to obtain information about whether Russia was trying to achieve a particular outcome in the 2016 U.S. elections, what personal and business ties then candidate Trump had in Russia, and whether there were any ties between the Russian government and Trump or his campaign. Steele's work for Fusion GPS resulted in his producing numerous election-related reports, which have been referred to collectively as the "Steele Dossier." Steele himself was not the originating source of any of the factual information in his reporting. Steele instead relied on a Primary Sub-source for information, who used his/her network of sub-sources to gather information that was then passed to Steele. With Fusion GPS's authorization, Steele directly provided more than a dozen of his reports to the FBI between July and October 2016, and several others to the FBI through Ohr and other third parties. The Crossfire Hurricane team received the first six election reports on September 19, 2016—more than two months after Steele first gave his handling agent two of the six reports. We describe the reasons it took two months for the reports to reach the team in Chapter Four.

FBI's Efforts to Evaluate the Steele Reporting

Steele's handling agent told us that when Steele provided him with the first election reports in July 2016 and described his engagement with Fusion GPS, it was obvious to him that the request for the research was politically motivated. The supervisory intelligence analyst who supervised the analytical efforts for the Crossfire Hurricane team (Supervisory Intel Analyst)



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explained that he also was aware of the potential for political influences on the Steele reporting.

The fact that the FBI believed Steele had been retained to conduct political opposition research did not require the FBI, under either DOJ or FBI policy, to ignore his reporting. The FBI regularly receives information from individuals with potentially significant biases and motivations, including drug traffickers, convicted felons, and even terrorists. The FBI is not required to set aside such information; rather, FBI policy requires that it critically assess the information. We found that after receiving Steele's reporting, the Crossfire Hurricane team began those efforts in earnest.

We determined that the FBI's decision to receive Steele's information for Crossfire Hurricane was based on multiple factors, including: (1) Steele's prior work as an intelligence professional for [REDACTED]; (2) his expertise on Russia; (3) his record as an FBI CHS; (4) the assessment of Steele's handling agent that Steele was reliable and had provided helpful information to the FBI in the past; and (5) the themes of Steele's reporting were consistent with the FBI's knowledge at the time of Russian efforts to interfere in the 2016 U.S. elections.

However, as we describe later, as the FBI obtained additional information raising significant questions about the reliability of the Steele election reporting, the FBI failed to reassess the Steele reporting relied upon in the FISA applications, and did not fully advise NSD or OI officials. We also found that the FBI did not aggressively seek to obtain certain potentially important information from Steele. For example, the FBI did not press Steele for information about the actual funding source for his election reporting work. Agents also did not question Steele about his role in a September 23, 2016 *Yahoo News* article entitled, "U.S. intel officials probe ties between Trump advisor and Kremlin," that described efforts by U.S. intelligence to determine whether Carter Page had opened communication channels with Kremlin officials. As we discuss in Chapters Five and Eight, the FBI assessed in the Carter Page FISA applications, without any support, that Steele had not "directly provided" the information to *Yahoo News*.

The First Application for FISA Authority on Carter Page

At the request of the FBI, the Department filed four applications with the FISC seeking FISA authority

targeting Carter Page: the first application on October [REDACTED], 2016, and three renewal applications on January [REDACTED], April [REDACTED], and June [REDACTED], 2017. A different FISC judge considered each application and issued the requested orders, collectively resulting in approximately 11 months of FISA coverage targeting Carter Page from October [REDACTED], 2016, to September [REDACTED], 2017. We discuss the first FISA application in this section and in Chapter Five.

Decision to Seek FISA Authority

We determined that the Crossfire Hurricane team's receipt of Steele's election reporting on September 19, 2016 played a central and essential role in the FBI's and Department's decision to seek the FISA order. As noted above, when the team first sought to pursue a FISA order for Page in August 2016, a decision was made by OGC, OI, or both that more information was needed to support a probable cause finding that Page was an agent of a foreign power. As a result, FBI OGC ceased discussions with OI about a Page FISA order at that time.

On September 19, 2016, the same day that the Crossfire Hurricane team first received Steele's election reporting, the team contacted FBI OGC again about seeking a FISA order for Page and specifically focused on Steele's reporting in drafting the FISA request. Two days later, on September 21, the FBI OGC Unit Chief contacted the NSD OI Unit Chief to advise him that the FBI believed it was ready to submit a formal FISA request to OI relating to Page. Almost immediately thereafter, OI assigned an attorney (OI Attorney) to begin preparation of the application.

Although the team also was interested in seeking FISA surveillance targeting Papadopoulos, the FBI OGC attorneys were not supportive. FBI and NSD officials told us that the Crossfire Hurricane team ultimately did not seek FISA surveillance of Papadopoulos, and we are aware of no information indicating that the team requested or seriously considered FISA surveillance of Manafort or Flynn.

We did not find documentary or testimonial evidence that political bias or improper motivation influenced the FBI's decision to seek FISA authority on Carter Page.

Preparation and Review Process

As we detail in Chapter Two, the FISC Rules of Procedure and FBI policy required that the Carter Page FISA applications contain all material facts. Although



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the FISC Rules do not define or otherwise explain what constitutes a "material" fact, FBI policy guidance states that a fact is "material" if it is relevant to the court's probable cause determination. Additionally, FBI policy mandates that the case agent ensure that all factual statements in a FISA application are "scrupulously accurate."

On or about September 23, the OI Attorney began work on the FISA application. Over the next several weeks, the OI Attorney prepared and edited a draft application using information principally provided by the FBI case agent assigned to the Carter Page investigation at the time and, in a few instances, by an OGC attorney (OGC Attorney) or other Crossfire Hurricane team members. The drafting process culminated in an application that asserted that the Russian government was attempting to undermine and influence the upcoming U.S. presidential election, and that the FBI believed Carter Page was acting in conjunction with the Russians in those efforts. The application's statement of facts supporting probable cause to believe that Page was an agent of Russia was broken down into five main elements:

- The efforts of Russian Intelligence Services (RIS) to influence the upcoming U.S. presidential election;
- The Russian government's attempted coordination with members of the Trump campaign, based on the FFG information reporting the suggestion of assistance from the Russians to someone associated with the Trump campaign;
- Page's historical connections to Russia and RIS;
- Page's alleged coordination with the Russian government on 2016 U.S. presidential election activities, based on Steele's reporting; and
- Page's statements to an FBI CHS in October 2016 that that he had an "open checkbook" from certain Russians to fund a think tank project.

In addition, the statement of facts described Page's denials of coordination with the Russian government, as reported in two news articles and asserted by Page in a September 25 letter to then FBI Director Comey.

The application received the necessary Department approvals and certifications as required by law. As we fully describe in Chapter Five, this application received more attention and scrutiny than a typical FISA application in terms of the additional layers

of review and number of high-level officials who read the application before it was signed. These officials included NSD's Acting Assistant Attorney General, NSD's Deputy Assistant Attorney General with oversight over OI, OI's Operations Section Chief and Deputy Section Chief, the DAG, Principal Associate Deputy Attorney General, and the Associate Deputy Attorney General responsible for ODAG's national security portfolio. However, as we explain below, the Department decision makers who supported and approved the application were not given all relevant information.

Role of Steele Election Reporting in the First Application

In support of the fourth element in the FISA application—Carter Page's alleged coordination with the Russian government on 2016 U.S. presidential election activities—the application relied entirely on the following information from Steele Reports 80, 94, 95, and 102:

- Compromising information about Hillary Clinton had been compiled for many years, was controlled by the Kremlin, and had been fed by the Kremlin to the Trump campaign for an extended period of time (Report 80);
- During a July 2016 trip to Moscow, Page met secretly with Igor Sechin, Chairman of Russian energy conglomerate Rosneft and close associate of Putin, to discuss future cooperation and the lifting of Ukraine-related sanctions against Russia; and with Igor Divyekin, a highly-placed Russian official, to discuss sharing with the Trump campaign derogatory information about Clinton (Report 94);
- Page was an intermediary between Russia and the Trump campaign's then manager (Manafort) in a "well-developed conspiracy" of cooperation, which led to Russia's disclosure of hacked DNC emails to WikiLeaks in exchange for the Trump campaign's agreement to sideline Russian intervention in Ukraine as a campaign issue (Report 95); and
- Russia released the DNC emails to WikiLeaks in an attempt to swing voters to Trump, an objective conceived and promoted by Page and others (Report 102).

We determined that the FBI's decision to rely upon Steele's election reporting to help establish probable cause that Page was an agent of Russia was a judgment reached initially by the case agents on the



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Crossfire Hurricane team. We further determined that FBI officials at every level concurred with this judgment, from the OGC attorneys assigned to the investigation to senior CD officials, then General Counsel James Baker, then Deputy Director Andrew McCabe, and then Director James Comey. FBI leadership supported relying on Steele's reporting to seek a FISA order on Page after being advised of, and giving consideration to, concerns expressed by Stuart Evans, then NSD's Deputy Assistant Attorney General with oversight responsibility over OI, that Steele may have been hired by someone associated with presidential candidate Clinton or the DNC, and that the foreign intelligence to be collected through the FISA order would probably not be worth the "risk" of being criticized later for collecting communications of someone (Carter Page) who was "politically sensitive." According to McCabe, the FBI "felt strongly" that the FISA application should move forward because the team believed they had to get to the bottom of what they considered to be a potentially serious threat to national security, even if the FBI would later be criticized for taking such action. McCabe and others discussed the FBI's position with NSD and ODAG officials, and these officials accepted the FBI's decision to move forward with the application, based substantially on the Steele information.

We found that the FBI did not have information corroborating the specific allegations against Carter Page in Steele's reporting when it relied upon his reports in the first FISA application or subsequent renewal applications. OGC and NSD attorneys told us that, while the FBI's "Woods Procedures" (described in Chapter Two) require that every factual assertion in a FISA application be "verified," when information is attributed to a FBI CHS, the Woods Procedures require only that the agent verify, with supporting documentation, that the application accurately reflects what the CHS told the FBI. The procedures do not require that the agent corroborate, through a second, independent source, that what the CHS told the FBI is true. We did not identify anything in the Woods Procedures that is inconsistent with these officials' description of the procedures.

However, absent corroboration for the factual assertions in the election reporting, it was particularly important for the FISA applications to articulate the FBI's knowledge of Steele's background and its assessment of his reliability. On these points, the applications advised the court that Steele was believed to be a reliable source for three reasons: his professional background; his history of work as an FBI CHS since 2013; and his prior non-election reporting,

which the FBI described as "corroborated and used in criminal proceedings." As discussed below, the representations about Steele's prior reporting were overstated and had not been approved by Steele's handling agent, as required by the Woods Procedures.

Due to Evans's persistent inquiries, the FISA application also included a footnote, developed by OI based on information provided by the Crossfire Hurricane team, to address Evans's concern about the potential political bias of Steele's research. The footnote stated that Steele was hired by an identified U.S. person (Glenn Simpson) to conduct research regarding "Candidate #1's" (Donald Trump) ties to Russia and that the FBI "speculates" that this U.S. person was likely looking for information that could be used to discredit the Trump campaign.

Relevant Information Inaccurately Stated, Omitted, or Undocumented in the First Application

Our review found that FBI personnel fell far short of the requirement in FBI policy that they ensure that all factual statements in a FISA application are "scrupulously accurate." We identified multiple instances in which factual assertions relied upon in the first FISA application were inaccurate, incomplete, or unsupported by appropriate documentation, based upon information the FBI had in its possession at the time the application was filed. We found that the problems we identified were primarily caused by the Crossfire Hurricane team failing to share all relevant information with OI and, consequently, the information was not considered by the Department decision makers who ultimately decided to support the applications.

As more fully described in Chapter Five, based upon the information known to the FBI in October 2016, the first application contained the following seven significant inaccuracies and omissions:

1. Omitted information the FBI had obtained from another U.S. government agency detailing its prior relationship with Page, including that Page had been approved as an "operational contact" for the other agency from 2008 to 2013, and that Page had provided information to the other agency concerning his prior contacts with certain Russian intelligence officers, one of which overlapped with facts asserted in the FISA application;
2. Included a source characterization statement asserting that Steele's prior reporting had been "corroborated and used in criminal proceedings,"



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which overstated the significance of Steele's past reporting and was not approved by Steele's handling agent, as required by the Woods Procedures;

3. Omitted information relevant to the reliability of Person 1, a key Steele sub-source (who was attributed with providing the information in Report 95 and some of the information in Reports 80 and 102 relied upon in the application), namely that (1) Steele himself told members of the Crossfire Hurricane team that Person 1 was a "boaster" and an "egoist" and "may engage in some embellishment" and (2) [REDACTED];
4. Asserted that the FBI had assessed that Steele did not directly provide to the press information in the September 23 *Yahoo News* article based on the premise that Steele had told the FBI that he only shared his election-related research with the FBI and Fusion GPS, his client; this premise was incorrect and contradicted by documentation in the Woods File—Steele had told the FBI that he also gave his information to the State Department;
5. Omitted Papadopoulos's consensually monitored statements to an FBI CHS in September 2016 denying that anyone associated with the Trump campaign was collaborating with Russia or with outside groups like WikiLeaks in the release of emails;
6. Omitted Page's consensually monitored statements to an FBI CHS in August 2016 that Page had "literally never met" or "said one word to" Paul Manafort and that Manafort had not responded to any of Page's emails; if true, those statements were in tension with claims in Report 95 that Page was participating in a conspiracy with Russia by acting as an intermediary for Manafort on behalf of the Trump campaign; and
7. Included Page's consensually monitored statements to an FBI CHS in October 2016 that the FBI believed supported its theory that Page was an agent of Russia but omitted other statements Page made that were inconsistent with its theory, including denying having met with Sechin and Divyekin, or even knowing who Divyekin was; if true, those statements contradicted the claims in Report 94 that Page

had met secretly with Sechin and Divyekin about future cooperation with Russia and shared derogatory information about candidate Clinton.

None of these inaccuracies and omissions were brought to the attention of OI before the last FISA application was filed in June 2017. Consequently, these failures were repeated in all three renewal applications. Further, as we discuss later, we identified 10 additional significant errors in the renewal applications.

The failure to provide accurate and complete information to the OI Attorney concerning Page's prior relationship with another U.S. government agency (item 1 above) was particularly concerning because the OI Attorney had specifically asked the case agent in late September 2016 whether Carter Page had a current or prior relationship with the other agency. In response to that inquiry, the case agent advised the OI Attorney that Page's relationship was "dated" (claiming it was when Page lived in Moscow in 2004-2007) and "outside scope." This representation, however, was contrary to information that the other agency had provided to the FBI in August 2016, which stated that Page was approved as an "operational contact" of the other agency from 2008 to 2013 (after Page had left Moscow). Moreover, rather than being "outside scope," Page's status with the other agency overlapped in time with some of the interactions between Page and known Russian intelligence officers that were relied upon in the FISA applications to establish probable cause. Indeed, Page had provided information to the other agency about his past contacts with a Russian Intelligence Officer (Intelligence Officer 1), which were among the historical connections to Russian intelligence officers that the FBI relied upon in the first FISA application (and subsequent renewal applications). According to the information from the other agency, an employee of the other agency had assessed that Page "candidly described his contact with" Intelligence Officer 1 to the other agency. Thus, the FBI relied upon Page's contacts with Intelligence Officer 1, among others, in support of its probable cause statement in the FISA application, while failing to disclose to OI or the FISC that (1) Page had been approved as an operational contact by the other agency during a five-year period that overlapped with allegations in the FISA application, (2) Page had disclosed to the other agency contacts that he had with Intelligence Officer 1 and certain other individuals, and (3) the other agency's employee had given a positive assessment of Page's candor.

Further, we were concerned by the FBI's inaccurate assertion in the application that Steele's prior reporting had been "corroborated and used in criminal



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proceedings," which we were told was primarily a reference to Steele's role in the FIFA corruption investigation. We found that the team had speculated that Steele's prior reporting had been corroborated and used in criminal proceedings without clearing the representation with Steele's handling agent, as required by the Woods Procedures. According to the handling agent, he would not have approved the representation in the application because only "some" of Steele's prior reporting had been corroborated—most of it had not—and because Steele's information was never used in a criminal proceeding. We concluded that these failures created the inaccurate impression in the applications that at least some of Steele's past reporting had been deemed sufficiently reliable by prosecutors to use in court, and that more of his information had been corroborated than was actually the case.

We found no evidence that the OI Attorney, NSD supervisors, ODAG officials, or Yates were made aware of these issues before the first application was submitted to the court. Although we also found no evidence that Comey had been made aware of these issues at the time he certified the application, as discussed in our analysis in Chapter Eleven, multiple factors made it difficult for us to precisely determine the extent of FBI leadership's knowledge as to each fact that was not shared with OI and not included, or inaccurately stated, in the FISA applications. These factors included, among other things, limited recollections, the inability to question Comey or refresh his recollection with relevant, classified documentation because of his lack of a security clearance, and the absence of meeting minutes that would show the specific details shared with Comey and McCabe during briefings they received, beyond the more general investigative updates that we know they were provided.

FBI Activities After the First FISA Application and FBI Efforts to Assess Steele's Election Reporting

On October 31, 2016, shortly after the first FISA application was signed, an article entitled "A Veteran Spy Has Given the FBI Information Alleging a Russian Operation to Cultivate Donald Trump," was published by *Mother Jones*. Steele admitted to the FBI that he was a source for the article, and the FBI closed him as a CHS for cause in November 2016. However, as we describe below, despite having been closed for cause, the Crossfire Hurricane team continued to obtain information from Steele through Ohr, who met with the FBI on 13 occasions to pass along information he had been provided by Steele.

In Chapter Six, we describe the events that followed Steele's closing as a CHS, including the FBI's receipt of information from several third parties who had acquired copies of the Steele election reports, use of information from the Steele reports in an interagency assessment of Russian interference in the U.S. 2016 elections, and continuing efforts to learn about Steele and his source network and to verify information from the reports following Steele's closure.

Starting in December 2016, FBI staff participated in an interagency effort to assess the Russian government's intentions and actions concerning the 2016 U.S. elections. We learned that whether and how to present Steele's reporting in the Intelligence Community Assessment (ICA) was a topic of significant discussion between the FBI and the other agencies participating in it. According to FBI staff, as the interagency editing process for the ICA progressed, the Central Intelligence Agency (CIA) expressed concern about the lack of vetting for the Steele election reporting and asserted it did not merit inclusion in the body of the report. An FBI Intel Section Chief told us the CIA viewed it as "internet rumor." In contrast, as we describe in Chapter Six, the FBI, including Comey and McCabe, sought to include the reporting in the ICA. Limited information from the Steele reporting ultimately was presented in an appendix to the ICA.

FBI efforts to verify information in the Steele election reports, and to learn about Steele and his source network continued after Steele's closure as a CHS. In November and December 2016, FBI officials travelled abroad and met with persons who previously had professional contacts with Steele or had knowledge of his work. Information these FBI officials obtained about Steele was both positive and negative. We found, however, that the information about Steele was not placed in his FBI CHS file.

We further learned that the FBI's Validation Management Unit (VMU) completed a human source validation review of Steele in early 2017. The VMU review found that Steele's past criminal reporting was "minimally corroborated," and included this finding in its report that was provided to the Crossfire Hurricane team. This determination by the VMU was in tension with the source characterization statement included in the initial FISA application, which represented that Steele's prior reporting had been "corroborated and used in criminal proceedings." The VMU review also did not identify any corroboration for Steele's election reporting among the information that the Crossfire Hurricane team had collected. However, the VMU did not include this finding in its written validation report.



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and therefore members of the Crossfire Hurricane team and FBI executives were unaware of it.

We also found that the FBI's interviews of Steele, his Primary Sub-source, a second sub-source, and other investigative activity, revealed potentially serious problems with Steele's descriptions of information in his reports. For example, as detailed in Chapters Six and Eight, the Primary Sub-source made statements during his/her January 2017 FBI interview that were inconsistent with multiple sections of the Steele reports, including some that were relied upon in the FISA applications. Among other things, regarding the allegations attributed to Person 1, the Primary Sub-source's account of these communications, if true, was not consistent with and, in fact, contradicted the allegations of a "well-developed conspiracy" in Reports 95 and 102 attributed to Person 1.

We further determined that the Crossfire Hurricane team was unable to corroborate any of the specific substantive allegations regarding Carter Page contained in Steele's election reporting which the FBI relied on in the FISA applications. We were told by the Supervisory Intel Analyst that, as of September 2017, the FBI had corroborated limited information in the Steele election reporting, and much of that was publicly available information. Most relevant to the Carter Page FISA applications, the allegations contained in Reports 80, 94, 95, and 102, which were relied upon in all four applications, remained uncorroborated and, in several instances, were inconsistent with information gathered by the Crossfire Hurricane team.



