



United States Department of Justice

Office of Special Counsel
John H. Durham

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

May 12, 2023

TO: ATTORNEY GENERAL MERRICK B. GARLAND

FROM:  JOHN H. DURHAM
SPECIAL COUNSEL

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

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

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

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

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

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

Special Counsel John H. Durham

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

Washington, D.C.

May 12, 2023

TABLE OF CONTENTS

Introduction.....	1
I. The Special Counsel’s Investigation	1
II. Executive Summary	7
III. Applicable Laws and Department and FBI Policies	19
A. Principles of Federal Prosecution.....	19
1. Determination to prosecute	19
2. Substantial federal interest	19
3. Most serious, readily provable offense	20
4. Unpopularity.....	20
5. Interests of uncharged parties.....	20
B. The FBI’s Assessment and Investigation of Counterintelligence Matters	21
1. Use of least intrusive means.....	22
2. Levels of investigation	23
a. Activity authorized before opening an assessment.....	23
b. Assessment	24
c. Preliminary investigation.....	24
d. Full investigation	24
3. The Confidential Human Source Guidelines	24
4. Analytic integrity.....	26
5. Recently upgraded protections	27
a. Investigative activities	27
b. CHS guidelines and policy	28
c. Defensive briefings.....	29
C. The Foreign Intelligence Surveillance Act (“FISA”).....	30
1. Required findings	31
2. Protection of First Amendment activities.....	33
3. Certification by Executive Branch official.....	34
4. Executive Branch requirements	35
D. Statutes Used to Evaluate Possible Criminal Conduct.....	36
1. Standard of proof beyond a reasonable doubt.....	36
2. False statements.....	36
3. Perjury	37
4. Falsification of records.....	38

5. Obstruction of justice	39
6. Violation of civil rights	39
7. Conspiracy to violate civil rights	40
8. General conspiracy statute	40
9. Campaign contributions	41
10. Campaign contributions by foreign nationals	41
11. Fraud against the United States	41
12. Money-laundering	42
13. Disclosure of national defense information	43
IV. Background Facts and Prosecution Decisions	44
A. The Crossfire Hurricane Investigation	46
1. New York Field Office investigation of Page	46
2. Evidence of predisposition to investigate Trump	47
3. The opening of Crossfire Hurricane	51
a. The information used to predicate Crossfire Hurricane	51
b. The lack of intelligence information supporting the premise of Crossfire Hurricane	54
c. Interview of the Australian diplomats	59
4. Other investigative activity prior to the receipt of the Steele Reports	66
B. The FBI's and the Department's Disparate Treatment of Candidates Clinton and Trump	68
1. The threat of foreign election influence by Foreign Government-2	69
2. The threat of foreign election influence by Foreign Government-3	74
3. Allegations involving the Clinton Foundation	78
C. Investigative Referral of Possible Clinton Campaign Plan	81
1. Factual background	81
a. Relevant facts	83
i. Receipt of the Clinton Plan intelligence	84
ii. White House briefing	85
iii. FBI awareness	85
iv. CIA referral and dissemination	86
v. Awareness by the Crossfire Hurricane investigators	87
vi. Other evidence obtained by the Office that appears to be relevant to an analysis of the Clinton Plan intelligence	88
vii. Other events occurring at the time of the purported approval of the Clinton Plan intelligence	92

2. Prosecution decisions	97
D. The Carter Page FISA Applications	98
1. Factual background	99
a. “Probable Cause” and the Page FISA applications	99
i. The lead up to the initial Page FISA application	100
ii. The Page FISA application renewals	104
iii. What the FBI knew from its intelligence collections as of early 2017	106
b. The “Steele dossier”	109
i. Christopher Steele – FBI Confidential Human Source	109
ii. The FBI first received the Steele Reports in July 2016	110
iii. The delay in the FBI’s transmission of the Steele Reports to the Crossfire Hurricane investigators	112
iv. The September 23, 2016 Yahoo! News article	118
v. The October meeting with Steele in Rome	118
vi. The draft Page FISA applications – Yahoo! News	119
vii. The Steele Reports are included in the Page FISA application	123
viii. The FBI identifies Steele’s primary sub-source	126
ix. Igor Danchenko	126
x. Danchenko’s employment at Danchenko Employer-1 and payments by Steele and others	127
c. The prior counterespionage investigation of Danchenko and the FBI’s failure to account for his possible motivations and allegiance	129
i. Danchenko becomes a paid FBI CHS despite the unresolved counterespionage investigation	132
ii. The VMU examines Danchenko’s suitability as a source	134
iii. The VMU’s recommendations to WFO and Helson	135
d. Danchenko’s relationship with Charles Dolan	137
i. Charles Dolan	138
ii. Dolan’s connections to the Kremlin	139
iii. Dolan is introduced to Danchenko in early 2016	140
iv. Trump’s alleged salacious sexual activity at the Ritz Carlton Moscow appears in a Steele Report	144
v. Dolan returns to Cyprus in July 2016	148
vi. Dolan is a source for certain information in a Steele Report	149
vii. The Kalugin allegation in Steele Report 2016/111	153
viii. The Ivanov allegation contained in Steele Report 2016/111	156