The Three Renewal Applications for Continued FISA Authority on Carter Page

As noted above, the FBI filed three renewal applications with the FISC, on January ■, April ■, and June ■, 2017. In addition to repeating the seven significant errors contained in the first FISA application and outlined above, we identified 10 additional

significant errors in the three renewal applications, based upon information known to the FBI after the first application and before one or more of the renewals. We describe the circumstances surrounding these 10 errors in Chapter Eight, and provide a chart listing additional errors in Appendix One. As more fully described in Chapter Eight, the renewal applications:

8. Omitted the fact that Steele's Primary Sub-source, who the FBI found credible, had made statements in January 2017 raising significant questions about the reliability of allegations included in the FISA applications, including, for example, that he/she had no discussion with Person 1 concerning WikiLeaks and there was "nothing bad" about the communications between the Kremlin and the Trump team, and that he/she did not report to Steele in July 2016 that Page had met with Sechin;
9. Omitted Page's prior relationship with another U.S. government agency, despite being reminded by the other agency in June 2017, prior to the filing of the final renewal application, about Page's past status with that other agency; instead of including this information in the final renewal application, the OGC Attorney altered an email from the other agency so that the email stated that Page was "not a source" for the other agency, which the FBI affiant relied upon in signing the final renewal application;
10. Omitted information from persons who previously had professional contacts with Steele or had direct knowledge of his work-related performance, including statements that Steele had no history of reporting in bad faith but "[d]emonstrates lack of self-awareness, poor judgment," "pursued people with political risk but no intelligence value," "didn't always exercise great judgment," and it was "not clear what he would have done to validate" his reporting;
11. Omitted information obtained from Ohr about Steele and his election reporting, including that (1) Steele's reporting was going to Clinton's presidential campaign and others, (2) Simpson was paying Steele to discuss his reporting with the media, and (3) Steele was "desperate that Donald Trump not get elected and was passionate about him not being the U.S. President";
12. Failed to update the description of Steele after information became known to the Crossfire



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Hurricane team, from Ohr and others, that provided greater clarity on the political origins and connections of Steele's reporting, including that Simpson was hired by someone associated with the Democratic Party and/or the DNC;

13. Failed to correct the assertion in the first FISA application that the FBI did not believe that Steele directly provided information to the reporter who wrote the September 23 *Yahoo News* article, even though there was no information in the Woods File to support this claim and even after certain Crossfire Hurricane officials learned in 2017, before the third renewal application, of an admission that Steele made in a court filing about his interactions with the news media in the late summer and early fall of 2016;
14. Omitted the finding from a FBI source validation report that Steele was suitable for continued operation but that his past contributions to the FBI's criminal program had been "minimally corroborated," and instead continued to assert in the source characterization statement that Steele's prior reporting had been "corroborated and used in criminal proceedings";
15. Omitted Papadopoulos's statements to an FBI CHS in late October 2016 denying that the Trump campaign was involved in the circumstances of the DNC email hack;
16. Omitted Joseph Mifsud's denials to the FBI that he supplied Papadopoulos with the information Papadopoulos shared with the FFG (suggesting that the campaign received an offer or suggestion of assistance from Russia); and
17. Omitted information indicating that Page played no role in the Republican platform change on Russia's annexation of Ukraine as alleged in the Report 95, which was inconsistent with a factual assertion relied upon to support probable cause in all four FISA applications.

Among the most serious of the 10 additional errors we found in the renewal applications was the FBI's failure to advise OI or the court of the inconsistencies, described in detail in Chapter Six, between Steele and his Primary Sub-source on the reporting relied upon in the FISA applications. Although the Primary Sub-source's account of these communications, if true, was not consistent with and, in fact, contradicted the allegations of a "well-developed conspiracy" in Reports 95 and 102 attributed to Person 1, the FBI did not share this information with OI. The

FBI also failed to share other inconsistencies with OI, including the Primary Sub-source's account of the alleged meeting between Page and Sechin in Steele's Report 94 and his/her descriptions of the source network. The fact that the Primary Sub-source's account contradicted key assertions attributed to his/her own sub-sources in Steele's Reports 94, 95, and 102 should have generated significant discussions between the Crossfire Hurricane team and OI prior to submitting the next FISA renewal application. According to Evans, had OI been made aware of the information, such discussions might have included the possibility of foregoing the renewal request altogether, at least until the FBI reconciled the differences between Steele's account and the Primary Sub-source's account to the satisfaction of OI. However, we found no evidence that the Crossfire Hurricane team ever considered whether any of the inconsistencies warranted reconsideration of the FBI's assessment of the reliability of the Steele reports or notice to OI before the subsequent renewal applications were filed.

Instead, the second and third renewal applications provided no substantive information concerning the Primary Sub-source's interview, and offered only a brief conclusory statement that the FBI met with the Primary Sub-source "[i]n an effort to further corroborate Steele's reporting" and found the Primary Sub-source to be "truthful and cooperative." We believe that including this statement, without also informing OI and the court that the Primary Sub-source's account of events contradicted key assertions in Steele's reporting, left a misimpression that the Primary Sub-source had corroborated the Steele reporting. Indeed, in a letter to the FISC in July 2018, before learning of these inconsistencies from us during this review, the Department defended the reliability of Steele's reporting and the FISA applications by citing, in part, to the Primary Sub-source's interview as "additional information corroborating [Steele's] reporting" and noting the FBI's determination that he/she was "truthful and cooperative."

The renewal applications also continued to fail to include information regarding Carter Page's past relationship with another U.S. government agency, even though both OI and members of the Crossfire Hurricane expressed concern about the possibility of a prior relationship following interviews that Page gave to news outlets in April and May 2017 stating that he had assisted other U.S. government agencies in the past. As we describe in Chapter Eight, in June 2017, SSA 2, who was to be the affiant for Renewal Application No. 3 and had been the affiant for the first two renewals, told us that he wanted a definitive answer to whether Page



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had ever been a source for another U.S. government agency before he signed the final renewal application. This led to interactions between the OGC Attorney assigned to Crossfire Hurricane and a liaison from the other U.S. government agency. In an email from the liaison to the OGC Attorney, the liaison provided written guidance, including that it was the liaison's recollection that Page had or continued to have a relationship with the other agency, and directed the OGC Attorney to review the information that the other agency had provided to the FBI in August 2016. As noted above, that August 2016 information stated that Page did, in fact, have a prior relationship with that other agency. The next morning, immediately following a 28 minute telephone call between the OGC Attorney and the OI Attorney, the OGC Attorney forwarded to the OI Attorney the liaison's email (but not the original email from the OGC Attorney to the liaison setting out the questions he was asking). The OI Attorney responded to the OGC Attorney, "thanks I think we are good and no need to carry it any further." However, when the OGC Attorney subsequently sent the liaison's email to SSA 2, the OGC Attorney altered the liaison's email by inserting the words "not a source" into it, thus making it appear that the liaison had said that Page was "not a source" for the other agency. Relying upon this altered email, SSA 2 signed the third renewal application that again failed to disclose Page's past relationship with the other agency. Consistent with the Inspector General Act of 1978, following the OIG's discovery that the OGC Attorney had altered and sent the email to SSA 2, who thereafter relied on it to swear out the third FISA application, the OIG promptly informed the Attorney General and the FBI Director and provided them with the relevant information about the OGC Attorney's actions.

None of the inaccuracies and omissions that we identified in the renewal applications were brought to the attention of OI before the applications were filed. As a result, similar to the first application, the Department officials who reviewed one or more of the renewal applications, including Yates, Boente, and Rosenstein, did not have accurate and complete information at the time they approved them.

We do not speculate whether or how having accurate and complete information might have influenced the decisions of senior Department leaders who supported the four FISA applications, or the court, if they had known all of the relevant information. Nevertheless, it was the obligation of the FBI agents and supervisors who were aware of the information to ensure that the FISA applications were "scrupulously accurate" and that OI, the Department's decision

makers, and ultimately, the court had the opportunity to consider the additional information and the information omitted from the first application. The individuals involved did not meet this obligation.

Conclusions Concerning All Four FISA Applications

We concluded that the failures described above and in this report represent serious performance failures by the supervisory and non-supervisory agents with responsibility over the FISA applications. These failures prevented OI from fully performing its gatekeeper function and deprived the decision makers the opportunity to make fully informed decisions. Although some of the factual misstatements and omissions we found in this review were arguably more significant than others, we believe that all of them taken together resulted in FISA applications that made it appear that the information supporting probable cause was stronger than was actually the case.

We identified at least 17 significant errors or omissions in the Carter Page FISA applications, and many additional errors in the Woods Procedures. These errors and omissions resulted from case agents providing wrong or incomplete information to OI and failing to flag important issues for discussion. While we did not find documentary or testimonial evidence of intentional misconduct on the part of the case agents who assisted OI in preparing the applications, or the agents and supervisors who performed the Woods Procedures, we also did not receive satisfactory explanations for the errors or problems we identified. In most instances, the agents and supervisors told us that they either did not know or recall why the information was not shared with OI, that the failure to do so may have been an oversight, that they did not recognize at the time the relevance of the information to the FISA application, or that they did not believe the missing information to be significant. On this last point, we believe that case agents may have improperly substituted their own judgments in place of the judgment of OI, or in place of the court, to weigh the probative value of the information. Further, the failure to update OI on all significant case developments relevant to the FISA applications led us to conclude that the agents and supervisors did not give appropriate attention or treatment to the facts that cut against probable cause, or reassess the information supporting probable cause as the investigation progressed. The agents and SSAs also did not follow, or appear to even know, the requirements in the Woods Procedures to re-verify the factual assertions from previous applications



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that are repeated in renewal applications and verify source characterization statements with the CHS handling agent and document the verification in the Woods File.

That so many basic and fundamental errors were made by three separate, hand-picked teams on one of the most sensitive FBI investigations that was briefed to the highest levels within the FBI, and that FBI officials expected would eventually be subjected to close scrutiny, raised significant questions regarding the FBI chain of command's management and supervision of the FISA process. FBI Headquarters established a chain of command for Crossfire Hurricane that included close supervision by senior CD managers, who then briefed FBI leadership throughout the investigation. Although we do not expect managers and supervisors to know every fact about an investigation, or senior officials to know all the details of cases about which they are briefed, in a sensitive, high-priority matter like this one, it is reasonable to expect that they will take the necessary steps to ensure that they are sufficiently familiar with the facts and circumstances supporting and potentially undermining a FISA application in order to provide effective oversight, consistent with their level of supervisory responsibility. We concluded that the information that was known to the managers, supervisors, and senior officials should have resulted in questions being raised regarding the reliability of the Steele reporting and the probable cause supporting the FISA applications, but did not.

In our view, this was a failure of not only the operational team, but also of the managers and supervisors, including senior officials, in the chain of command. For these reasons, we recommend that the FBI review the performance of the employees who had responsibility for the preparation, Woods review, or approval of the FISA applications, as well as the managers and supervisors in the chain of command of the Carter Page investigation, including senior officials, and take any action deemed appropriate. In addition, given the extensive compliance failures we identified in this review, we believe that additional OIG oversight work is required to assess the FBI's compliance with Department and FBI FISA-related policies that seek to protect the civil liberties of U.S. persons. Accordingly, we have today initiated an OIG audit that will further examine the FBI's compliance with the Woods Procedures in FISA applications that target U.S. persons in both counterintelligence and counterterrorism investigations. This audit will be informed by the findings in this review, as well as by our prior work over the past 15 years on the Department's and FBI's use of

national security and surveillance authorities, including authorities under FISA, as detailed in Chapter One.

Issues Relating to Department Attorney Bruce Ohr

In Chapter Nine, we describe the interactions Department attorney Bruce Ohr had with Christopher Steele, the FBI, Glenn Simpson (the owner of Fusion GPS), and the State Department during the Crossfire Hurricane investigation. At the time of these interactions, which took place from about July 2016 to May 2017, Ohr was an Associate Deputy Attorney General in the Office of the Deputy Attorney General (ODAG) and the Director of the Organized Crime and Drug Enforcement Task Force (OCDETF).

Ohr's Interactions with Steele, the FBI, Simpson, and the State Department

Beginning in July 2016, at about the same time that Steele was engaging with the FBI on his election reporting, Steele contacted Ohr, who he had known since at least 2007, to discuss information from Steele's election reports. At Steele's suggestion, Ohr also met in August 2016 with Simpson to discuss Steele's reports. At the time, Ohr's wife, Nellie Ohr, worked at Fusion GPS as an independent contractor. Ohr also met with Simpson in December 2016, at which time Simpson gave Ohr a thumb drive containing numerous Steele election reports that Ohr thereafter provided to the FBI.

On October 18, 2016, after speaking with Steele that morning, Ohr met with McCabe to share Steele's and Simpson's information with him. Thereafter, Ohr met with members of the Crossfire Hurricane team 13 times between November 21, 2016, and May 15, 2017, concerning his contacts with Steele and Simpson. All 13 meetings occurred after the FBI had closed Steele as a CHS and, except for the November 21 meeting, each meeting was initiated at Ohr's request. Ohr told us that he did not recall the FBI asking him to take any action regarding Steele or Simpson, but Ohr also stated that "the general instruction was to let [the FBI] know...when I got information from Steele." The Crossfire Hurricane team memorialized each of the meetings with Ohr as an "interview" using an FBI FD-302 form. Separately, in November 2016, Ohr met with senior State Department officials regarding Steele's election reporting.

Department leadership, including Ohr's supervisors in ODAG and the ODAG officials who



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reviewed and approved the Carter Page FISA applications, were unaware of Ohr's meetings with FBI officials, Steele, Simpson, and the State Department until after Congress requested information from the Department regarding Ohr's activities in late November 2017.

We did not identify a specific Department policy prohibiting Ohr from meeting with Steele, Simpson, or the State Department and providing the information he learned from those meetings to the FBI. However, Ohr was clearly cognizant of his responsibility to inform his supervisors of these interactions, and acknowledged to the OIG that the possibility that he would have been told by his supervisors to stop having such contact may have factored into his decision not to tell them about it.

We concluded that Ohr committed consequential errors in judgment by (1) failing to advise his direct supervisors or the DAG that he was communicating with Steele and Simpson and then requesting meetings with the FBI's Deputy Director and Crossfire Hurricane team on matters that were outside of his areas of responsibility, and (2) making himself a witness in the investigation by meeting with Steele and providing Steele's information to the FBI. As we describe in Chapter Eight, the late discovery of Ohr's meetings with the FBI prompted NSD to notify the FISC in July 2018, over a year after the final FISA renewal order was issued, of information that Ohr had provided to the FBI but that the FBI had failed to inform NSD and OI about (and therefore was not included in the FISA applications), including that Steele was "desperate that Donald Trump not get elected and was passionate about him not being the U.S. President."

FBI Compliance with Policies

The FBI's CHS Policy Guide (CHSPG) provides guidance to agents concerning contacts with CHSs after they have been closed for cause, as was the case with Steele as of November 2016. According to the CHSPG, a handling agent must not initiate contact with or respond to contacts from a former CHS who has been closed for cause absent exceptional circumstances that are approved by an SSA. The CHSPG also requires reopening of the CHS if the relationship between the FBI and a closed CHS is expected to continue beyond the initial contact or debriefing. Reopening requires high levels of supervisory approval, including a finding that the benefits of reopening the CHS outweigh the risks.

We found that, while the Crossfire Hurricane team did not initiate direct contact with Steele after his

closure, it responded to numerous contacts made by Steele through Ohr. Ohr himself was not a direct witness in the Crossfire Hurricane investigation; rather, his purpose in communicating with the FBI was to pass along information from Steele. While the FBI's CHS policy does not explicitly address indirect contact between an FBI agent and a closed CHS, we concluded that the repeated contacts with Steele should have triggered the CHS policy requiring that such contacts occur only after an SSA determines that exceptional circumstances exist. While an SSA was present for the meetings with Ohr, we found no evidence that the SSAs made considered judgments that exceptional circumstances existed for the repeated contacts. We also found that, given that there were 13 different meetings with Ohr over a period of months, the use of Ohr as a conduit between the FBI and Steele created a relationship by proxy that should have triggered, pursuant to FBI policy, a supervisory decision about whether to reopen Steele as a CHS or discontinue accepting information indirectly from him through Ohr.

Ethics Issues Raised by Nellie Ohr's Former Employment with Fusion GPS

Fusion GPS employed Nellie Ohr as an independent contractor from October 2015 to September 2016. On his annual financial disclosure forms covering calendar years 2015 and 2016, Ohr listed Nellie Ohr as an "independent contractor" and reported her income from that work on the form. We determined that financial disclosure rules, 5 C.F.R. Part 2634, did not require Ohr to list on the form the specific organizations, such as Fusion GPS, that paid Nellie Ohr as an independent contractor during the reporting period.

In addition, for reasons we explain in Chapter Eleven, we concluded that the federal ethics rules did not require Ohr to obtain Department ethics counsel approval before engaging with the FBI in connection with the Crossfire Hurricane matter because of Nellie Ohr's prior work for Fusion GPS. However, we found that, given the factual circumstances that existed, and the appearance that they created, Ohr displayed a lapse in judgment by not availing himself of the process described in the ethics rules to consult with the Department ethics official about his involvement in the investigation.

Meetings Involving Ohr, CRM officials, and the FBI Regarding the MLARS Investigation



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Ohr's supervisors in ODAG also were unaware that Ohr, shortly after the U.S. elections in November 2016, and again in early 2017, participated in discussions about a money laundering investigation of Manafort that was then being led by prosecutors from the Money Laundering and Asset Recovery Section (MLARS), which is located in the Criminal Division (CRM) at the Department's headquarters.

As described in more detail in Chapter Nine, in November 2016, Ohr told CRM Deputy Assistant Attorney General Bruce Swartz and Counsel to the CRM Assistant Attorney General Zainab Ahmad about information he was getting from Steele and Simpson about Manafort. Between November 16, 2016 and December 15, 2016, Ohr participated in several meetings that were attended, at various times, by some or all of the following individuals: Swartz, Ahmad, Andrew Weissmann (then Section Chief of CRM's Fraud Section), Strzok, and Lisa Page. The meetings involving Ohr, Swartz, Ahmad, and Weissmann focused on their shared concern that MLARS was not moving quickly enough on the Manafort criminal investigation and whether there were steps they could take to move the investigation forward. The meetings with Strzok and Page focused primarily on whether the FBI could assess the case's relevance, if any, to the FBI's Russian interference investigation. MLARS was not represented at any of these meetings or told about them, and none of attendees had supervisory responsibility over the MLARS investigation.

There were no meetings about the Manafort case involving Ohr, Swartz, Ahmad, and Weissmann from December 16, 2016 to January 30, 2017. On January 31, 2017, one day after Yates was removed as DAG, Ahmad, by then an Acting CRM Deputy Assistant Attorney General, after consulting with Swartz and Weissmann, sent an email to Lisa Page, copying Weissmann, Swartz, and Ohr, requesting a meeting the next day to discuss "a few Criminal Division related developments." The next day, February 1, Swartz, Ohr, Ahmad, and Weissmann met with Strzok, Lisa Page, and an FBI Acting Section Chief. None of the attendees at the meeting could explain to us what the "Criminal Division related developments" were, and we did not find any. Meeting notes reflect, among other things, that the group discussed the Manafort criminal investigation and efforts that the Department could undertake to investigate attempts by Russia to influence the 2016 elections. MLARS was not represented at, or told about, the meeting.

We are not aware of information indicating that any of the discussions involving Ohr, Swartz,

Weissmann, Ahmad, Strzok, and Lisa Page resulted in any actions taken or not taken in the MLARS investigation, and ultimately the investigation remained with MLARS until it was transferred to the Office of the Special Counsel in May 2017. We also did not identify any Department policies prohibiting internal discussions about a pending investigation among officials not assigned to the matter, or between those officials and senior officials from the FBI. However, as described in Chapter Nine, we were told that there was a decision not to inform the leadership of CRM, both before and after the change in presidential administrations, of these discussions in order to insulate the MLARS investigation from becoming "politicized." We concluded that this decision, made in the absence of concerns of potential wrongdoing or misconduct, and for the purpose of avoiding the appearance that an investigation is "politicized," fundamentally misconstrued who is ultimately responsible and accountable for the Department's work. We agree with the concerns expressed to us by then DAG Yates and then CRM Assistant Attorney General Leslie Caldwell. Department leaders cannot fulfill their management responsibilities, and be held accountable for the Department's actions, if subordinates intentionally withhold information from them in such circumstances.

The Use of Confidential Sources (Other Than Steele) and Undercover Employees

As discussed in Chapter Ten, we determined that, during the 2016 presidential campaign, the Crossfire Hurricane team tasked several CHSs, which resulted in multiple interactions with Carter Page and George Papadopoulos, both before and after they were affiliated with the Trump campaign, and one with a high-level Trump campaign official who was not a subject of the investigation. All of these CHS interactions were consensually monitored and recorded by the FBI. As noted above, under Department and FBI policy, the use of a CHS to conduct consensual monitoring is a matter of investigative judgment that, absent certain circumstances, can be authorized by a first-line supervisor (a supervisory special agent). We determined that the CHS operations conducted during Crossfire Hurricane received the necessary FBI approvals, and that AD Priestap knew about, and approved of, all of the Crossfire Hurricane CHS operations, even in circumstances where a first-level supervisory special agent could have approved the operations. We found no evidence that the FBI used CHSs or UCEs to interact with members of the Trump campaign prior to the opening of the Crossfire Hurricane investigation. After the opening of the investigation, we



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found no evidence that the FBI placed any CHSs or UCEs within the Trump campaign or tasked any CHSs or UCEs to report on the Trump campaign. Finally, we also found no documentary or testimonial evidence that political bias or improper motivations influenced the FBI's decision to use CHSs or UCEs to interact with Trump campaign officials in the Crossfire Hurricane investigation.

Although the Crossfire Hurricane team's use of CHSs and UCEs complied with applicable policies, we are concerned that, under these policies, it was sufficient for a first-level FBI supervisor to authorize the domestic CHS operations that were undertaken in Crossfire Hurricane, and that there was no applicable Department or FBI policy requiring the FBI to notify Department officials of the investigative team's decision to task CHSs to consensually monitor conversations with members of a presidential campaign. We found no evidence that the FBI consulted with any Department officials before conducting these CHS operations. We believe that current Department and FBI policies are not sufficient to ensure appropriate oversight and accountability when such operations potentially implicate sensitive, constitutionally protected activity, and that they should require, at minimum, Department consultation. As noted above, we include a recommendation in this report to address this issue.

Consistent with current Department and FBI policy, we learned that decisions about the use of CHSs and UCEs were made by the case agents and the supervisory special agents assigned to Crossfire Hurricane. These agents told the OIG that they focused the CHS operations on the FFG information and the four investigative subjects, and that they viewed CHS operations as one of the best methods available to quickly obtain information about the predicated allegations, while preventing information about the nature and existence of the investigation from becoming public, and potentially impacting the presidential election.

During the meeting between a CHS and the high-level Trump campaign official who was not a subject of the investigation, the CHS asked about the role of three Crossfire Hurricane subjects—Page, Papadopoulos, and Manafort—in the Trump campaign. The CHS also asked about allegations in public reports concerning Russian interference in the 2016 elections, the campaign's response to ideas featured in Page's Moscow speech, and the possibility of an "October Surprise." In response, the campaign official made no comments of note about those topics. The CHS and the high-level campaign official also discussed [REDACTED]

[REDACTED] We found that the Crossfire Hurricane team made no use of any information collected from the high-level Trump campaign official, because the team determined that none of the information gathered was "germane" to the allegations under investigation. However, we were concerned that the Crossfire Hurricane team did not recall having in place a plan, prior to the operation involving the high-level campaign official, to address the possible collection of politically sensitive information.

As discussed in Chapter Ten, through the use of CHSs, the investigative team obtained statements from Carter Page and Papadopoulos that raised questions about the validity of allegations under investigation. For example, when questioned in August 2016 about other individuals who were subjects in the investigation, Page told a CHS that he had "literally never met" or "said one word to" Manafort and that Manafort had not responded to any of Page's emails. As another example, Papadopoulos denied to a CHS that anyone associated with the Trump campaign was collaborating with Russia or with outside groups like WikiLeaks in the release of emails. Papadopoulos stated that the "campaign, of course, [does not] advocate for this type of activity because at the end of the day it's...illegal" and that "our campaign is not...engag[ing] or reaching out to WikiLeaks or to the whoever it is to tell them please work with us, collaborate because we don't, no one does that...." Papadopoulos also said that "as far as I understand...no one's collaborating, there's been no collusion and it's going to remain that way." In another interaction, Papadopoulos told a CHS that he knew "for a fact" that no one from the Trump campaign had anything to do with releasing emails from the DNC, as a result of Papadopoulos's involvement in the Trump campaign. Despite the relevance of this material, as described in Chapters Five and Seven, none of Papadopoulos's statements were provided by the Crossfire Hurricane team to the OI Attorney and Page's statements were not provided to the OI attorney until June 2017, approximately ten months after the initial Carter Page FISA application was granted by the FISC.

Through our review, we also determined that there were other CHSs tasked by the FBI to attempt to contact Papadopoulos, but that those attempted contacts did not lead to any operational activity. We also identified several individuals who had either a connection to candidate Trump or a role in the Trump



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campaign, and were also FBI CHSs, but who were not tasked as part of the Crossfire Hurricane investigation. One such CHS did provide the Crossfire Hurricane team with general information about Crossfire Hurricane subjects Page and Manafort, but we found that this CHS had no further involvement in the investigation.

We identified another CHS that the Crossfire Hurricane team first learned about in 2017, after the CHS voluntarily provided his/her handling agent with an [REDACTED]—and the handling agent forwarded the material, through his supervisor and FBI Headquarters, to the Crossfire Hurricane team.

[REDACTED] The handling agent told us that, when he subsequently informed the Crossfire Hurricane team that the CHS had access to [REDACTED], a Crossfire Hurricane team intelligence analyst asked the handling agent to collect [REDACTED] from the CHS, which the handling agent did. We found that the Crossfire Hurricane team determined that there was not "anything significant" in this [REDACTED] collection, and did not seek to task the CHS. While we found that no action was taken by the Crossfire Hurricane team in response to receiving [REDACTED], we nevertheless were concerned to learn that the handling agent for the CHS placed [REDACTED] into the FBI's files, and we promptly notified the FBI upon learning that they were still being maintained in the FBI's files. We further concluded that, because the CHS's handling agent did not understand the CHS's political involvement, no assessment was performed by the source's handling agent or his supervisors (none of whom were members of the Crossfire Hurricane team) to determine whether the CHS required re-designation as a "sensitive source" or should have been closed during the pendency of the campaign.

While we concluded that the investigative activities undertaken by the Crossfire Hurricane team involving CHSs and UCEs complied with applicable Department and FBI policies, we believe that in certain circumstances Department and FBI policies do not provide sufficient oversight and accountability for investigative activities that have the potential to gather sensitive information involving protected First Amendment activity, and therefore include recommendations to address these issues.

Finally, as we also describe in Chapter Ten, we learned during the course of our review that in August

2016, the supervisor of the Crossfire Hurricane investigation, SSA 1, participated on behalf of the FBI in a strategic intelligence briefing given by Office of the Director of National Intelligence (ODNI) to candidate Trump and his national security advisors, including Michael Flynn, and in a separate strategic intelligence briefing given to candidate Clinton and her national security advisors. The stated purpose of the FBI portion of the briefing was to provide the recipients "a baseline on the presence and threat posed by foreign intelligence services to the National Security of the U.S." However, we found that SSA 1 was selected to provide the FBI briefings, in part, because Flynn, who was a subject in the ongoing Crossfire Hurricane investigation, would be attending the Trump campaign briefing.

Following his participation in the briefing of candidate Trump, Flynn, and another Trump advisor, SSA 1 drafted an EC documenting his participation in the briefing, and added the EC to the Crossfire Hurricane investigative file. We were told that the decision to select SSA 1 to participate in the ODNI briefing was reached by consensus among a group of senior FBI officials, including McCabe and Baker. We noted that no one at the Department or ODNI was informed that the FBI was using the ODNI briefing of a presidential candidate for investigative purposes, and found no applicable FBI or Department policies addressing this issue. We concluded that the FBI's use of this briefing for investigative reasons could potentially interfere with the expectation of trust and good faith among participants in strategic intelligence briefings, thereby frustrating their purpose. We therefore include a recommendation to address this issue.

Recommendations

Our report makes nine recommendations to the FBI and the Department to assist them in addressing the issues that we identified in this review:

- The Department and the FBI should ensure that adequate procedures are in place for OI to obtain all relevant and accurate information needed to prepare FISA applications and renewal applications, including CHS information. In Chapter Twelve, we identify a few specific steps to assist in this effort.



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- The Department and FBI should evaluate which types of SIMs require advance notification to a senior Department official, such as the DAG, in addition to the notifications currently required for SIMs, especially for case openings that implicate core First Amendment activity and raise policy considerations or heighten enterprise risk, and establish implementing policies and guidance, as necessary.
- The FBI should develop protocols and guidelines for staffing and administering any future sensitive investigative matters from FBI Headquarters.
- The FBI should address the problems with the administration and assessment of CHSs identified in this report, including, at a minimum, revising the FBI's standard CHS admonishments, improving the documentation of CHS information, revising FBI policy to address the acceptance of information from a closed CHS indirectly through a third party, and taking other steps we identify in Chapter Twelve.
- The Department and FBI should clarify the terms (1) "sensitive monitoring circumstance" in the AG Guidelines and the DIOG to determine whether to expand its scope to include consensual monitoring of a domestic political candidate or an individual prominent within a domestic political organization, or a subset of these persons, so that consensual monitoring of such individuals would require consultation with or advance notification to a senior Department official, such as the DAG, and (2) "prominent in a domestic political organization" so that agents understand which campaign officials fall within that definition as it relates to "sensitive investigative matters," "sensitive UDP," the designation of "sensitive sources," and "sensitive monitoring circumstance."
- The FBI should ensure that appropriate training on DIOG § 4 is provided to emphasize the constitutional implications of certain monitoring situations and to ensure that agents account for these concerns, both in the tasking of CHSs and in the way they document interactions with and tasking of CHSs.
- The FBI should establish a policy regarding the use of defensive and transition briefings for investigative purposes, including the factors to be considered and approval by senior leaders at the FBI with notice to a senior Department official, such as the DAG.
- The Department's Office of Professional Responsibility should review our findings related to the conduct of Department attorney Bruce Ohr for any action it deems appropriate. Ohr's current supervisors in CRM should also review our findings related to Ohr's performance for any action they deem appropriate.
- The FBI should review the performance of all employees who had responsibility for the preparation, Woods review, or approval of the FISA applications, as well as the managers, supervisors, and senior officials in the chain of command of the Carter Page investigation for any action it deems appropriate.

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CHAPTER ONE INTRODUCTION

I. Background and Overview

The Department of Justice (Department) Office of the Inspector General (OIG) undertook this review to examine certain actions by the Federal Bureau of Investigation (FBI) and the Department during an FBI investigation into whether individuals associated with the Donald J. Trump for President Campaign were coordinating, wittingly or unwittingly, with the Russian government. The FBI's counterintelligence investigation, known as "Crossfire Hurricane," was opened on July 31, 2016, weeks after the Republican National Convention (RNC) formally nominated Trump as its candidate for President, and several months before the November 8, 2016 elections, through which Trump was elected President of the United States. On May 17, 2017, the Crossfire Hurricane investigation was transferred from the FBI to the Office of Special Counsel upon the appointment of Special Counsel Robert S. Mueller III to investigate Russian interference with the 2016 presidential election and related matters.

The FBI opened Crossfire Hurricane in July 2016 following the receipt of certain information from a Friendly Foreign Government (FFG). According to the information provided by the FFG, in May 2016, a Trump campaign foreign policy advisor, George Papadopoulos, "suggested" to an FFG official that the Trump campaign had received "some kind of suggestion" from Russia that it could assist with the anonymous release of information that would be damaging to Hillary Clinton (Trump's opponent in the presidential election) and President Barack Obama. At the time the FBI received the FFG information, the U.S. Intelligence Community (USIC), which includes the FBI, was aware of Russian efforts to interfere with the 2016 U.S. elections, including efforts to infiltrate servers and steal emails belonging to the Democratic National Committee (DNC) and the Democratic Congressional Campaign Committee. The FFG shared this information with the State Department on July 26, 2016, after the internet site WikiLeaks began releasing emails hacked from computers belonging to the DNC and Clinton's campaign manager. The State Department advised the FBI of the information the next day.

Crossfire Hurricane was opened several weeks after the FBI's July 5, 2016 conclusion of its "Midyear Exam" investigation into Clinton's handling of government emails during her tenure as Secretary of State.¹ Some of the same FBI officials, supervisors, and attorneys responsible for the Midyear investigation were assigned to the newly opened Crossfire Hurricane investigation, but there was almost no

¹ See U.S. Department of Justice (DOJ) Office of the Inspector General (OIG), *A Review of Various Actions by the Federal Bureau of Investigation and Department of Justice in Advance of the 2016 Election*, Oversight and Review Division Report 18-04 (June 2018), <https://www.justice.gov/file/1071991/download> (accessed November 12, 2019), 2 (hereinafter *Review of Various Actions in Advance of the 2016 Election*).

overlap between the FBI agents and analysts assigned to the Midyear and Crossfire Hurricane investigations.

The FBI opened Crossfire Hurricane as an umbrella counterintelligence investigation, without identifying any specific subjects or targets. FBI officials told us that they did not immediately identify subjects or targets because it was unclear from the FFG information who within the Trump campaign may have received the reported offer of assistance and might be coordinating, wittingly or unwittingly, with the Russian government. By August 10, 2016, the FBI had assembled an investigative team of special agents, analysts, and supervisory special agents (the Crossfire Hurricane team) and conducted an initial analysis of links between Trump campaign members and Russia. Based upon this analysis, the FBI opened individual cases under the Crossfire Hurricane umbrella on three U.S. persons—Papadopoulos, Carter Page, and Paul Manafort—all of whom were affiliated with the Trump campaign at the time the cases were opened.² On August 16, 2016, the FBI opened a fourth individual case under Crossfire Hurricane on Michael Flynn, who was serving at the time as the Trump campaign's National Security Advisor.³

Two of the four Crossfire Hurricane subjects were already the subjects of other existing federal investigations. Carter Page was the subject of an ongoing counterintelligence investigation opened by the FBI's New York Field Office (NYFO) on April 4, 2016, relating to his contacts with suspected Russian intelligence officers. Manafort was the subject of an ongoing criminal investigation, supervised by the Money Laundering and Asset Recovery Section (MLARS) in the Department's Criminal Division, concerning millions of dollars Manafort allegedly received from the government of Ukraine.⁴

² According to public reporting, Carter Page ceased being associated with the Trump campaign as of September 26, 2016, and Manafort resigned as of August 19, 2016. As noted in Chapter Ten, accounts vary as to when Papadopoulos left the Trump campaign; according to *The Special Counsel's Report on the Investigation into Russian Interference with the 2016 Presidential Election*, Papadopoulos was dismissed from the campaign in early October 2016. See Special Counsel Robert S. Mueller III, *Report on the Investigation into Russian Interference in the 2016 Presidential Election*, Vol. I (March 2019), 93 (hereinafter *The Special Counsel's Report*).

³ Flynn remained on the Trump campaign through the election and was subsequently appointed as National Security Advisor. Flynn resigned that position on February 13, 2017. Papadopoulos, Manafort, and Flynn were later indicted in federal district court for crimes prosecuted by the Special Counsel. On October 5, 2017, and December 1, 2017, respectively, Papadopoulos and Flynn pleaded guilty to making material false statements and material omissions during interviews with the FBI. On August 21, 2018, Manafort was convicted after trial on tax and bank fraud charges, and on September 14, 2018, pleaded guilty to charges of conspiracy against the United States and conspiracy to obstruct justice.

The indictments and sentencing documents are publicly available and therefore we refer to these individuals by name in this report. We also refer to Carter Page by name in this report because the Department publicly released, in response to Freedom of Information Act (FOIA) requests, redacted versions of the Foreign Intelligence Surveillance Act (FISA) applications and orders that name him.

⁴ Prior to January 2017, MLARS was named the Asset Forfeiture and Money Laundering Section.

Some of the early investigative steps taken by the Crossfire Hurricane team immediately after opening the investigation were to develop profiles on each subject; send names of, among others, individuals associated with the Trump campaign to other U.S. government intelligence agencies for any further information; and review FBI files for potential FBI Confidential Human Sources (CHSs) who might be able to assist the investigation. FBI witnesses we interviewed told us they believed that using CHSs in covert operations would be an efficient way to develop a better understanding of the information received from the FFG. We determined that the Crossfire Hurricane team tasked several CHSs and Undercover Employees (UCEs) during the 2016 presidential campaign, which resulted in interactions with Carter Page, Papadopoulos, and a high-level Trump campaign official who was not a subject of the investigation. All of these interactions were consensually monitored and recorded by the FBI. The interactions between CHSs and Page and Papadopoulos occurred both during the time Page and Papadopoulos were advisors to the Trump campaign, and after Page and Papadopoulos were no longer affiliated with the Trump campaign. We also learned that in August 2016, a supervisor of the Crossfire Hurricane investigation participated on behalf of the FBI in a strategic intelligence briefing given by the Office of the Director of National Intelligence (ODNI) to candidate Trump and his national security advisors, including investigative subject Flynn, and also participated in a separate strategic intelligence briefing given to candidate Clinton and her national security advisors. The FBI viewed the briefing of candidate Trump and his advisors as a possible opportunity to collect information potentially relevant to the Crossfire Hurricane and Flynn investigations. The supervisor memorialized the results of the briefing in an official FBI document, including instances where he was engaged by Trump and Flynn, as well as anything he considered related to the FBI or pertinent to the Crossfire Hurricane investigation. The supervisor did not memorialize the results of the briefing of candidate Clinton and her advisors.

An early investigative step considered but not initially taken by the Crossfire Hurricane team was to seek court orders under the Foreign Intelligence Surveillance Act (FISA) authorizing surveillance of Page and Papadopoulos. The U.S. Foreign Intelligence Surveillance Court (FISC) may approve FISA surveillance of an American citizen for a period of up to 90 days, subject to renewal, if the government's FISA application establishes probable cause to believe that the targeted individual is an agent of a foreign power by knowingly engaging in at least one of the five activities enumerated in the FISA statute.⁵ The Crossfire Hurricane team initially considered seeking FISA surveillance of Papadopoulos as a result of his statement to the FFG and of Page based upon information the FBI had collected about his prior and more recent contacts with known and suspected Russian intelligence officers, as well as Page's financial, political, and business ties to the

⁵ See 50 U.S.C. §§ 1801(b)(2)(A) through (E). In the case of the Carter Page FISA applications, the government relied upon the definition of an agent of a foreign power in Section 1801(b)(2)(E), which covers, among other things, any person who knowingly aids or abets any other person who knowingly engages in clandestine intelligence activities (other than intelligence gathering activities) that involve or are about to involve a violation of the criminal statutes of the United States, pursuant to the direction of an intelligence service or network of a foreign power, or knowingly conspires with other persons in such activities.

Russian government. Officials determined there was an insufficient basis to proceed with a FISA application concerning Papadopoulos, and the Crossfire Hurricane team never submitted a FISA application for Papadopoulos. With regard to Page, on August 15, 2016, the Crossfire Hurricane team requested assistance from the FBI's Office of the General Counsel (OGC) to prepare a FISA application for submission to the FISC. However, after consultation between FBI OGC and attorneys in the Office of Intelligence (OI) in the Department's National Security Division (NSD), which is responsible for preparing FISA applications and appearing before the FISC, the Crossfire Hurricane team was told in late August 2016 that more information was needed to establish probable cause for a FISA on Page.

A few weeks later, on September 19, 2016, the Crossfire Hurricane team received a set of six reports prepared by Christopher Steele concerning Russian interference in the 2016 U.S. election and alleged connections between this Russian effort and individuals associated with the Trump campaign.⁶ Steele is a former intelligence officer [REDACTED] who, following his retirement, opened a consulting firm and furnished information to the FBI beginning in 2010, primarily on matters concerning organized crime and corruption in Russia and Eastern Europe. In 2013, the FBI prepared paperwork to enable it to open Steele as an FBI CHS. In providing the first two election reports to his FBI handling agent in July 2016, Steele told the handling agent that he had been hired by an investigative firm, Fusion GPS, to collect information on the relationship between candidate Trump's businesses and Russia. Steele further informed the FBI handling agent that Fusion GPS had been retained by a law firm to conduct this research. According to the handling agent, it was obvious to him that the request for the research was politically motivated.

Two of the six Steele reports received by the Crossfire Hurricane team on September 19 referenced Carter Page by name. One stated that Page had held secret meetings with two high level Russian officials during Page's July 2016 trip to Moscow. This report also indicated that one of the alleged meetings included a discussion about the Kremlin potentially releasing compromising information about Democratic candidate Hillary Clinton to Trump's campaign team. Another report from Steele described "a well-developed conspiracy of co-operation" between the Russian government and Trump's campaign to defeat Clinton, using Carter Page and others as intermediaries.⁷ On September 21, 2016, 2 days after the team received these reports, FBI OGC advised OI that the FBI believed it was ready to

⁶ As described in this report, information from Christopher Steele's reports—sometimes collectively referred to as the "Steele dossier"—that pertained to Carter Page was relied upon in the Carter Page FISA applications. In those applications, Steele was referred to as "Source #1." We refer to Steele by name in this report because the Department and the FBI have publicly revealed Steele's identity as Source #1 in connection with FOIA litigation.

⁷ A third report from Steele, which did not reference Carter Page, stated that Russian intelligence services had used concealed cameras to film Trump's alleged sexual activities with prostitutes at a Moscow hotel, and claimed that the Russians could blackmail Trump by threatening to release this compromising material. These allegations, which have come to be known publicly as the "salacious and unverified" portion of the reporting, were not included in the original Carter Page FISA application or any of the renewal applications.

submit a request for FISA authority on Carter Page, and OI and the FBI began drafting the first FISA application. Among the FBI's purposes in seeking a FISA order for Page was to obtain information about Page's trip to Russia in July 2016, when Page was still a member of the Trump campaign.

On September 23, 2016, *Yahoo News* published an article stating that U.S. intelligence officials had received reports regarding Carter Page's private meetings in Moscow with senior Russian officials. The article cited a "well-placed Western intelligence source," and contained details about Carter Page's activities in Russia that closely paralleled the information contained in the reporting that Steele had provided to the FBI. We found no evidence that anyone from the FBI asked Steele in September 2016 or at any other time, if he had spoken with the *Yahoo News* reporter. Steele had, in fact, spoken with the reporter prior to the article's publication, which the FBI would learn from public records after the submission of the first FISA application.

On October ■, 2016, NSD submitted the Carter Page FISA application to the FISC, asserting that there was probable cause to believe that Page was an agent of the Russian government. The application relied on, among other things:

- The information provided by the FFG about its interaction with Papadopoulos;
- Information from the FBI's previously opened counterintelligence investigation relating to Page arising from his contacts with Russian intelligence officers;
- Information from Steele's reports that pertained specifically to Carter Page; and
- Information from a meeting between Page and an FBI CHS that was consensually monitored by Crossfire Hurricane investigators.

The application also stated in a footnote that the FBI "speculates that the [person who hired Steele] was likely looking for information that could be used to discredit [candidate Trump's] campaign." Further, the application advised the court of information reported in the September 23, 2016 *Yahoo News* article and stated that (a) the FBI "does not believe that Source #1 directly provided...to the press" the information in the article, (b) according to the article and other news articles, individuals affiliated with the Trump campaign made statements distancing the campaign from Carter Page, and (c) Page himself denied the accusations in the *Yahoo News* article and reiterated that denial in a September 25, 2016 letter to the FBI Director and in a September 26, 2016 media interview.

However, the application, as well as the renewal applications, did not include significant relevant information, and contained inaccurate and incomplete information, that was known to the Crossfire Hurricane team at the time but that it did not share with NSD attorneys. For example, when asked by an NSD attorney who was involved in helping to draft the first FISA application whether Page had provided information to another U.S. government agency or was a source for that other agency, a Crossfire Hurricane agent incorrectly told the NSD attorney that

Page's contact with the other U.S. government agency was "dated" and "outside scope." The Crossfire Hurricane agent made this statement despite the fact that the Crossfire Hurricane team had been told by the other agency in a written memorandum that Page had been approved as an operational contact for the other agency from 2008 to 2013 and that Page had provided information to the other agency that was relevant to the FISA application.⁸ The Crossfire Hurricane team also failed to inform NSD attorneys about information obtained by the FBI during CHS operations and interviews that was inconsistent with the allegations contained in the Steele reporting that was being relied upon in the FISA application.

The FISA application was reviewed by numerous FBI agents, FBI attorneys, and NSD attorneys, and, as required by law, was ultimately certified by then FBI Director James Comey and approved by then Deputy Attorney General Sally Yates. The FISC granted the first FISA application on October [REDACTED], 2016, authorizing the use of FISA authority on Carter Page.

On October 31, 2016, *Mother Jones* magazine published an online news article titled "A Veteran Spy has Given the FBI Information Alleging a Russian Operation to Cultivate Donald Trump." The October 31 article quoted a "well-placed Western intelligence source," and described how that individual had provided reports to the FBI about connections between Trump and the Russian government. According to the article, the source was continuing to provide information to the FBI, and was quoted as saying "it's quite clear there was or is a pretty substantial inquiry going on." On November 1, 2016, Steele's FBI handling agent questioned Steele, who admitted speaking to the reporter who wrote the October 31 article. The handling agent advised Steele at that time that his relationship with the FBI would likely be terminated for disclosing his relationship with the FBI to the press, and the FBI officially closed Steele for cause on November 17, 2016. Steele was never paid by the FBI for any of the reports or information that he provided concerning Carter Page or connections between the Russian government and the Trump campaign.

After Steele was closed as an FBI CHS, Crossfire Hurricane agents continued to receive information from him through a conduit, Department attorney Bruce Ohr, who at the time was an Associate Deputy Attorney General in the Office of the Deputy Attorney General (ODAG). Ohr had known Steele, through work, since at least 2007 and, starting in July 2016, Steele had contacted Ohr on multiple occasions to discuss information from Steele's reports. At Steele's suggestion, Ohr also met in August and December 2016 with Glenn Simpson, the owner of Fusion GPS, which Ohr's wife had worked for as an independent contractor through September 2016. During those meetings, Simpson provided Ohr with several of

⁸ According to the other U.S. government agency, "operational contact," as that term is used in the memorandum about Page, provides "Contact Approval," which allows the other agency to contact and discuss sensitive information with a U.S. person and to collect information from that person via "passive debriefing," or debriefing a person of information that is within the knowledge of an individual and has been acquired through the normal course of that individual's activities. According to the U.S. government agency, a "Contact Approval" does not allow for operational use of a U.S. person or tasking of that person.

Steele's election reports. Ohr also communicated with a senior State Department official concerning, among other matters, the Steele reporting. Between the date of Steele's closing as an FBI CHS in November 2016 and May 15, 2017, Ohr met with the FBI on 13 occasions. In his meetings with the FBI, Ohr provided the FBI with information that Steele had provided to him, the Steele election reports that Ohr had received from Simpson, as well as a thumb drive containing information Ohr had received from his wife that contained open source research she had compiled while working for Fusion GPS. Department leaders, including Ohr's supervisors within ODAG, were unaware of Ohr's meetings with Steele, Simpson, the FBI, or the State Department, or of Ohr's wife's connection to Fusion GPS, until late November 2017, when Congress requested information from the Department regarding Ohr's activities.

As the FBI's Crossfire Hurricane investigation proceeded, the Department submitted three renewal applications to the FISC seeking authority to continue FISA surveillance of Carter Page. Comey and Yates approved the first renewal application, Comey and then Acting Attorney General Dana Boente approved the second renewal, and then Acting FBI Director Andrew McCabe and then Deputy Attorney General (DAG) Rod Rosenstein approved the third renewal. In total, at the request of the FBI, the Department filed four FISA applications, each of which was granted by the FISC: the first FISA application on October ■, 2016, and three renewal applications on January ■, April ■, and June ■, 2017. A different FISC judge considered each application before issuing the requested orders, which collectively resulted in approximately 11 months of FISA coverage of Carter Page from October ■, 2016, until September ■, 2017.

Each of the FISA orders issued by the FISC authorized the U.S. government to conduct electronic surveillance ■ targeting Carter Page for a period of up to 90 days. The authority permitted the government to, among other things, ■

by Carter Page. This included ■

during the 90-day period.

The authority also permitted the government to ■

■. The orders expressly limited the electronic surveillance to only ■

specifically identified in the order and in the manner specified by the order. Further, the orders required the government to adhere to standard procedures designed to minimize the government's acquisition and retention of non-public information about a U.S. person that did not constitute foreign intelligence information. At the request of the government, the orders also included special procedures restricting access to acquired information to only those individuals assigned to the Crossfire Hurricane investigation (and their supervisors), which the Department interpreted to include Department attorneys and officials assisting in and overseeing the investigation. The orders also required higher approval than would normally be required before disseminating the information outside the FBI.

In April and May 2017, following news reports that the FBI had obtained a FISA for Carter Page, Page gave interviews to news outlets denying that he had collected intelligence for the Russian government and asserting instead that he had previously assisted U.S. government agencies. Shortly before the FBI filed the final renewal application with the FISC in mid-June 2017, and in response to concerns expressed by the investigative team and NSD about Page's claim, an FBI OGC Attorney emailed the U.S. government agency that had provided information to the FBI in August 2016, referenced above, about its prior interactions with Carter Page to inquire about Page's past status. The other U.S. government agency's liaison to the Crossfire Hurricane team responded by email to the FBI OGC attorney by directing the attorney to a memoranda previously sent to the FBI by the other U.S. government agency informing the FBI that Page had been approved as an operational contact for the other agency from 2008 to 2013. The email also stated, using the other agency's terminology, that it was the other agency liaison's recollection that Page had prior interactions with that other agency. However, when asked by one of the supervisory special agents (SSA) on the Crossfire Hurricane team (who was going to be the affiant on the final FISA renewal application) about Page's prior interactions with that other agency, the OGC Attorney advised the SSA that Page was "never a source" for the other U.S. government agency. In addition, the OGC Attorney altered the email that the other U.S. government agency had sent to the OGC Attorney so that the email inaccurately stated that Page was "not a source" for the other agency; the OGC Attorney then forwarded the altered email to the SSA. Shortly thereafter, on June █, 2017, the SSA served as the affiant on the final renewal application, which was again silent about Page's prior relationship with the other U.S. government agency.

On July 12, 2018, while the OIG's review was ongoing, NSD submitted a letter to the FISC advising the court of certain factual omissions in the Carter Page FISA applications that had come to NSD's attention after the final renewal application was filed on June █, 2017.⁹ The Department's letter stated that, despite the omissions, it was the Department's view that the applications contained sufficient information to support the FISC's earlier probable cause findings as to Page.

On March 28, 2018, the OIG publicly announced that, in response to requests from the Attorney General and Members of Congress, it had initiated this review to examine:

- Whether the Department and the FBI complied with legal requirements and applicable policies and procedures in FISA applications filed with the FISC relating to surveillance of Carter Page;
- What information was known to the Department and FBI at the time the applications were filed about Christopher Steele; and

⁹ At the time of this letter, NSD was unaware of the numerous factual assertions made in the FISA applications that were inaccurate, incomplete, or unsupported by appropriate documentation that the OIG identified during the course of our review and that we detail in this report.

- How the Department's and FBI's relationships and communications with Steele related to the FISA applications.¹⁰

In addition, during the *OIG's Review of Various Actions in Advance of the 2016 Election*, we discovered text messages and instant messages between some FBI employees, using FBI mobile devices and computers, which expressed statements of hostility toward then candidate Trump and expressed statements of support for then candidate Clinton.¹¹ Because some of the FBI employees responsible for those communications, including Section Chief Peter Strzok and FBI Attorney Lisa Page, also had involvement in the Crossfire Hurricane investigation, we examined whether their communications evidencing a potential bias affected investigative decisions made in Crossfire Hurricane.¹² We also examined, where available, the government emails, text messages, and instant messages of all Department and FBI employees who played a substantive role in Crossfire Hurricane to determine if there were any additional communications evidencing a potential bias and, if so, whether the views expressed influenced any investigative decisions.

The March 28, 2018 *OIG* announcement also stated that "if circumstances warrant, the *OIG* will consider including other issues that may arise during the course of the review." In May 2018, in response to Rosenstein's request, the *OIG* added to the scope of this review to determine whether the FBI infiltrated or surveilled the Trump campaign. Accordingly, we examined the FBI's use of CHSs in the Crossfire Hurricane investigation, up through November 8, 2016 (the date of the 2016 U.S. elections) to evaluate whether the FBI had placed any CHSs within the Trump campaign or tasked any CHSs to report on the Trump campaign, and, if so, whether any such use of CHSs was in violation of applicable Department and FBI policies or was politically motivated. We subsequently learned of and included in our review certain other CHS activities that took place after the 2016 election.

II. Prior *OIG* Reports on FISA and Related Issues

In addition to the requests described above from the Attorney General, the Deputy Attorney General, and Members of Congress, our initiation of this review was informed by our prior work over the past 15 years on the Department's and FBI's use of national security and surveillance authorities, including authorities under FISA. This prior *OIG* work considered the challenges faced by the Department and the FBI as they utilized national security authorities while also striving to safeguard civil liberties and privacy. In every year since 2006, the *OIG's*

¹⁰ As part of our review of this issue, the *OIG* examined the interactions between Ohr and the Crossfire Hurricane team as well as Ohr's communications with Steele and Simpson, both before and after the FBI closed Steele as a CHS. Our review also examined Ohr's interactions with Department attorneys regarding the Manafort criminal case.

¹¹ DOJ *OIG*, *Review of Various Actions in Advance of the 2016 Election*, 3.

¹² FBI Attorney Lisa Page is not related to Carter Page, the individual affiliated with the Trump campaign who was the subject of the FISA surveillance in Crossfire Hurricane.

annual report on “*Top Management and Performance Challenges Facing the Department of Justice*” has highlighted the difficulty faced by the Department and the FBI in maintaining a balance between protecting national security and safeguarding civil liberties.

The OIG’s prior oversight work, some of which was congressionally mandated, informed our decision to initiate this review. That prior oversight work included OIG reviews of the FBI’s use of specific FISA authorities,¹³ the FBI’s use of other national security-related surveillance authorities,¹⁴ and the FBI’s or other Department law enforcement components’ use of CHSs and administrative subpoenas.¹⁵ We also conducted reviews that specifically examined the impact of

¹³ DOJ OIG, *A Review of the FBI’s Handling of Intelligence Information Related to the September 11 Attacks*, Oversight and Review Division (November 2004), <https://oig.justice.gov/special/s0606/final.pdf> (accessed November 12, 2019); DOJ OIG, *A Review of the Federal Bureau of Investigation’s Activities Under Section 702 of the Foreign Intelligence Surveillance Act Amendments Act of 2008*, Oversight and Review Division (September 2012), <https://oig.justice.gov/reports/2016/o1601a.pdf> (accessed November 12, 2019); DOJ OIG, *A Review of the Federal Bureau of Investigation’s Use of Section 215 Order for Business Records*, Oversight and Review Division (March 2007), <https://oig.justice.gov/reports/2014/215-I.pdf> (accessed November 12, 2019); DOJ OIG, *A Review of the FBI’s Use of Section 215 Orders for Business Records in 2006*, Oversight and Review Division (March 2008), <https://oig.justice.gov/reports/2016/215-2008.pdf> (accessed November 12, 2019); DOJ OIG, *FBI’s Use of Section 215 Orders: Assessment of Progress in Implementing Recommendations and Examination of Use in 2007 through 2009*, Oversight and Review Division Report 15-05 (May 2015), <https://oig.justice.gov/reports/2015/o1505.pdf> (accessed November 12, 2019); DOJ OIG, *A Review of the FBI’s Use of Section 215 Orders for Business Records in 2012 through 2014*, Oversight and Review Division Report 16-04 (September 2016), <https://oig.justice.gov/reports/2016/o1604.pdf> (accessed November 12, 2019); DOJ OIG, *A Review of the FBI’s Use of Trap and Trace Devices Under the Foreign Intelligence Surveillance Act in 2007 through 2009*, Oversight and Review Division 15-06 (June 2015), <https://oig.justice.gov/reports/2015/o1506.pdf> (accessed November 12, 2019).

¹⁴ DOJ OIG, *A Review of the Federal Bureau of Investigation’s Use of National Security Letters*, Oversight and Review Division (March 2007), <https://oig.justice.gov/reports/2016/NSL-2007.pdf> (accessed November 12, 2019); DOJ OIG, *A Review of the FBI’s Use of National Security Letters: Assessment of Corrective Actions and Examination of NSL Usage in 2006*, Oversight and Review Division (March 2008), <https://oig.justice.gov/reports/2014/s1410a.pdf> (accessed November 12, 2019); DOJ OIG, *A Review of the Federal Bureau of Investigation’s Use of National Security Letters: Assessment of Progress in Implementing Recommendations and Examination of Use in 2007 through 2009*, Oversight and Review Division (August 2014), <https://oig.justice.gov/reports/2014/s1408.pdf> (accessed November 12, 2019); DOJ OIG, *A Review of the Federal Bureau of Investigation’s Use of Exigent Letters and Other Informal Requests for Telephone Records*, Oversight and Review Division (January 2010), <https://oig.justice.gov/reports/2014/o1411.pdf> (accessed November 12, 2019); DOJ OIG, *A Review of the Department of Justice’s Involvement with the President’s Surveillance Program*, Oversight and Review Division (July 2009), <https://oig.justice.gov/reports/2016/PSP-01-08-16-vol-3.pdf> (accessed November 12, 2019).

¹⁵ DOJ OIG, *Audit of the Bureau of Alcohol, Tobacco, Firearms and Explosives’ Management and Oversight of Confidential Informants*, Audit Division 17-17 (March 2017), <https://oig.justice.gov/reports/2017/a1717.pdf> (accessed November 12, 2019); DOJ OIG, *Audit of the Drug Enforcement Administration’s Confidential Source Policies and Oversight of Higher-Risk Confidential Sources*, Audit Division 15-28 (July 2015), <https://oig.justice.gov/reports/2015/a1528.pdf> (accessed November 12, 2019); DOJ OIG, *Audit of the Drug Enforcement Administration’s Management and Oversight of its Confidential Source Program*, Audit Division 16-33 (September 2016), <https://oig.justice.gov/reports/2016/a1633.pdf> (accessed November 12, 2019); DOJ OIG,

the FBI's use of investigative authorities on U.S. persons engaged in activities that are protected by the First Amendment of the U.S. Constitution.¹⁶

III. Methodology

During the course of this review, the OIG conducted over 170 interviews involving more than 100 witnesses. These interviews included former FBI Director Comey, former Attorney General Loretta Lynch, former DAG Yates, former Acting Attorney General and Acting DAG and current FBI General Counsel Dana Boente, former FBI Deputy Director McCabe, former DAG Rod Rosenstein, former FBI General Counsel James Baker, FBI agents, analysts, and supervisors who worked on the Crossfire Hurricane investigation, attorneys from the FBI's National Security and Cyber Law Branch, NSD attorneys who prepared or reviewed the FISA applications, Department attorneys from ODAG who reviewed the FISA applications, former and current members of the FBI's senior executive leadership, Department attorney Bruce Ohr and his wife, Nellie Ohr, and additional Department attorneys who supervised and worked with Ohr on matters relevant to this review.

The OIG also interviewed witnesses who were not current or former Department employees regarding their interactions with the FBI on matters falling within the scope of this review, including Christopher Steele and employees of other U.S. government agencies.¹⁷ Steele provided the OIG with access to, but not copies of, memoranda regarding interactions he had with FBI personnel and Bruce Ohr in 2010, 2011, and 2016. Steele represented to us that he drafted the memoranda shortly after each interaction. In addition, we reviewed relevant information that other U.S. government agencies provided to the FBI in the course of the Crossfire Hurricane investigation. Because the activities of other agencies were not within the scope of this review, we did not seek to obtain records from them that the FBI never received or reviewed, except for a limited amount of State

Public Summary of the Addendum to the Audit of the Drug Enforcement Administration's Management and Oversight of its Confidential Source Program, Audit Division 16-33a (March 2017), <https://oig.justice.gov/reports/2017/a1633a.pdf> (accessed November 12, 2019); DOJ OIG, *A Review of the Drug Enforcement Administration's Use of Administrative Subpoenas to Collect or Exploit Bulk Data*, Oversight and Review Division 19-01 (March 2019), <https://oig.justice.gov/reports/2019/o1901.pdf> (accessed November 12, 2019); DOJ OIG, *The Federal Bureau of Investigation's Management of Confidential Case Funds and Telecommunication Costs*, Audit Division 18-03 (January 2008), <https://oig.justice.gov/reports/FBI/a0803/final.pdf> (accessed November 12, 2019).

¹⁶ DOJ OIG, *A Review of the FBI's Investigative Activities Concerning Potential Protesters at the 2004 Democratic and Republican National Political Conventions*, Oversight and Review Division (April 2006), <https://oig.justice.gov/special/s0604/final.pdf> (accessed November 12, 2019); DOJ OIG, *A Review of the FBI's Investigations of Certain Domestic Advocacy Groups*, Oversight and Review Division (September 2010), <https://oig.justice.gov/special/s1009r.pdf> (accessed November 12, 2019).

¹⁷ According to Steele, his cooperation with our investigation [REDACTED].

Department records relating to Steele.¹⁸ Additionally, our review also did not seek to independently determine whether corroboration existed for the Steele election reporting; rather, our review was focused on information that was available to the FBI prior to and during the pendency of the Carter Page FISAs that related to the Steele reporting.

Two witnesses, Glenn Simpson and Jonathan Winer (a former State Department official), declined our requests for voluntary interviews, and we were unable to compel their testimony.¹⁹ The OIG does not have authority to subpoena for testimony former Department employees or third parties who may have relevant information about an FBI or Department program or operation.²⁰ Certain former FBI employees who agreed to interviews, including Comey and Baker, chose not to request that their security clearances be reinstated for their OIG interviews. Therefore, we were unable to provide classified information or documents to them during their interviews to develop their testimony, or to assist their recollections of relevant events.

We also received and reviewed more than one million documents that were in the Department's and FBI's possession. Among these were electronic communications of Department and FBI employees and documents from the Crossfire Hurricane investigation, including interview reports (FD-302s and Electronic Communications or ECs), contemporaneous notes from agents, analysts, and supervisors involved in case-related meetings, documents describing and analyzing Steele's reporting and information obtained through FISA coverage on

¹⁸ In this review, we also did not seek to assess the actions taken by or information available to U.S. government agencies outside the Department of Justice, as those agencies are outside our jurisdiction.

¹⁹ The OIG did not seek to interview Carter Page or any other subject in the Crossfire Hurricane investigation because their actions were not the focus of our review. Rather, consistent with the OIG's jurisdiction, we examined the actions of the FBI and Department. In response to a request from Page to review a draft of our report, the OIG advised Page in correspondence in November 2019 that the OIG would notify him of the report's anticipated release date shortly before the report is made public. This courtesy is consistent with the OIG's practice in other matters where the actions we reviewed affected the personal interests of a private citizen.

²⁰ In 2016, Congress passed the "Inspector General Empowerment Act" (IGEA) (P. L. 114-317). Timely completion of this review would not have been possible without the IGEA's statutory clarification that OIGs must be granted access to all agency records and information, including highly sensitive records, such as FISA materials. We note that the Department and the FBI gave us broad and timely access to all such material, and provided us with their full cooperation.

Earlier versions of the IGEA also included a provision to authorize all OIGs to issue testimonial subpoenas (the Department of Defense OIG already has such authority, as does the Health and Human Services OIG in certain circumstances), but the provision was removed from the IGEA prior to its passage. The OIG would have directly benefited from the ability to subpoena former government and non-government individuals in this review. In addition to being able to compel the testimony of the small number of individuals who did not testify voluntarily, the ability to subpoena witnesses would have expedited completion of the review, as multiple individuals only agreed to interviews at a late stage in the review. In September 2018, the House of Representatives unanimously passed legislation that would provide testimonial subpoena authority to OIGs. No similar legislation has been introduced in the current Congress.

Carter Page, and draft and final versions of materials used to prepare the FISA applications and renewals filed with the FISC.²¹ We also obtained documents from attorneys and supervisors in NSD, Criminal Division (CRM), ODAG, and the Office of the Attorney General (OAG).

As with the *OIG's Review of Various Actions in Advance of the 2016 Election*, we obtained electronic communications between and among FBI agents, analysts, and supervisors, and FBI and Department officials to understand what happened during the investigation and identify what was known by the members of the Crossfire Hurricane team as the investigation progressed. In addition to a large volume of unclassified and classified emails, we received and reviewed hundreds of thousands of text messages and instant messages to or from FBI personnel who worked on the investigation.²² We also were provided with and reviewed transcripts of testimony from numerous witnesses who participated in hearings jointly conducted during the 115th Congress by the House Committee on the Judiciary and the House Committee on Oversight and Government Reform.

Our review included the examination of highly classified information. We were given broad access to relevant materials by the Department and the FBI, including emails, text messages, and instant messages from both the FBI's Top Secret SCINet and Secret FBINet systems, as well as access to the FBI's classified Delta database, which FBI agents use to record their interactions with, and information received from, CHSs. Chapter Ten provides more information on the methodology we employed to examine the FBI's use of CHSs.

As with the *OIG's* handling of past reviews, we did not analyze all of the decisions made during the Crossfire Hurricane investigation. Rather, we reviewed the issues described below in Section IV of this chapter. Moreover, our role in this review was not to second-guess discretionary judgments by Department personnel about whether to open an investigation, or specific judgment calls made during the course of an investigation, where those decisions complied with or were authorized by Department rules, policies, or procedures. We do not criticize particular decisions merely because we might have recommended a different investigative strategy or tactic based on the facts learned during our investigation. The question we considered was not whether a particular investigative decision was ideal or could have been handled more effectively, but whether the Department and the FBI complied with applicable legal requirements, policies, and procedures in taking the actions we reviewed or, alternatively, whether the circumstances surrounding the

²¹ We did not review the entirety of FISA [REDACTED] obtained through FISA surveillance [REDACTED] targeting Carter Page. We reviewed only those documents [REDACTED] under FISA authority that were pertinent to our review.

²² During our review, we identified a small number of text messages and instant messages, beyond those discussed in the *OIG's Review of Various Actions in Advance of the 2016 Election*, in which FBI employees involved in the Crossfire Hurricane investigation discussed political issues and candidates. Unlike the messages in the *OIG's Review of Various Actions in Advance of the 2016 Election*, the messages here did not raise significant questions of potential bias or improper motivation because of the potential connection to investigative activity.

decision indicated that it was based on inaccurate or incomplete information, or considerations other than the merits of the investigation. If the explanations we were given for a particular decision were consistent with legal requirements, policies and procedures, reflected rational investigative strategy and were not unreasonable, we did not conclude that the decision was based on improper considerations in the absence of documentary or testimonial evidence to the contrary.²³

IV. Structure of the Report

This report consists of twelve chapters. The public version of this report contains limited redactions of information that the FBI and other agencies determined is classified or too sensitive for public release.²⁴ Following this introduction, Chapter Two summarizes relevant Department and FBI policies concerning counterintelligence investigations, including the policies governing the FBI's use of CHSs and FISA authority in the context of counterintelligence investigations.

In Chapter Three, we provide an overview of the Crossfire Hurricane investigation, including the information that predicated the investigation, the identification of the subjects of the investigation, the organization and staffing of the Crossfire Hurricane team, and the involvement of Department and FBI leadership. We also describe the context surrounding the Crossfire Hurricane investigation, in particular the conclusion by the USIC that the Russian government was attempting to interfere with the 2016 U.S. elections. In Chapter Four, we discuss the FBI's receipt and evaluation of information from Steele up and through the first Carter Page FISA application. In Chapter Five, we describe the preparation of the first FISA application which, once granted by the FISC, authorized FISA surveillance of Carter Page. We also describe instances in which information in the first FISA application was inaccurate, incomplete, or unsupported by appropriate documentation.

Chapter Six discusses the FBI's activities involving Steele after the first FISA application, including the FBI's decision to close Steele as a CHS and the FBI's efforts to assess Steele's election reports. Chapter Seven describes the three renewal applications for FISA surveillance of Carter Page as the Crossfire Hurricane investigation proceeded. In Chapter Eight, we discuss a letter NSD sent to the FISC

²³ As part of the standard practice in our reviews, we provided a draft copy of this report to the Department and the FBI to conduct a factual accuracy review. Also consistent with our standard practice, we contacted individuals who were interviewed as part of the review and whose conduct is addressed in this report, and certain other witnesses, to provide them an opportunity to review the portions of the report that pertain to their testimony to the OIG. With limited exceptions, these witnesses availed themselves of this opportunity, and we provided those who did conduct such a review with the opportunity to provide oral or written comments directly to the OIG concerning the portions they reviewed, consistent with rules to protect classified information.

²⁴ Consistent with our standard practice, we provided a draft copy of this report to the Department and the FBI, and as appropriate, other government agencies, for the purpose of conducting a classification review and providing final classification markings.

in July 2018, about one year after the final renewal application was filed, outlining omissions from the FISA applications. We also describe additional instances of inaccurate, incomplete, or undocumented information in the three FISA renewal applications that were not identified in NSD's letter.

In Chapter Nine, we discuss the interactions between Ohr and the Crossfire Hurricane team, Ohr's communications with Steele and Simpson, both before and after the FBI closed Steele as a CHS, and Ohr's interactions with Department attorneys regarding the Manafort criminal case. Chapter Ten discusses the FBI's use of CHSs other than Steele and its use of Undercover Employees (UCEs) as part of the Crossfire Hurricane investigation. We also describe several individuals we identified who had either a connection to candidate Trump or a role in the Trump campaign, and were also FBI CHSs, and provide the reasons such individuals were not tasked as part of the Crossfire Hurricane investigation. Finally, we describe the attendance of an SSA on the Crossfire Hurricane team at counterintelligence briefings given to the presidential candidates and certain campaign advisors.

Chapter Eleven contains our analysis of the factual information presented in Chapters Three through Ten. Chapter Twelve provides our conclusions and our nine recommendations.

Appendix One to this report contains a chart illustrating the results of our review of the FBI's compliance with the FISA "Woods Procedures" that are described in Chapter Two. Appendix Two is the FBI's official response to this report and the report's recommendations.

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CHAPTER TWO

APPLICABLE LAWS AND DEPARTMENT AND FBI POLICIES

In this chapter, we describe the standards set forth in the Attorney General's Guidelines for Domestic FBI Operations (AG Guidelines) and implemented through the FBI's Domestic Investigations and Operations Guide (DIOG) and the Counterintelligence Division (CD) Policy Directive and Policy Guide (CDPG) for the opening of predicated counterintelligence investigations. We then describe the FBI's process for opening and overseeing Sensitive Investigative Matters (SIMs), such as those involving political candidates or officials. Next, we discuss relevant policies governing the use and handling of Confidential Human Sources (CHS), focusing on the validation process, the use of sub-sources, and the continued receipt of intelligence from a closed CHS.

We then summarize the legal standards for obtaining approval to conduct electronic surveillance and physical searches under the Foreign Intelligence Surveillance Act of 1978 (FISA), as well as the procedural steps, approval and certification standards, and accuracy requirements necessary to obtain such approvals. Because our review focuses on the process the FBI used to obtain authorization to conduct electronic surveillance and physical searches targeting Carter Page, the discussion of FISA in this chapter is limited to the provisions applicable to these authorities. We also describe government ethics regulations concerning conflicts of interests that apply to certain events discussed in Chapter Nine.

Finally, we discuss examples of other Department and FBI policies regulating investigative activity that could potentially impact civil liberties, including policies that address when someone acting on behalf of the FBI becomes a member of, or participates in, the activity of an organization without disclosing their FBI affiliation to an appropriate official of the organization, and when investigative actions involve members of the news media, White House personnel, and Members of Congress.

I. FBI Counterintelligence Investigations

The FBI has the authority to investigate federal crimes that are not exclusively assigned to other agencies.²⁵ In addition, under Executive Order (EO) 12333 and various statutory authorities, the FBI has the primary domestic responsibility for investigating threats within the United States to the national security. Such threats are defined to include the following:

- International terrorism;
- Espionage and other intelligence activities, sabotage, and assassination, conducted by, for, or on behalf of foreign powers, organizations, or persons;

²⁵ See AG Guidelines § A.1; DIOG §§ 6.4.1, 7.4.1.

- Foreign computer intrusion; and
- Other matters determined by the Attorney General, consistent with E.O. 12333 or any successor order.

Beyond these investigative functions, the FBI also serves as a domestic intelligence agency and has the authority to collect and analyze foreign intelligence as a member of the U.S. Intelligence Community (USIC).²⁶

The standards that the FBI must follow when conducting investigative and intelligence gathering activities are set forth in the AG Guidelines and implemented through the DIOG. The AG Guidelines and the DIOG both require that FBI investigations be undertaken for an authorized purpose—that is, “to detect, obtain information about, or prevent or protect against federal crimes or threats to the national security or to collect foreign intelligence.”²⁷ The DIOG requires that the authorized purpose be “well-founded and well-documented,” and states that this threshold requirement is a safeguard intended to ensure that FBI employees respect the constitutional rights of Americans. Under both the AG Guidelines and the DIOG, no investigation may be conducted for the sole purpose of monitoring activities protected by the First Amendment or the lawful exercise of other rights secured by the Constitution or laws of the United States.²⁸ However, the DIOG also recognizes that

the law does not preclude FBI employees from observing and collecting any of the forms of protected speech and considering its content—as long as those activities are done for a valid law enforcement or national security purpose and are conducted in a manner that does not unduly infringe upon the ability of the speaker to deliver his or her message.²⁹

Balancing individual rights and the FBI’s legitimate investigative needs requires “a rational relationship between the authorized purpose and the protected speech to be collected such that a reasonable person with knowledge of the circumstances could understand why the information is being collected.”³⁰

The AG Guidelines recognize that activities subject to investigation as “threats to the national security” also may involve violations or potential violations of federal criminal laws, or may serve important purposes outside the ambit of normal criminal investigation and prosecution by informing national security decisions.³¹ Given such potential overlaps in subject matter, the AG Guidelines

²⁶ See AG Guidelines §§ A.2, B.

²⁷ AG Guidelines § II.B.1; DIOG § 7.2.; *see also* AG Guidelines §§ I.B.1, II; DIOG §§ 2.2.1, 6.2.

²⁸ See AG Guidelines §§ I.B.1, I.C.3; DIOG § 4.1.2.

²⁹ DIOG § 4.2.1.

³⁰ DIOG § 4.2.1.

³¹ See AG Guidelines § A.2.

state that the FBI is not required to differently label its activities as criminal investigations, national security investigations, or foreign intelligence collection, nor is it required to segregate FBI personnel based on the subject areas in which they operate. Rather, the AG Guidelines state that, where an authorized purpose exists, all of the FBI's legal authorities are available for deployment in all cases to which they apply.³²

The AG Guidelines and the DIOG require that the "least intrusive" means or method be "considered" when selecting investigative techniques and, "if reasonable based upon the circumstances of the investigation," be used to obtain information instead of a more intrusive method.³³ In choosing whether an investigative method is appropriate, the DIOG requires FBI agents to balance the level of intrusion against the investigative needs, particularly where the information sought involves clearly established constitutional, statutory, or evidentiary rights, or sensitive circumstances. Considerations include the seriousness of the crime or national security threat; the strength and significance of the intelligence or information to be gained; the amount of information already known about the subject or group under investigation; and the requirements of operational security, including protection of sources and methods.³⁴ The DIOG states that the degree of procedural protection the law and Department and FBI policy provide for the use of a particular investigative method helps to determine its intrusiveness.³⁵ According to the DIOG, search warrants, wiretaps, and undercover operations are considered to be very intrusive, while database searches and communication with established sources are less intrusive.³⁶ The least intrusive method principle reflects an attempt to balance the FBI's ability to effectively conduct investigations with the potential negative impact an investigation can have on the privacy and civil liberties of individuals encompassed within an investigation.³⁷ However, the DIOG states that investigators "must not hesitate to use any lawful method consistent with the [AG Guidelines] when the degree of intrusiveness is warranted in light of the seriousness of the matter concerned."³⁸ According to the DIOG, "[i]n the final analysis, choosing the method that [most] appropriately balances the impact on privacy and civil liberties with operational needs, is a matter of judgment, based on training and experience."³⁹

Where the authorized purpose involves a threat to the national security, the AG Guidelines require the FBI to coordinate with other Department components,

³² See AG Guidelines § A, II.

³³ See AG Guidelines § I.C.2; DIOG § 4.4.1.

³⁴ See DIOG § 4.4.4.

³⁵ See DIOG § 4.4.3.

³⁶ See DIOG § 4.4.3.

³⁷ See DIOG § 4.4.4.

³⁸ See DIOG § 4.1.1(F).

³⁹ See DIOG § 4.4.5.

specifically including the National Security Division (NSD), and to share information with other agencies with national security responsibilities, including other USIC agencies, the Department of Homeland Security, and the White House. Section VI.D of the AG Guidelines governs the FBI's responsibility to provide information concerning threats to the national security to NSD and to the White House. Where there is "compromising" information about U.S. officials or political organizations, or information concerning activities of U.S. persons intended to affect the political process, the FBI may disseminate it to the White House with the approval of the Attorney General, based on a determination that the dissemination is needed for foreign intelligence purposes, to protect against international terrorism or other threats to the national security, or for the conduct of foreign affairs.⁴⁰

A. Predicated Investigations

Where the FBI has an authorized purpose and factual predication—that is, allegations, reports, facts or circumstances indicative of possible criminal activity or a national security threat, or the potential for acquiring information responsive to foreign intelligence requirements—it may initiate an investigation. The predication requirement is not a legal requirement but rather a prudential one imposed by Department and FBI policy.⁴¹

Predicated investigations that concern federal crimes or threats to the national security are divided into Preliminary Investigations and Full Investigations.⁴² Preliminary Investigations may be opened on the basis of any "allegation or information" indicative of possible criminal activity or threats to the national security. Authorized investigative methods in Preliminary Investigations include all lawful methods (to include CHS and UCE operations) except mail opening, search warrants, electronic surveillance requiring a judicial order or warrant (Title III or FISA), or requests under Title VII of FISA. A Preliminary Investigation may also be converted to a Full Investigation if the available information provides predication for a Full Investigation.⁴³ As described in more detail in Chapter Three, both Crossfire Hurricane and an earlier counterintelligence investigation on Carter Page were initiated as Full Investigations, and thus we focus on the requirements for this level of predicated investigation.⁴⁴

⁴⁰ See AG Guidelines § VI.D.2.b.

⁴¹ For example, the Supreme Court has held that the Department and FBI can lawfully open a federal criminal grand jury investigation even in the absence of predication. See *United States v. Morton Salt*, 338 U.S. 632, 642-43 (1950) (a grand jury "can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not"); see also *United States v. R. Enterprises*, 498 U.S. 292, 297 (1991).

⁴² See AG Guidelines § II.B.3.

⁴³ See AG Guidelines §§ II.B.3, II.B.4; DIOG §§ 6.1, 6.4, 6.6, 6.7.2, 6.9 (Preliminary Investigations); DIOG §§ 7.5, 7.6, 7.7.3, 7.9 (Full Investigations).

⁴⁴ In addition to predicated investigations, the AG Guidelines and the DIOG also authorize the FBI to use relatively non-intrusive means to conduct assessments when it receives or obtains allegations or other information concerning crimes or threats to the national security. Assessments

Under Section II.B.3 of the AG Guidelines and Section 7 of the DIOG, the FBI may open a Full Investigation if there is an “articulable factual basis” that reasonably indicates one of the following circumstances exists:

- An activity constituting a federal crime or a threat to the national security has or may have occurred, is or may be occurring, or will or may occur and the investigation may obtain information relating to the activity or the involvement or role of an individual, group, or organization in such activity;
- An individual, group, organization, entity, information, property, or activity is or may be a target of attack, victimization, acquisition, infiltration, or recruitment in connection with criminal activity in violation of federal law or a threat to the national security and the investigation may obtain information that would help to protect against such activity or threat; or
- The investigation may obtain foreign intelligence that is responsive to a requirement that the FBI collect positive foreign intelligence—*i.e.*, information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations or foreign persons, or international terrorists.

The DIOG provides examples of information that is sufficient to initiate a Full Investigation, including corroborated information from an intelligence agency stating that an individual is a member of a terrorist group, or a threat to a specific individual or group made on a blog combined with additional information connecting the blogger to a known terrorist group.⁴⁵

A Full Investigation may be opened if there is an “articulable factual basis” of possible criminal or national threat activity. When opening a Full Investigation, an FBI employee must certify that an authorized purpose and adequate predication exist; that the investigation is not based solely on the exercise of First Amendment rights or certain characteristics of the subject, such as race, religion, national origin, or ethnicity; and that the investigation is an appropriate use of personnel and financial resources. The factual predication must be documented in an electronic communication (EC) or other form, and the case initiation must be approved by the relevant FBI personnel, which, in most instances, can be a Supervisory Special Agent (SSA) in a field office or at Headquarters. As described in more detail below, if an investigation is designated as a Sensitive Investigative Matter, that designation must appear in the caption or heading of the opening EC, and special approval requirements apply.

require an authorized purpose but no particular factual predication, and are the lowest level of investigation permitted under the AG Guidelines and the DIOG. See AG Guidelines § II.A; DIOG § 5.2. The investigations opened on Carter Page were not assessments.

⁴⁵ DIOG § 7.5.

All lawful investigative methods may be used in a Full Investigation, including electronic surveillance and physical searches under FISA.⁴⁶ However, as described above, the FBI must consider the least intrusive means or method to accomplish the operational objectives of the investigation.

B. Sensitive Investigative Matters (SIM)

The DIOG states that certain investigative matters, known as Sensitive Investigative Matters or SIMs, should be brought to the attention of FBI management and Department officials, as described in further detail below, because of the possibility of public notoriety and sensitivity.⁴⁷ Section 10.1.2.1 of the DIOG, in relevant part, defines a SIM as an assessment or predicated investigation of the activities of a domestic public official or domestic political candidate (involving corruption or a threat to the national security), or a domestic political organization or an individual prominent in such an organization. The term "domestic political candidate" includes an individual who is seeking nomination or election to federal or other political office, while the term "domestic political organization" includes, in relevant part, a committee or group formed to elect an individual to public office. Under the DIOG, if an assessment or predicated investigation concerns a person prominent in a "domestic political organization" but not the political organization itself, it nonetheless must be treated as a SIM.⁴⁸

Section 10.1.3 of the DIOG states that the following factors are to be considered when deciding to open a SIM:

- The seriousness or severity of the violation or threat;
- The significance of the information sought to the violation or threat;
- The probability that the proposed course of action will be successful;
- The risk of public exposure, and if there is such a risk, the adverse impact or the perception of the adverse impact on civil liberties and public confidence; and
- The risk to the national security or the public welfare if the proposed course of action is not approved (*i.e.*, the risk of doing nothing).

The DIOG cautions that, when conducting a SIM, the FBI should take particular care to consider whether a planned course of action is the least intrusive method if reasonable, based upon the circumstances of the investigation.⁴⁹ As noted above, when balancing the needs of the investigation and the intrusiveness of an investigative method, the FBI must consider the seriousness of the crime or national security threat, the strength and significance of the intelligence or

⁴⁶ See AG Guidelines § II.B.4(b)(ii); see also DIOG §§ 7.9, 18.7.1.

⁴⁷ DIOG § 10.1.1

⁴⁸ See DIOG § 10.1.2.2.3.

⁴⁹ See DIOG § 10.1.3

information to be gained, the amount of information already known about the subject or group under investigation, and the requirements of operational security, including protection of sources and methods.⁵⁰

The DIOG and CDPG impose special approval and notification requirements for initiating a Full Investigation of a U.S. person relating to a threat to the national security or any investigation involving a SIM. When a case is opened and designated a SIM by FBI Headquarters, these include review by the FBI Office of the General Counsel (OGC), approval by the FBI Headquarters operational Section Chief (SC), and notification to NSD.⁵¹ At NSD, counterintelligence investigations fall within the purview of the Counterintelligence and Export Control Section (CES), which has the responsibility of supervising and coordinating, among other things, the criminal investigation and prosecution of national security cases, except counterterrorism cases, nationwide. CES receives a steady volume of investigation notifications from the FBI, referred to as letterhead memoranda or LHMs, and on counterintelligence matters CES officials meet regularly with officials from the FBI's Counterintelligence Division.

II. Department and FBI Policies Governing the Use of Confidential Human Sources (CHS)

CHSs play a crucial role in the FBI's efforts to combat crime and protect national security. CHSs provide the FBI with information and insights about the inner workings of criminal, terrorist, and espionage networks that otherwise would be unavailable. The intelligence that CHSs generate has enabled the FBI to thwart terrorist plots, combat intelligence gathering by malign foreign actors, and collect critical evidence for criminal prosecutions.

A. Risk Management Issues Related to CHSs

The operation of CHSs carries numerous risks, both for the CHSs and for law enforcement.⁵² CHSs oftentimes place themselves in significant danger because

⁵⁰ See DIOG § 4.4.4.

⁵¹ The DIOG states "an appropriate NSD official" should be notified and provides a general email account for notification. See DIOG §§ 7.7, 7.10, DIOG Appendix G § G.9.1 (classified); CDPG § 3.1.2.

⁵² The OIG has conducted numerous reviews of the CHS Programs at the Department's law enforcement components, including most recently the OIG's *Audit of the Federal Bureau of Investigation's Management of its Confidential Human Source Validation Processes*, Audit Division Report 20-009 (November 2019), <http://oig.justice.gov/reports/2019/a20009.pdf> (accessed December 1, 2019). See also DOJ OIG, *Audit of the Bureau of Alcohol, Tobacco, Firearms and Explosives' Management and Oversight of Confidential Informants*, Audit Division 17-17 (March 2017), <https://oig.justice.gov/reports/2017/a1717.pdf> (accessed November 12, 2019); DOJ OIG, *Audit of the Drug Enforcement Administration's Confidential Source Policies and Oversight of Higher-Risk Confidential Sources*, Audit Division 15-28 (July 2015), <https://oig.justice.gov/reports/2015/a1528.pdf> (accessed November 12, 2019); DOJ OIG, *Audit of the Drug Enforcement Administration's Management and Oversight of its Confidential Source Program*, Audit Division 16-33 (September 2016), <https://oig.justice.gov/reports/2016/a1633.pdf> (accessed November 12, 2019); DOJ OIG,

disclosure of their cooperation with the FBI can result in retaliation by the persons on whom they are reporting, including physical abuse and even death. Maintaining the confidential nature of the FBI's relationship with its human sources consequently is a priority for the FBI and the Department. Without such secrecy, the safety of CHSs and the FBI's ability to recruit CHSs would be severely jeopardized.

Law enforcement agencies, including the FBI, also assume various risks when utilizing CHSs. Sources may fail to follow instructions and engage in criminal activities that are not authorized, or they may lie or otherwise provide inaccurate information. In light of these risks, the Department and the FBI have established detailed policies to govern the use of CHSs, which seek to mitigate the various risks that such use creates. The Department has established AG Guidelines for FBI CHSs (AG CHS Guidelines) and baseline risk and mitigation protocols for CHS operations.⁵³ The AG CHS Guidelines and protocols require, for example, that the FBI: (1) complete an initial suitability or validation review prior to operating a CHS; (2) admonish the CHS regarding the parameters of his or her service, such as a prohibition on unauthorized illegal activity, and the requirement to abide by the FBI's instructions; (3) maintain proper payment documentation; and (4) subject the CHS to an on-going validation review, to include quarterly and annual reporting on the CHS's activities.⁵⁴ Sources that the FBI operates outside of the United States are subject to further requirements under a separate set of Attorney General's Guidelines.⁵⁵

The FBI's CHS policies provide additional guidance about source operation procedures and include the DIOG, the Confidential Human Source Policy Guide (CHSPG), and the Confidential Human Source Validation Standards Manual (VSM).⁵⁶ Under these policies, FBI case agents (handling agents) are responsible for recruiting and operating CHSs, as well as securing approvals for CHS activities and maintaining accurate CHS case files.⁵⁷ These policies expressly recognize that the "FBI must, to the extent practicable, ensure that the information collected from

Public Summary of the Addendum to the Audit of the Drug Enforcement Administration's Management and Oversight of its Confidential Source Program, Audit Division 16-33a (March 2017), <https://oig.justice.gov/reports/2017/a1633a.pdf> (accessed November 12, 2019);

⁵³ Alberto Gonzales, *Attorney General's Guidelines Regarding the Use of FBI Confidential Human Sources* ("AG CHS Guidelines") (Dec. 13, 2006); James M. Cole, Deputy Attorney General, *Baseline Risk Assessment and Mitigation Policies for Law Enforcement Operations in Criminal Matters* (December 7, 2013) at 6-10.

⁵⁴ AG CHS Guidelines §§ II.A, II.B, II.C & IV.C.4.

⁵⁵ William P. Barr, *Attorney General's Guidelines on the Development and Operation of FBI Criminal Informants and Cooperative Witnesses in Extraterritorial Jurisdictions* (January 15, 1993); See also Confidential Human Source Policy Guide (CHSPG) § 19.

⁵⁶ The FBI is in the process of drafting new guidance to replace the *Confidential Human Source Validation Standards Manual* ("VSM"), 0258PG (March 26, 2010). Witnesses we interviewed told the OIG that the FBI has changed its validation process, and no longer follows much of the VSM, but it has not yet been replaced by more recent guidance.

⁵⁷ DIOG § 18.5.5; CHSPG § 1.0; VSM § 1.0.

every CHS is accurate and current, and not given to the FBI in an effort to distract, mislead, or misdirect FBI organizational or governmental efforts."⁵⁸

The CHSPG recognizes that the decision to open an individual as a CHS will not only forever affect the life of that individual, but that the FBI will also be viewed, fairly or unfairly, in light of the conduct or misconduct of that individual.⁵⁹ Accordingly, the CHSPG identifies criteria that handling agents must consider when assessing the risks associated with the potential CHS. [REDACTED]

[REDACTED]⁶⁰ These risks must be weighed against the benefits associated with use of the potential CHS.⁶¹

Once a CHS has been evaluated and recruited, the CHSPG does not allow for tasking until after the CHS has been approved for opening by an FBI SSA; the required approvals for a specific tasking have been granted; and the CHS has met with the co-handling agent assigned to his or her file, who has the same duties, responsibilities, and file access as the handling agent.⁶² The CHSPG requires additional supervisory approval by a Special Agent in Charge (SAC) and review by a Chief Division Counsel (CDC) to open CHSs that are "sensitive" sources, [REDACTED]

[REDACTED]⁶³

Before a CHS may be tasked, the CHS must also be admonished by the handling agent regarding the nature and parameters of the CHS's relationship with

⁵⁸ VSM § 1.0.

⁵⁹ CHSPG § 3.1.

⁶⁰ CHSPG § 3.1.

⁶¹ Criteria used by agents and analysts to weigh the risks and benefits are: [REDACTED]

[REDACTED] CHSPG § 3.1.

⁶² CHSPG §§ 2.2.1, 4.2.

⁶³ CHSPG § 3.5.1.1. [REDACTED]

[REDACTED].⁷³ Handling agents are also specifically required to document derogatory information about the CHS, which the FBI broadly defines as “[i]nformation that detracts from the character or standing” of an individual.⁷⁴ Derogatory information can take many forms, including, for example, involvement in criminal activity, drug use or possession, financial delinquency or bankruptcy, shifts in beliefs and values, unfavorable comments from individuals who know the CHS, undisclosed allegiances, or inaccurate or incomplete reporting.⁷⁵ Documenting derogatory information is critical to the CHS risk management process because, as recognized by the CHSPG, “past activities and observable characteristics can provide insights that point to future control or handling issues, reliability problems, or lack of credibility” on the part of the CHS. The OIG has previously recommended that the FBI create a subsection within each CHS Delta file that contains, in a single location, all of the information concerning the reliability of the CHS, including any red flags, derogatory reporting, anomalies, or other counterintelligence concerns. The FBI has not implemented this recommendation.⁷⁶

The CHSPG prohibits FBI personnel from disclosing investigative information to a CHS, including “the identity of...actual or potential subjects” of an investigation “other than what is strictly necessary for operational reasons.”⁷⁷ If an agent believes that the disclosure of classified information to a source is necessary, the agent is required to obtain authorization from an FBI Assistant Director before disclosing the classified information.

C. Validation Process for CHSs

Validation is the process used by the FBI to measure the value and mitigate the risks associated with the operation of CHSs.⁷⁸ By design, the validation process

[REDACTED]

[REDACTED]

- [REDACTED] ([REDACTED]);

⁷³ CHSPG §§ 5.1, 16.1.7.

⁷⁴ CHSPG § 16.1.7; FBI National Name Check Derogatory Information Policy Implementation Guide (FBI NNCPG), 0317PG (July 25, 2010), B-1.

⁷⁵ See, e.g., FBI NNCPG § 3.1.1.

⁷⁶ See DOJ OIG, *A Review of the FBI's Handling and Oversight of FBI Asset Katrina Leung*, Oversight and Review Division, Special Report (May 2006), 229.

⁷⁷ CHSPG § 2.3; see also AG CHS Guidelines § I.D.5.

⁷⁸ VSM § 2.1.1.

⁷⁹ VSM § 2.2.

- [REDACTED]);
- [REDACTED]); and
- [REDACTED].⁸⁰

Each year, the handling agent must complete a Field Office Annual Source Report (FOASR), [REDACTED].⁸¹ FOASRs must be maintained in the CHS's Delta validation sub-file, where they are reviewed and approved by the SSA and an Assistant Special Agent in Charge (ASAC), then submitted to the FBI Headquarters' Validation Management Unit (VMU), which assesses each CHS for continued operation.⁸²

SSAs are responsible for daily oversight of CHSs operated by handling agents on the SSA's squad. SSAs review all communications regarding those CHSs, and perform required reviews of documentation collected in each CHS's Delta file.⁸³ Every 90 days, the SSA must also complete a Quarterly Supervisory Source Report (QSSR) for each CHS operated by a handling agent under that SSA's supervisory authority.⁸⁴ As part of the QSSR, the SSA must review the Delta file for each CHS to note any significant anomalies (for example, potential derogatory information, sudden requests for money, or substantial changes in behavior, lifestyle, or viewpoint) that occurred in the last 90 days.⁸⁵

VMU independently conducts Human Source Validation Reviews (HSVRs), which are separate evaluations of the CHS that are completed, among other reasons, because an FBI Field Office or Operational Division has requested enhanced review.⁸⁶ These HSVRs involve:

- Independent review and analysis of the [REDACTED].⁸⁷
- Appropriate traces to [REDACTED], criminal activities, or interactions with other intelligence services, terrorist groups, or criminal organizations;⁸⁸

⁸⁰ VSM § 2.1.2.

⁸¹ CHSPG § 16.7; VSM § 4.1.2.

⁸² CHSPG §§ 16.7, 4.1.2.1.

⁸³ CHSPG §§ 2.1.1, 16.7 & 16.8.

⁸⁴ CHSPG § 16.8.

⁸⁵ CHSPG § 16.8.

⁸⁶ VSM §§ 4.1, 4.1.2, 4.1.3 & 4.1.4.

⁸⁷ VSM §§ 4.1.3, 4.1.4.

⁸⁸ VSM §§ 4.1.3, 4.1.4.

- [REDACTED] ⁸⁹ and
- [REDACTED] ⁹⁰

In the validation context, the term "corroborated" has a specific meaning—that an independent source (for example, [REDACTED] has provided the FBI with the same information. [REDACTED]

⁹¹

The FBI's validation process also addresses the use of sub-sources by a CHS.⁹² For example, the VSM requires the FOASR to assess the CHS's access to information, [REDACTED]

⁹³ If

the latter, the FOASR should [REDACTED]

⁹⁴

D. Closure and Re-Opening of CHSs

Closing a CHS requires documentation of the reason for the closure, which must be included in the CHS's Delta file.⁹⁵ A CHS may be closed for general reasons or for cause. General reasons include considerations such as a lack of productivity, poor health, or transfer of the handling agent.⁹⁶ However, a CHS must be closed for cause "if there is grievous action by the CHS or a discovery of previously unknown facts or circumstances that make the individual unsuitable for use as a CHS."⁹⁷ Reasons that justify closing a CHS for cause include commission

⁸⁹ VSM §§ 4.1.4, 4.1.4.1.

⁹⁰ VSM §§ 4.1.4., 4.1.4.2.

⁹¹ VSM § 2.2.

⁹² CHSPG § 10.12; VSM § 4.1.2.1.7.

⁹³ VSM § 4.1.2.1.7.

⁹⁴ VSM § 4.1.2.1.7.

⁹⁵ CHSPG § 18.1.

⁹⁶ CHSPG § 18.1.1.

⁹⁷ CHSPG § 18.1.2.

of unauthorized illegal activity, unwillingness to follow instructions, unreliability, or serious control problems.⁹⁸ The handling agent must advise the CHS that he or she has been closed, and document such notification in the CHS's validation sub-file, including a statement as to whether the CHS acknowledged or refused to acknowledge the closure.⁹⁹

Absent exceptional circumstances that are approved (in advance, whenever possible) by an SSA, a handling agent must not initiate contact with or respond to contacts from a former CHS who has been closed for cause.¹⁰⁰ Where there is contact with a CHS following closure (whether or not for cause), new information "may be documented" to a closed CHS file.¹⁰¹ However, the CHSPG requires reopening of the CHS if the relationship between the FBI and the CHS is expected to continue beyond the initial contact or debriefing.¹⁰²

A request to reopen a CHS that has previously been closed for cause requires high levels of supervisory approval, [REDACTED]

[REDACTED] A CHS who has been closed for cause [REDACTED]

¹⁰⁴

E. Use of CHSs in Sensitive Monitoring Circumstances

The CHSPG "emphasizes the importance of oversight and self-regulation to ensure that CHS Program activities are conducted within Constitutional and statutory parameters and that civil liberties and privacy are protected."¹⁰⁵ To protect such rights, the FBI must meet additional requirements for use of CHSs in what the AG Guidelines and the DIOG define as "sensitive monitoring circumstances."¹⁰⁶

One of the investigative techniques that the FBI may use in predicated investigations is consensual monitoring, which means the monitoring and/or recording of conversations, telephone calls, and electronic communications based on the consent of one party involved, such as an FBI CHS.¹⁰⁷ SSAs may approve the use of CHSs for consensual monitoring in ordinary cases, so long as the consent

⁹⁸ CHSPG § 18.1.2.

⁹⁹ CHSPG § 18.2.

¹⁰⁰ CHSPG § 18.3.

¹⁰¹ CHSPG § 18.3.

¹⁰² CHSPG § 18.3.

¹⁰³ CHSPG § 4.5.1.

¹⁰⁴ CHSPG § 4.5.1.

¹⁰⁵ CHSPG § 1.2.

¹⁰⁶ AG Guidelines § VII.O; DIOG § 18.6.1.6.3.

¹⁰⁷ AG Guidelines § V.A.4; DIOG §§ 18.6.1.2, 18.6.1.4.

of the CHS has been documented, and the CDC or OGC has determined that, given the facts of the case, the consensual monitoring is legal.¹⁰⁸

For investigations concerning threats to national security, the FBI is required to obtain approval from the Department for consensual monitoring in a “sensitive monitoring circumstance.”¹⁰⁹ A “sensitive monitoring circumstance” as defined by the AG Guidelines and the DIOG is not the same as a “sensitive investigative matter” or “SIM.” As described in Section I.B of this chapter, DIOG § 10.1.2 defines a SIM to include predicated investigations of the activities of a domestic public official or political candidate (involving corruption or a threat to the national security), or a domestic political organization or an individual prominent in such an organization.¹¹⁰ In contrast, a “sensitive monitoring circumstance” is defined more narrowly. As it pertains to this report, a “sensitive monitoring circumstance” arises only when the FBI seeks to record communications of officials who have already been elected or appointed, such as Members of Congress, federal judges, or high ranking members of the executive branch.¹¹¹

The AG Guidelines and the DIOG do not mandate prior notice to, or approval by, the Department before the FBI conducts consensual monitoring of candidates for political office or prominent officials in domestic political organizations, including the most senior officials in a national presidential campaign. However, the definition of a sensitive monitoring circumstance provides that the Attorney General, the DAG, or an Assistant Attorney General (AAG) can require that the FBI obtain Department approval prior to conducting consensual monitoring for a specific investigation of which they are aware.¹¹² As described in Chapter Ten of this report, the consensual monitoring conducted in the Crossfire Hurricane investigation did not meet the definition of sensitive monitoring circumstances provided by the AG Guidelines and the DIOG.

F. Use of CHS Reporting in FISA Applications

The CHSPG allows the use of CHS reporting in FISA applications without revealing the identity of the CHS, so long as the handling agent provides the relevant FBI Headquarters operational unit (*e.g.*, Counterintelligence, Counterterrorism) with the CHS file number, duration of service to the FBI, and a statement on whether the CHS is reliable and has provided reporting that has been corroborated.¹¹³ The CHS handling agent must also be prepared to furnish information to NSD concerning the CHS’s criminal history, payments, and any

¹⁰⁸ DIOG §§ 18.6.1.5.1, 18.6.1.5.1.7.

¹⁰⁹ AG Guidelines § VII.O; DIOG § 18.6.1.6.3.

¹¹⁰ AG Guidelines §§ VII.N, VII.O; DIOG §§ 10.1.2, 18.6.1.6.3.

¹¹¹ AG Guidelines §§ VII.N, VII.O; DIOG §§ 10.1.2, 18.6.1.6.3.

¹¹² AG Guidelines § VII.O(4); DIOG § 18.6.1.6.3.

¹¹³ CHSPG § 10.13.

impeachment information.¹¹⁴ All information provided to support a FISA application must also be documented in the CHS's Delta file.¹¹⁵

Further, the FBI's Foreign Intelligence Surveillance Act and Standard Minimization Procedures Policy Guide (FISA SMP PG) requires that the FISA accuracy or "Woods" file, described in more detail in the next section, contains documentation from the CHS handling agent stating that the handling agent has reviewed the facts presented in the FISA application regarding the CHS's reliability and background, and that, based upon a review of the CHS file, the facts presented in the application concerning the CHS are accurate.

III. The Foreign Intelligence Surveillance Act (FISA)

The FBI identified Carter Page as a U.S. person during all times relevant herein.¹¹⁶ Accordingly, in this section, we briefly describe the statutory requirements and Department policies and procedures for obtaining approval to conduct electronic surveillance and physical searches targeting a U.S. person under FISA.¹¹⁷

A. Statutory Requirements and the Foreign Intelligence Surveillance Court

FISA authorizes the U.S. government to apply for and obtain an order from the Foreign Intelligence Surveillance Court (FISC) to conduct electronic surveillance and physical searches for foreign intelligence purposes. The government's application for electronic surveillance must be approved by the Attorney General (or his or her designee) and contain certain specified information, including a statement of the facts and circumstances relied upon by the applicant to support the belief that the target is a foreign power or an agent of a foreign power, and that each facility or place at which the electronic surveillance is directed is being used,

¹¹⁴ CHSPG § 10.13.

¹¹⁵ CHSPG § 10.13.

¹¹⁶ A U.S. person means a U.S. citizen, a lawful permanent resident (*i.e.*, a green card holder), an unincorporated association with a substantial number of members who are citizens of the United States or lawful permanent residents, or a corporation that is incorporated in the United States—provided such corporation does not constitute a foreign government or any component thereof, a faction of a foreign nation, or an entity that is openly acknowledged by a foreign government to be directed and controlled by the foreign government. See 50 U.S.C. § 1801(i). FISA treats U.S. persons and non-U.S. persons differently in various aspects, including by setting forth different definitions of an "agent of a foreign power" for non-U.S. persons, and authorizing initial electronic surveillance and physical searches targeting a non-U.S. person for a longer duration (120 days versus 90 days for a U.S. person).

¹¹⁷ This report does not describe other FISA provisions not relevant here, including the statutory requirements for obtaining similar FISA authority on a non-U.S. person, see 50 U.S.C. §§ 1801-1805, 1821-1825; see *also* E.O. 12139 (May 23, 1979); E.O. 12949 (Feb. 9, 1995). Also not relevant here are the circumstances under which the U.S. government may conduct emergency electronic surveillance or physical searches without a court order (for not more than 7 days). For the emergency provisions, see 50 U.S.C. §§ 1805(e), 1824(e).

or is about to be used, by a foreign power or an agent of a foreign power; proposed minimization procedures; and a description of the nature of the information sought and the type of communications or activities subject to surveillance.

An application for physical searches requires substantially similar information, except that it also must state the facts and circumstances justifying the applicant's belief that the premises or property to be searched contains "foreign intelligence information" and "is or is about to be, owned, used, possessed by, or is in transit to or from" the target.¹¹⁸ Electronic surveillance and physical searches targeting a U.S. person may be approved for up to 90 days, and subsequent extensions may be approved for up to 90 days provided the government submits another application that meets the requirements of FISA.¹¹⁹ The approvals and certifications required for applications for electronic surveillance and physical searches are discussed in more detail below.

In addition, 50 U.S.C. § 1881d(b) allows the U.S. government to apply for and obtain concurrent authorization to continue targeting a U.S. person reasonably believed to be outside the United States when applying for authorization to conduct electronic surveillance and physical searches within the United States. Because the requirements for such applications are substantially similar to those for surveillance and searches within the United States, we discuss them together.

Probable Cause

The electronic surveillance and physical search provisions of FISA require the FISC to make a probable cause finding based on information submitted by the government. Specifically, the FISC must find probable cause to believe that: (1) the target of the electronic surveillance and physical searches is a foreign power or, as described in more detail below, the agent of a foreign power; (2) for electronic surveillance, that each of the facilities or places at which the surveillance is being directed is being used, or is about to be used, by the foreign power or agent of a foreign power; and (3) for physical searches, that each of the premises or property to be searched is or is about to be owned, used, possessed by, or is in transit to or from the foreign power or agent of a foreign power. In determining whether probable cause exists, a judge may consider the target's past activities, as well as the facts and circumstances relating to his current or future activities.¹²⁰ Where the

¹¹⁸ See 50 U.S.C. §§ 1823(a)(1)-(8). Foreign intelligence information means information that relates to, and if concerning a U.S. person is necessary to, the ability of the United States to protect against actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power; sabotage, international terrorism, or the international proliferation of weapons of mass destruction by a foreign power or an agent of a foreign power; or clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power. See, e.g., 50 U.S.C. § 1801(e)(1).

¹¹⁹ An order for electronic surveillance or physical searches may be extended on the same basis as the original order. The extension for a U.S. person may not exceed 90 days, whereas for non-U.S. person who is an agent of a foreign power it may be for a period not to exceed 1 year. See 50 U.S.C. §§ 1801(b)(1)-(2), 1805(d), 1824(d).

¹²⁰ 50 U.S.C. §§ 1805(a)(2), 1805(b), 1824(a)(2), 1824(b).

FISC authorizes the electronic surveillance or physical search of a U.S. person, the Attorney General may authorize, for the effective period of the FISC's order, the targeting of the U.S. person for the purpose of acquiring foreign intelligence information while such person is reasonably believed to be located outside the United States.¹²¹

According to FISA guidance issued by OGC, probable cause means the following:

"[P]robable cause" is reason to believe, based on the available facts and circumstances, as well as the logical inferences that can be drawn from them. It is determined by the totality of the facts and circumstances, as viewed from the perspective of a reasonable person. Probable cause [means] probability, not certainty, and, thus, is significantly lower than the "proof beyond a reasonable doubt" necessary to support a criminal conviction. It is also lower than the "preponderance of the evidence" required in most civil cases.

The FISA guidance also states:

[OGC] recommends that a field agent seeking a FISA order focus on the *object* of the belief required, *i.e.*, the facts and circumstances demonstrating that the target of the proposed search or surveillance is an agent of a foreign power and that the premises to be surveilled...is used by that agent of a foreign power, rather than on the *quantum* of the belief involved. If you can show that a target is engaged in certain activities, and that he is engaged in them for or on behalf of a foreign power, you have won most of the battle.¹²²

Unlike wiretap applications in a criminal case, which require the government to establish probable cause to believe that an individual is committing, has committed, or is about to commit a specific criminal offense, among other requirements, FISA does not require that the government show a nexus to criminality.¹²³ Rather, a probable cause finding under FISA "focuses on the status of the target as a foreign power or the agent of a foreign power," which is discussed in more detail below.¹²⁴ The Report of the Senate Select Committee on Intelligence

¹²¹ See 50 U.S.C. § 1881b(c)(B)(i).

¹²² FBI OGC, *What Do I Have to Do to Get a FISA?* ("FISA guidance"), Jan. 23, 2003 (emphasis in original); see also *United States v. Rosen*, 447 F. Supp. 2d 538, 549 (E.D. Va. 2006).

¹²³ See, e.g., *United States v. Daoud*, 761 F.3d 678, 681 (7th Cir. 2014); *United States v. Abu-Jihaad*, 630 F.2d 102, 122, 127 (2d Cir. 2010); *United States v. Duka*, 671 F.3d 329, 339-41 (3d Cir. 2011); *United States v. Wen*, 477 F.3d 896, 898 (7th Cir. 2007); *In re Sealed Case*, 310 F.3d 717, 738 (Foreign Intel. Surv. Ct. Rev. 2002) (per curiam); *United States v. Cavanagh*, 807 F.2d 787, 790 (9th Cir. 1987).

¹²⁴ See, e.g., *United States v. El-Mezain*, 664 F.3d 467, 564 (5th Cir. 2011); see also *United States v. Duggan*, 743 F.2d 59, 72-73 (2d Cir. 1984).

(SSCI) that accompanied the 1978 passage of FISA explains the rationale for the different probable cause standards:

[I]f electronic surveillance is to make an effective contribution to foreign counterintelligence, it must be available for use when necessary for the investigative process. The criminal laws are enacted to establish standards for arrest and conviction[,] and they supply guidance for investigations conducted to collect evidence for prosecution. Foreign counterintelligence investigations have different objectives. They succeed when the United States can insure that an intelligence network is not obtaining vital information, that a suspected agent's future access to such information is controlled effectively, and that security precautions are strengthened in areas of top priority for the foreign intelligence service.... Therefore, procedures appropriate in regular criminal investigations need modification to fit the counterintelligence context. [FISA] adopts probable cause standards that allow surveillance at an early stage in the investigative process by not requiring that a crime be imminent or that the elements of a specific offense exist.¹²⁵

Given these differences, the FISA guidance notes that the strictures developed to assess the reliability of informants providing information used to support a wiretap application in criminal cases do not necessarily apply to FISA.¹²⁶ However, the FISA guidance nonetheless cautions that probable cause determinations should take into account "the same aspects of reliability...as in the ordinary criminal context, including the reliability of any informant, the circumstances of the informant's knowledge, and the age of the information relied upon." The FISA guidance instructs agents to "look to the totality of the information and consider its reliability on a case-by-case basis" when judging the information supporting a FISA application.¹²⁷

Agent of a Foreign Power

As described above, the probable cause finding required under FISA focuses on the status of the target as a foreign power or the agent of a foreign power. Under FISA § 1801(b)(2), the definition of "agent of a foreign power" includes, in relevant part, "any person" (including any U.S. person) who engages in the following conduct:

- A. Knowingly engages in clandestine intelligence gathering activities for or on behalf of a foreign power, which activities

¹²⁵ Report of the Senate Select Committee on Intelligence, *Foreign Intelligence Surveillance Act of 1978*, S. Rep. No. 701, 95th Cong., 2d Sess. 34 (Mar. 14, 1978) (S. Rep. 95-701), 3981.

¹²⁶ The rules for assessing the reliability of information provided by confidential informants or sources in counterintelligence cases are discussed above in Section II.

¹²⁷ See FISA guidance, *supra* (citing *Illinois v. Gates*, 462 U.S. 213 (1983)).

involve or may involve a violation of the criminal statutes of the United States; or

- B. Pursuant to the direction of an intelligence service or network of a foreign power, knowingly engages in any other clandestine intelligence activities for or on behalf of such foreign power, which activities involve or are about to involve a violation of the criminal statutes of the United States.¹²⁸

Further, under FISA § 1801(b)(2)(E), the provision the Department relied upon in the Carter Page FISA applications, an agent of a foreign power also includes any person who knowingly aids or abets any person, or conspires with any person, in the conduct described above.

FISA provides that a U.S. person may not be found to be a foreign power or an agent of a foreign power solely upon the basis of activities protected by the First Amendment.¹²⁹ Congress added this language to reinforce that lawful political activities may not serve as the only basis for a probable cause finding, recognizing that “there may often be a narrow line between covert action and lawful activities undertaken by Americans in the exercise of the [F]irst [A]mendment rights,” particularly between legitimate political activity and “other clandestine intelligence activities.”¹³⁰ The Report by SSCI accompanying the passage of FISA states that there must be “willful” deception about the origin or intent of political activity to support a finding that it constitutes “other clandestine intelligence activities”:

If...foreign intelligence services hide behind the cover of some person or organization in order to influence American political events and deceive Americans into believing that the opinions or influence are of domestic origin and initiative and such deception is willfully maintained in violation of the Foreign Agents Registration Act, then electronic

¹²⁸ FISA does not define what constitutes “other clandestine intelligence activities.” However, the 1978 House Permanent Select Committee on Intelligence (HPSCI) Report accompanying the passage of FISA states the following:

The term “any other clandestine intelligence activities” is intended to refer to covert actions by intelligence services of foreign powers. Not only do foreign powers engage in spying in the United States to obtain information, they also engage in activities which are intended to harm the Nation's security by affecting the course of our Government, the course of public opinion, or the activities of individuals. Such activities may include political action (recruiting, bribery or influencing of public officials to act in favor of the foreign power), disguised propaganda (including the planting of false or misleading articles or stories), and harassment, intimidation, or even assassination of individuals who oppose the foreign power. Such activity can undermine our democratic institutions as well as directly threaten the peace and safety of our citizens. Report of the House Permanent Select Committee on Intelligence, *Foreign Intelligence Surveillance Act of 1978*, H. Rep. No. 1283, 95th Cong., 2d Sess. 41 (Jun. 8, 1978) (H. Rep. 95-1283).

¹²⁹ See 50 U.S.C. §§ 1805(a)(2)(A), 1824(a)(2)(A).

¹³⁰ H. Rep. 95-1283 at 41, 79-80; FISA guidance at 7-8; see also *Rosen*, 447 F. Supp. 2d at 547-48 (probable cause finding may be based partly on First Amendment protected activity).

surveillance might be justified under [“other clandestine intelligence activities”] if all the other criteria of [FISA] were met.¹³¹

Approval and Certification Requirements

Each application for electronic surveillance or physical searches under FISA must be approved by the “Attorney General,” defined to include the Attorney General, Acting Attorney General, DAG, or, upon designation, the AAG of NSD.¹³² The Attorney General (or his or her designee) must provide written approval that an application satisfies the statutory requirements—namely, that the facts and circumstances set forth in the affidavit support a finding of probable cause, and that the application meets all other statutory criteria.¹³³ During times relevant herein, the general practice was to submit FISA applications to the NSD AAG for approval and, in instances where the NSD AAG was unavailable or in an acting position, to the DAG. Similarly, in the event the DAG was unavailable or in an acting position, the FISA application was submitted to the Attorney General for approval.

Applications submitted to the FISC must also include written certification by certain specified high-ranking executive branch officials. In the case of FISA applications for FBI investigations, the application is usually certified by the FBI Director or Deputy Director.¹³⁴ The written certification must include the following:

- A statement that the certifying official deems the information sought to be “foreign intelligence information;”
- A statement that a “significant purpose” of the electronic surveillance or physical searches is to obtain foreign intelligence information;
- A statement that such information cannot reasonably be obtained by normal investigative techniques;
- A designation of the type of foreign intelligence information being sought (*e.g.*, information concerning a U.S. person that is necessary to the ability of the United States to protect against clandestine

¹³¹ See S. Rep. 95-701 at 24-25. The Foreign Agents Registration Act, 22 U.S.C. § 611 *et seq.*, is a disclosure statute that requires persons acting as agents of foreign principals such as a foreign government or foreign political party in a political or quasi-political capacity to make periodic public disclosure of their relationship with the foreign principal, as well as activities, receipts and disbursements in support of those activities.

¹³² See 50 U.S.C. §§ 1801(g), 1804(a), 1821(1), 1823(a).

¹³³ See generally David S. Kris and J. Douglas Wilson, National Security Investigations and Prosecutions § 6:5 (2016). In certain cases, the Director of the FBI, the Secretary of Defense, the Secretary of State, the Director of National Intelligence (DNI), or the Director of the CIA may request that the Attorney General personally review a FISA application. This obligation is not delegable by the Attorney General (or any of the other officials mentioned) except “when disabled or otherwise unavailable.” See 50 U.S.C. §§ 1804(d), 1823(d).

¹³⁴ See 50 U.S.C. §§ 1804(a)(6), 1823(a)(6); E.O. 12139 (May 23, 1979) (electronic surveillance); E.O. 12949 (Feb. 9, 1995) (physical search).

intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power).

- A "statement of the basis" for the certification that the information sought is the type of foreign intelligence designated and that it cannot reasonably be obtained by normal investigative means.¹³⁵

As described in more detail below, the FISC must find that an application includes all of the required statements and certifications (among other requirements) before issuing an order authorizing electronic surveillance or physical searches. Where the target is a U.S. person, the FISC must find that the certifications are not clearly erroneous.¹³⁶

Foreign Intelligence Surveillance Court (FISC)

The FISC was established in 1978 to hear applications and grant orders for electronic surveillance.¹³⁷ Subsequent amendments to FISA expanded the FISC's jurisdiction to the collection of foreign intelligence information by other means, including physical searches.¹³⁸ The FISC consists of 11 federal district court judges, chosen by the Chief Justice of the United States, from at least 7 judicial circuits, with at least 3 judges required to reside within 20 miles of the District of Columbia.¹³⁹ Judges on the FISC sit for staggered 7-year terms, during which time they also continue to serve as judges in their home districts.¹⁴⁰ According to former FISC Presiding Judge John D. Bates, district court judges selected to sit on the FISC are typically experienced judges with significant national security or Fourth Amendment experience.¹⁴¹

The FISC's Rules of Procedure require the government to submit a proposed application for authorization to conduct FISA surveillance and physical searches no later than 7 days before the government seeks to have the matter entertained, except that the 7-day requirement is waived when submitting an application

¹³⁵ See 50 U.S.C. §§ 1804(a)(6)(A)-(E), 1823(a)(6); see also H. Rep. 95-1283 at 76.

¹³⁶ See 50 U.S.C. § 1881b(c)(1)(D). The certifications submitted in support of a FISA application are presumed valid. The certifications are upheld absent a "substantial preliminary showing" that the application knowingly and intentionally, or with reckless disregard for the truth, included a false statement, and that the allegedly false statement was "necessary" to the approval of the application. In 2002, the Foreign Intelligence Surveillance Court of Review stated: "We think the government's purpose...is to be judged by the national security official's articulation and not be a FISA [C]ourt inquiry into the origins of the investigation nor an examination of the personnel involved...." *In re Sealed Case*, 310 F.3d at 736.

¹³⁷ See National Security Investigations and Prosecutions § 5:3.

¹³⁸ See *In re Motion for Release of Court Records*, 526 F. Supp. 2d 484, 487-88 (FISA Ct. 2007).

¹³⁹ See 50 U.S.C. § 1803(a)(1); Rule 4, FISC Rules of Procedure (Nov. 1, 2010).

¹⁴⁰ See 50 U.S.C. § 1803(d).

¹⁴¹ See Culper Rule of Law Series: Judge John Bates, Lawfare Podcast at 32:00, <https://www.lawfareblog.com/lawfare-podcast-culper-partners-rule-law-series-judge-john-bates> (accessed Dec. 2, 2019) (hereinafter Lawfare Podcast).

following emergency authorization (not applicable here) or when the court agrees to expedite its consideration of an application at the government's request.¹⁴² The proposed application typically is referred to as the "read copy," which is prepared by an attorney in NSD's Office of Intelligence (OI) based upon information provided by the FBI. The FISC will review the read copy, evaluate whether it meets the requirements of the statute, and, through a legal advisor, discuss with the assigned OI attorney, any issues the legal advisor or judge identified. The read copy allows FISC legal advisors to have informal interaction with OI to convey any questions, concerns, or requests for additional information from the legal advisor or judge before a final application is filed.¹⁴³ The OI attorney then works with the FBI to provide additional information to the FISC legal advisor and makes any necessary revisions before submitting the final application to the FISC.¹⁴⁴

Once a final application is submitted, the judge may request that the OI attorney present it at a scheduled hearing, or may approve the application based on the written submission.¹⁴⁵ The judge is authorized to enter an order approving electronic surveillance or physical searches if he or she finds that the facts presented in the application are sufficient to establish probable cause, as discussed above; that the application includes "minimization procedures" sufficient to minimize the acquisition and retention, and prohibit the dissemination, of non-public information about a U.S. person unless it meets certain criteria; and that the application includes all required statements and certifications.¹⁴⁶

¹⁴² See Rules 6(a), 9(a), FISC Rules of Procedure (2010). The FISC Rules specifically address emergency authorizations but do not address expedited applications. However, Rule 9(a) states that the 7-day requirement does not apply to emergency authorizations or "as otherwise permitted by the Court." According to NSD, in instances where the government seeks the court's expedited consideration of a FISA application, and the court is able to do so, the court will rely upon "as otherwise permitted by the Court" to waive the 7-day requirement.

¹⁴³ According to a 2013 letter explaining how the FISC operates, FISC legal advisors interact with NSD on a daily basis. See Letter from Judge Reggie Walton to Senator Patrick Leahy, U.S. Senate Committee on the Judiciary (Jul. 29, 2013) (2013 Judge Walton Letter), <http://www.fisc.uscourts.gov/sites/default/files/Leahy.pdf> (accessed Dec. 2, 2019).

¹⁴⁴ See 2013 Judge Walton Letter, at 6 & n.3.

¹⁴⁵ If the judge denies a final application, he or she is required to draft a statement of reasons explaining the basis for the denial. See 50 U.S.C. §§ 1803(a)(1), 1822(c). Denials of applications for electronic surveillance or physical searches may be appealed to the Foreign Intelligence Surveillance Court of Review. See 50 U.S.C. §§ 1803(b), 1822(d). Alternatively, if the judge indicates that he or she will deny a proposed or final application, NSD may decide not to submit a final application, or may withdraw a final application after submission. See 2013 Judge Walton Letter at 3.

¹⁴⁶ See 50 U.S.C. §§ 1805(a), 1824(a); see also 50 U.S.C. § 1881d(b) (concurrent authorization to conduct electronic surveillance and physical searches targeting a U.S. person inside and outside the United States). In addition to the standard minimization procedures, which apply to all information acquired through electronic surveillance and physical searches, each application may describe other minimization procedures that are appropriate for the particular surveillance or search in question. The FISC may modify the government's proposed minimization procedures if it concludes they do not meet the statutory requirements. See National Security Investigations and Prosecutions, § 9.1.

If the FISC approves a FISA application, it issues a primary order finding that the statutory requirements were met and authorizing the electronic surveillance or physical searches. The primary order also must direct the government to follow the minimization procedures proposed in the application.¹⁴⁷ Where assistance from a third party (such as an email provider, telephone company, or landlord) is required, the FISC also issues a secondary order directing the third party to “furnish...all information, facilities, or technical assistance necessary” to accomplish the search or surveillance “in such a manner as will protect its secrecy and produce a minimum of interference.”¹⁴⁸

In addition, under Rule 13(a) of the FISC Rules of Procedure, if the government subsequently identifies a misstatement or omission of material fact in an application or other document submitted to the FISC, the government, in writing, must immediately inform the judge to whom the submission was made of the following: (1) the misstatement or omission, (2) any necessary correction, (3) the facts and circumstances of the misstatement or omission, (4) any modifications the government has made or proposes to make to how it will implement any authority or approval granted by the FISC, and (5) the government’s proposal for disposal of or treatment of any information obtained as a result of the misstatement or omission.¹⁴⁹

B. FBI and Department FISA Procedures

1. Preparation and Approval of FISA Applications

The FBI’s policies and procedures for the preparation and approval of applications for authorization to conduct electronic surveillance or physical searches under FISA are contained in the FBI’s online FISA Management System (FISAMS), the FISA Verification Form (described below), the DIOG, and the FISA SMP PG. We will describe the typical preparation and approval process below. The preparation and approval process taken with respect to the four Carter Page FISA applications, including steps that were taken in addition to the steps typically completed during the FISA process, are discussed in Chapters Five and Seven.

The FBI’s FISA process is initiated when a case agent begins drafting a FISA Request Form for submission to OI. The FISA Request Form requires that the case agent provide specific categories of information to OI, the most important of which is a description of the facts and circumstances that the agent views as establishing probable cause to believe the target of the application is a foreign power or an agent of a foreign power. In particular, the FISA Request Form states that the case agent should provide a complete description of all material facts regarding a target to justify FISA authority or, in the case of renewals, to justify continued FISA coverage. In the case of FISA renewals, the form also asks the case agent to describe in detail any previous information that requires modification or correction.

¹⁴⁷ See 50 U.S.C. §§ 1805(c)(2)(A), 1824(c)(2)(A).

¹⁴⁸ See 50 U.S.C. § 1805(c)(2)(B).

¹⁴⁹ See Rule 13(a), FISC Rules of Procedure.

The form does not specifically require the case agent disclose exculpatory facts or facts that, if accurate, would tend to undermine the factual assertions being relied upon to support the government's theory, in whole or in part, that the target is a foreign power or an agent of a foreign power.

After the case agent prepares the FISA Request Form, in ordinary circumstances, the supervisory chain in the relevant field office will receive the request for approval, including the SSA, CDC, ASAC, and the SAC, before the request is sent to the appropriate FBI Headquarters substantive division Unit Chief (UC). The UC reviews and approves the request, assigns it to the appropriate FBI Headquarters substantive division SSA Program Manager, and to OGC's National Security and Cyber Law Branch (NSCLB) for assignment and review. As described in Chapter Five, in the case of Carter Page, because the investigation was close-hold and being conducted from FBI Headquarters instead of a field office, the case agent submitted the FISA Request Form directly to the NSCLB line attorney assigned to Crossfire Hurricane.

Once the FISA Request Form is submitted to NSCLB, an NSCLB line attorney reviews the request and provides feedback to the case agent. Once the draft is finalized, the NSCLB line attorney approves the FISAMS request and routes the form to the appropriate FBI Headquarters Section Chief for review and approval. The FBI Headquarters Section Chief reviews the request and, if approved, submits the request to the appropriate Deputy Assistant Director (DAD) for approval in the case of an expedited request, or, if not, directly to OI. Once in OI, the request is then assigned to an OI line attorney from one of three units within OI's Operations Section: the Counterintelligence Unit, the Counterterrorism Unit, or the Special Operations Unit. In this instance, an OI attorney in the Counterintelligence Unit was assigned to the Carter Page FISA request.

The OI attorney prepares the read copy application using the information provided by the FBI and works with the NSCLB attorney and FBI case agent to obtain additional information, frequently resulting in a "back and forth" between OI and the FBI. According to NSD, as part of this back and forth process, OI will ask whether the FBI is aware of any "exculpatory" information that relates to the target of the application, as well as any derogatory information that relates to sources relied upon in the application. An OI supervisor, usually the relevant Unit Chief or Deputy Unit Chief, then reviews the draft read copy. Neither the FISA statute nor FISC procedures dictate who in the Department must approve the read copy before it is submitted to the FISC. In most instances, once the FBI case agent affirms the accuracy of the information in the read copy, the OI supervisor conducts the final review and approval before a read copy is submitted with the FISC. However, in some cases, multiple OI supervisors, or even senior NSD leadership, may review the read copy, particularly if it presents a novel or complicated issue or otherwise has been flagged by the OI supervisor for further review.

NSD's Deputy Assistant Attorney General (Deputy AAG) for Intelligence is responsible for, among other things, overseeing OI. According to the Deputy AAG for Intelligence at the time of the Carter Page FISA applications and renewals, not all FISA requests from the FBI culminate in the filing of an application with the

FISC. Sometimes the back and forth process between the OI attorney and the case agent does result in sufficient factual information for a showing of probable cause or sometimes investigative objectives and needs change during the drafting process, obviating the FBI's desire for FISA authority on a particular target.

However, as described previously, after a read copy is filed, OI may receive feedback from the court through the FISC legal advisor. The OI attorney will then work with the case agent to address any issues raised by the legal advisor, such as by providing additional information to the FISC legal advisor and making any requested revisions before preparing the final application. Occasionally, the feedback from the court leads the FBI, in consultation with OI, to decide not to submit a final application, or to limit the authorities sought in the final application.

At the same time the read copy is filed with the FISC, OI sends the completed FISA application (referred to as the "FISA Certification Copy" or "cert copy") and a one-page cover memorandum (cert memo) signed by the OI supervisor to the case agent for final review within the FBI. This process in OI is sometimes referred to as "signing out" a FISA.

After receiving the cert copy and cert memo, an FBI agent, not necessarily the case agent, is assigned to complete an accuracy review of the application, which is discussed in more detail in Section III.B.2 below. After any additional edits necessitated by the accuracy review are made, the agent and an SSA sign the FISA Verification Form, also known as the Woods Procedures (described further below) or "Woods Form," and send the application package to the FBI Headquarters substantive division Program Manager who, according to the FISA SMP PG, must review the FISA application and coordinate the FISA accuracy and approval process that takes place at FBI Headquarters.

The Headquarters Program Manager is responsible for ensuring that the supervisory personnel in the field office have completed and documented their reviews of the application; determining whether another field office should also review the application for factual accuracy; verifying and providing documentation for any factual assertions identified by the field office as requiring Headquarters verification; and notifying OI and NSCLB of any factual assertions in the application that could not be verified so that the necessary action is taken to remove the unverified information from the declaration. If all factual assertions have been verified and documented, the Headquarters Program Manager will sign the affidavit in the application declaring under penalty of perjury that the information in the application is true and correct. The Program Manager then submits the application package to NSCLB for final legal review and approval by an NSCLB line attorney and Senior Executive Service-level supervisor. Witnesses told us that usually the Senior Executive Service-level supervisor is an NSCLB Section Chief or a Deputy General Counsel, but that, on occasion, the role is delegated to a GS-15 Unit Chief.

FBI procedures do not specify what steps must be taken during the final legal review. As described in Chapter Five, the FBI's Deputy General Counsel at the time of the Carter Page FISA applications told us that she typically reviewed the cert memo and FISA Verification Form to determine whether the FISA application

package was complete, all the steps of the Woods Procedures were completed, the probable cause standard was met, and there were no outstanding issues.¹⁵⁰ Ultimately, if the NSCLB line attorney and a Senior Executive Service-level supervisor approve the FISA cert copy, they both sign the cert memo, and the complete application package is then taken to the FBI Director's Office for review and approval. If the FBI Director signs the cert copy, the paper copy of the signed application is delivered to OI. OI then provides the signed application package to the final signatory who, as discussed above, is usually the NSD AAG but can sometimes be the DAG or Attorney General.

In addition to receiving the final application and cert memo, the NSD AAG (or DAG or Attorney General) typically receives an oral briefing from senior OI managers. The NSD AAG receives the application for the first time during or shortly before the oral briefing, unless the application was submitted for his or her review beforehand, which is not typical. During the oral briefing, senior OI managers present all the FISA applications awaiting final Department approval, which, according to NSD, in 2016 generally ranged from 20 to 30 total applications in any given week (though the quantity sometimes varied outside that range). Once the FISA application is approved and signed by the NSD AAG, OI will submit it to the FISC for its final consideration.

2. "Woods Procedures"

In April 2001, the FBI implemented FISA verification procedures (known as "Woods Procedures") for applications for electronic surveillance or physical searches under FISA.¹⁵¹ These procedures were adopted following errors in numerous FISA applications in FBI counterterrorism investigations, virtually all of which "involved information sharing and unauthorized disseminations to criminal investigators and prosecutors."¹⁵²

To address these concerns, the procedures focused on ensuring accuracy in three areas: (1) the specific factual information supporting probable cause, (2) the existence and nature of any related criminal investigations or prosecutions involving the target of the FISA authorization, and (3) the existence and nature of any ongoing asset relationship between the FISA target and the FBI. The procedures required FBI agents and supervisors to undertake specific steps before filing a FISA application, which included a determination of whether the target is the subject of a

¹⁵⁰ As discussed in Chapter Five, the then Deputy General Counsel told us that she would sometimes read the FISA application if she determined, based on the cert memo or otherwise, that there was a reason to do so.

¹⁵¹ Memorandum from Michael J. Woods, Unit Chief, FBI Office of the General Counsel, National Security Law Unit, to FBI Field Offices (Apr. 5, 2001). <https://fas.org/irp/agency/doj/fisa/woods.pdf> (accessed Dec. 2, 2019); see generally National Security Investigations and Prosecutions § 6.3.

¹⁵² *In re All Matters Submitted to the Foreign Intelligence Surveillance Court*, 218 F. Supp. 2d 611, 620-21 (FISA Ct. 2002), *rev'd*, *In re Sealed Case*, 310 F.3d at 736.

past or current criminal investigation, negative or positive search results in FBI databases on the target, and a review of the affidavit for factual accuracy.

The Woods Procedures in the original memorandum were subsequently expanded and incorporated into other policy documents, including the 2016 FISA SMP PG, which was the applicable FBI policy guide in effect during the period relevant to this review, and a 2009 joint NSD-FBI guidance memorandum on FISA application accuracy (2009 Accuracy Memorandum).¹⁵³ Both the FISA SMP PG and 2009 Accuracy Memorandum state that the U.S. government's ability to obtain FISA authority depends on the accuracy of applications submitted to the FISC and that because FISA proceedings are *ex parte*, the FISC relies on the U.S. government's "full and accurate presentation of the facts to make its probable cause determinations." The FISA SMP PG further states that it is the case agent's responsibility to ensure that statements contained in applications submitted to the FISC are "scrupulously accurate."

Like the original procedures, the accuracy procedures in the FISA SMP PG require relevant FBI personnel to conduct database searches [REDACTED] to identify any previous or ongoing criminal investigations and to determine the target's immigration status; [REDACTED]; and identify the source of every fact asserted in a FISA application. The results of these steps must be documented in the FISA Verification or Woods Form and must be reviewed for accuracy and verified by relevant FBI personnel, with the results of the factual review documented and included in the final FISA package.

The FISA SMP PG requires that the case agent who requested the FISA application create and maintain an accuracy sub-file (known as a "Woods File") that contains: (1) supporting documentation for every factual assertion contained in a FISA application, and (2) supporting documentation and the results of the required searches and verifications. The Woods File must include the documented results of the required database and CHS file searches, as well as copies of the "most authoritative documents" supporting the facts asserted in the application. The FISA SMP PG advises that while there is some "latitude" as to what documents meet this requirement, the case agent "should endeavor to obtain the original documentation and/or best evidence of any given fact."

Further, as described earlier in this chapter, where a FISA application contains reporting from a CHS, the Woods File must contain a memorandum, email, or other documentation from the handling agent, CHS coordinator, or either of their immediate supervisors, stating that: (1) this individual has reviewed the facts presented in the FISA application regarding the CHS's reliability and background,

¹⁵³ Foreign Intelligence Surveillance Act and Standard Minimization Procedures, 0828PG, Aug. 11, 2016; Matthew G. Olsen, NSD Acting Assistant Attorney General and Valerie Caproni, FBI General Counsel, Memorandum for All Office of Intelligence Attorneys, All National Security Law Branch Attorneys, and All Chief Division Counsels, Guidance to Ensure the Accuracy of Federal Bureau of Investigation Applications under the Foreign Intelligence Surveillance Act, February 11, 2009; *see also* previous FBI policy guide, FBI FISA Accuracy Policy Implementation Guide, 0394PG, Mar. 31, 2011 (superseded by 0828PG).

and (2) based on this review of the CHS file documentation, the facts presented in the FISA application are accurate. Common accuracy documentation for a CHS include, among other things, [REDACTED]

[REDACTED] and reliability of the CHS.

After the Woods File is created, the case agent is responsible for verifying each factual assertion in the FISA application and ensuring that the supporting documentation is in the Woods File. In the case of renewal applications, the case agent must re-verify the accuracy of each factual assertion that is carried over from the first application and also verify and obtain supporting documentation for any new factual assertions that are added. After the case agent completes this process, the agent signs the Woods Form affirming the accuracy and documentation of every factual assertion in the application. The case agent then submits the Woods Form and Woods File to his or her SSA. The SSA is responsible for reviewing the Woods File and confirming that it contains supporting documentation of every factual assertion in the application. After the SSA completes this process, the SSA signs the Woods Form, and then the Woods Form, but not the Woods File, is transmitted to Headquarters. As described previously, one of the responsibilities of the Headquarters Program Manager is to verify any factual assertions that require Headquarters verification and provide supporting documentation for the Woods File. After doing so, the Program Manager signs the Woods Form affirming that he or she has verified the accuracy of those factual assertions and has transmitted the necessary documentation to the field office for inclusion in the Woods File.

According to FBI training materials, "everyone in the FISA process" relies on the case agent's signature on the Woods Form verifying that the factual assertions contained in the application are accurate. According to the FISA SMP PG, the Headquarters Program Manager, who signs the FISA application under penalty of perjury certifying that the information in the application is true and correct, does not typically have the personal or programmatic knowledge of the factual information necessary for a FISA application and therefore must rely on the field office for the accuracy of the information in the application. The case agent's signature allows the Program Manager to sign and swear to the application and the Director or Deputy Director to certify the application. Further, OI, NSD, the approving official (NSD AAG, DAG, or Attorney General), and the FISC rely on the Headquarters Program Manager, or declarant, that the application contains a complete and accurate recitation of the relevant facts.

The FISA SMP PG states that information in a FISA application that cannot be verified as true and correct must be removed from the application, or the entire application must be delayed until the information is verified and the verification is documented. According to FBI and NSD officials, in the case of information provided by a CHS, the verification process does not require that the FBI establish the accuracy of the CHS's information before that information may be relied upon in a FISA application. The OGC Unit Chief who supervised the attorney assigned to assist the Carter Page FISA applications told us that the Woods Procedures require that the case agent identify documentation stating what the CHS told the FBI, but

does not require the agent to corroborate the underlying accuracy of the information. Similarly, according to NSD supervisors, although the Woods Procedures require that every factual assertion in a FISA application be "verified," when a particular fact is attributed to a source, an agent must only verify that the fact came from the source and that the application accurately states what the source said. The Woods Procedures do not require that the FBI have corroboration from a second source for the same information. According to the Deputy AAG who had oversight over OI at the time of the Carter Page FISA applications, the FISC is aware of how the FBI "verifies" information that is attributed to a CHS, and the court has not requested a change to their Woods Procedures. Further, NSD officials told us that in all instances, a FISA application will include an FBI assessment of the reliability of the CHS's information, which may come from factual corroboration or, in the absence of factual corroboration, from information about the CHS's general reliability.

IV. Ethics Regulations

Government ethics regulations, specifically those providing guidance on conflicts of interests pertain to the events discussed in Chapter Nine concerning Department attorney Bruce Ohr.

The Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Ethical Conduct), 5 C.F.R. § 2635, is a comprehensive set of regulations that set forth the principles of ethical conduct to which all executive branch employees must adhere. In addition to the basic obligations of public service, the regulations address such ethical issues as gifts from outside sources and impartiality in performing official duties. Specifically, 5 C.F.R. § 2635.502 seeks to avoid any appearance of the loss of impartiality in the performance of official government duties by an employee due to a financial interest that the employee may have. It applies in circumstances:

[w]here an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household...and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter....

Another portion of the regulations, 5 C.F.R. § 2635.402(b)(1), defines "direct and predictable effect" as "a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest."

Section 502 also includes a catch-all provision, which states:

An employee who is concerned that circumstances other than those specifically described in this section would raise a question regarding his impartiality should use the process described in this section to

determine whether he should or should not participate in a particular matter. 5 C.F.R. § 2635.502(a)(2).

The process referenced in this section is for the employee to describe the circumstances that would raise an impartiality question to a Department ethics officer for the purpose of receiving guidance on how to address potential conflicts of interest, including whether the employee should be disqualified from participation. 5 C.F.R. § 2635.502(c).

V. Examples of Other Department and FBI Policies Regulating Investigative Activity that Could Potentially Impact Civil Liberties

On occasion, the Department and the FBI investigate alleged illegal activity that is intertwined with, or take investigative steps with the potential to implicate, what is otherwise constitutionally protected activity. Examples include investigations of allegations of illegal campaign finance activity, allegations of violations of the Foreign Agent Registration Act, or the use of legal process to obtain information about the media or Members of Congress. The Department and the FBI have promulgated specific policies intended to ensure appropriate oversight of and accountability for many of these investigative activities. Some of these policies, such as the notification requirement described above for a “Sensitive Investigative Matter,” applied to the Crossfire Hurricane investigation. In this section, we provide examples of other Department and FBI policies and procedures, not applicable to the Crossfire Hurricane investigation, that establish senior-level approval requirements and other procedures to regulate certain investigative activity capable of implicating civil liberties and constitutional concerns.

A. Undisclosed Participation

Undisclosed Participation (UDP) takes place when anyone acting on behalf of the FBI, including a CHS, becomes a member of, or participates in, the activity of an organization on behalf of the U.S. government without disclosing their FBI affiliation to an appropriate official of the organization.¹⁵⁴ A CHS who participates in an organization entirely on his or her own behalf and who is not tasked by the FBI to obtain information or undertake other activities in that organization is not engaging in UDP—regardless of whether the CHS volunteers information to the FBI and regardless of whether the CHS’s affiliation with the FBI is known. However, if the CHS is tasked by the FBI to join an organization, obtain specific information through participation in the organization, or take specific actions, those activities are on behalf of the FBI, and require compliance with the UDP policies set forth in the DIOG.¹⁵⁵

¹⁵⁴ DIOG § 16.1.

¹⁵⁵ DIOG §§ 16.2.3.1, 16.3.

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In our review, we identified an FBI CHS who, months after the presidential campaign was concluded, [REDACTED] to the FBI, without being tasked by the FBI to gather that information, or directed by the FBI to participate in the campaign. This type of voluntary activity does not meet the definition of UDP and therefore does not implicate the FBI's requirements for approval of UDP.

B. Investigative Activities Concerning Members of the News Media, White House and Executive Branch Personnel, and Members of Congress

The Department and the FBI have policies to ensure appropriate oversight and accountability for investigative activities involving members of the news media, White House personnel, and Members of Congress.

1. Members of the News Media

The Department and the FBI have numerous regulations and policies regarding investigations that involve members of the news media that relate to events arising from their profession. For example, 28 C.F.R. § 50.10 and the

¹⁵⁶ DIOG § 16.2.3.5.

¹⁵⁷ DIOG § 16.4(A).

¹⁵⁸ DIOG § 16.3.1.5.1(B).

¹⁵⁹ DIOG § 16.2.3.2.

¹⁶⁰ DIOG § 16.3.1.5.3(C).

Department's Justice Manual § 9-13.400 govern obtaining information from, or records of, members of the news media and questioning, arresting, or charging members of the news media. The rules require, with certain exceptions, the Attorney General to approve subpoenas issued to members of the news media; warrants to search premises, properties, communications records, or business records of a member of the news media; and questioning, arresting, or charging members of the news media.

Pursuant to DIOG § 18.5.9.3.1, FBI agents must obtain higher-level authority, consistent with 28 C.F.R. § 50.10, when seeking the issuance of a subpoena for records relating to members of the news media. Similarly, DIOG § 18.6.4.3.4.3 requires the FBI to obtain the Attorney General's approval when using an administrative subpoena directed to a telecommunications provider for toll records associated with members of the news media.

2. White House and Executive Branch Personnel

The Department's Justice Manual states that any monitoring of oral communications without the consent of all parties, when it is known that the monitoring concerns an investigation into an allegation of misconduct committed by a senior member of the executive branch, must be approved by a Deputy AAG from the Department's Criminal Division.¹⁶¹

DIOG § 18.5.6.4.7 states that an FBI agent may only initiate contact with White House personnel as part of an investigation after consulting with the FBI OGC and obtaining SAC and appropriate FBI Assistant Director approval.

3. Members of Congress and Their Staff

The Department's Justice Manual states that any monitoring of oral communications without the consent of all parties when it is known that the monitoring concerns an investigation into an allegation of misconduct committed by a Member of Congress must be approved by a Deputy AAG from the Department's Criminal Division.¹⁶²

DIOG § 18.5.6.4.6 requires FBI agents to obtain SAC and appropriate FBI Assistant Director approval, along with notice to the AD for the Office of Congressional Affairs, when seeking to interview a Member of Congress or Congressional staff in connection with a public corruption matter or a foreign counterintelligence matter.

¹⁶¹ Section 9-7.302.

¹⁶² Sections 9-7.302, 9-85.110.

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