ix.	The YPO Conference – October 2016.....	157
x.	Dolan’s contact with Danchenko following the YPO Conference	158
e.	The FBI’s failure to investigate Charles Dolan’s role as a possible source for the Steele Reports.....	160
i.	Danchenko’s hesitancy to speak to the FBI about Charles Dolan.....	160
ii.	The FBI’s failure to interview Charles Dolan.....	163
iii.	The FBI learns of Dolan’s relationship with Olga Galkina.....	163
iv.	Helson requests to interview Charles Dolan.....	164
v.	Mueller Supervisory Special Agent-1 and Mueller Analyst-1 investigate the relationship between Dolan, Danchenko and Galkina.....	166
vi.	The FBI interviews Olga Galkina.....	166
vii.	Mueller Supervisory Special Agent-1 and Mueller Analyst-1 push to open a case on Charles Dolan.....	167
viii.	Mueller Supervisory Special Agent-1 and Mueller Analyst-1 expressed concerns about the appearance of political bias in the decision not to open on Charles Dolan	170
ix.	The FBI’s failure to investigate Dolan.....	171
f.	Sergei Millian	172
i.	Danchenko’s statements to the FBI regarding Millian	173
ii.	Steele’s statements to the FBI about Millian	175
iii.	The evidence obtained by the Office	176
iv.	Fusion GPS implicates Sergei Millian.....	180
v.	Fusion GPS attempts to tie Millian to Alfa Bank	183
vi.	The FBI’s conduct concerning Millian.....	185
g.	The FBI’s failure to disclose to OI and include in the Page FISA applications Page’s role as a source for another government agency	185
i.	FBI attorney Kevin Clinesmith.....	186
h.	CHS meetings with Papadopoulos, Page, and a third Trump campaign member, the <i>Yahoo! News</i> article about Page, and Page’s offer to be interviewed.....	191
i.	The FBI’s engagement with CHS-1 and first consensual recording of Carter Page on August 20, 2016.....	191
ii.	The receipt of the first Steele Reports, publication of the <i>Yahoo! News</i> article naming Page, and Page’s expressed willingness to be interviewed by the FBI ...	195
iii.	The second recording of Page made by CHS-1	201
iv.	Crossfire Hurricane investigators submit the initial FISA application on October 21, 2016.....	203
v.	The third recording of Page	205

vi.	CHS-1's misrepresentation to Crossfire Hurricane investigators of his/her conversation with Page regarding Page's alleged meeting with Sechin	206
vii.	The first renewal of the Page FISA Warrant surveillance order	207
viii.	The fourth recording of Page made by CHS-1 January 25, 2017	209
ix.	The second and third renewals of the Page FISA surveillance.....	211
x.	Recording of a high-level Trump campaign foreign policy advisor by CHS-1 on September 1, 2016	212
xi.	Recordings of George Papadopoulos by FBI UCEs and CHS-1	215
xii.	Recordings of Papadopoulos by CHS-2	223
i.	Other aspects of the Page FISA applications.....	228
i.	Multiple levels of subsources.....	228
ii.	Reliability of subsources.....	228
iii.	Role of campaign manager.....	229
iv.	Involvement in criminal activity.....	229
2.	Prosecution decisions	229
a.	Kevin Clinesmith	230
b.	Statements made to the FBI regarding the Steele reporting	233
c.	The FBI's receipt and dissemination of the Steele Reports	234
d.	The <i>Yahoo! News</i> article.....	234
e.	The use of the Steele Reports in the Page FISA applications.....	235
f.	Igor Danchenko	237
g.	The legality of Danchenko's visa arrangement.....	239
h.	The FBI's handling of the prior counterespionage investigation of Danchenko	240
i.	The recordings of Page, Papadopoulos and others	240
i.	CHS-1's recordings of Page.....	240
ii.	Recordings of George Papadopoulos.....	242
iii.	The conduct of CHS-1	242
j.	Certification of the FISA applications.....	243
E.	The Alfa Bank and Yotaphone Allegations	243
1.	Factual background – Alfa Bank.....	243
a.	Introduction	243
b.	Sussmann's attorney-client relationship with the Clinton campaign and Joffe.....	245
c.	The Alfa Bank allegations	245
i.	Actions by Sussmann, Perkins Coie, and Joffe to promote the allegations.....	245

ii.	Actions by Tech Company-2 Executive-1 and others and additional actions by Joffe.....	251
iii.	Sussmann’s meeting with the FBI	255
d.	The FBI’s Alfa Bank investigation.....	257
i.	The Cyber Division’s review of the Alfa Bank allegations.....	257
ii.	The opening of the FBI’s investigation	258
iii.	The close hold on Sussmann’s identity as a source.....	260
e.	Actions by Fusion GPS to promote the Alfa Bank allegations	263
f.	Actions by the Clinton campaign to promote the Alfa Bank allegations	265
g.	Sussmann’s meeting with the CIA	267
h.	Sussmann’s Congressional testimony	270
i.	Perkins Coie’s statements to the media	272
j.	Providing the Alfa Bank and Yotaphone allegations to Congress	272
k.	Tech Company-1’s connections to the DNC and the Clinton campaign.....	274
l.	Other post-election efforts to continue researching and disseminating the Alfa Bank and Yotaphone allegations.....	274
i.	Continued efforts through Joffe-affiliated companies	275
ii.	Efforts by Research Executive-1 and others	277
iii.	Meetings between DARPA and University-1	280
iv.	The relevant Trump Organization email domain and Yotaphone data	282
2.	Prosecution decisions	287
V.	Observations	288
A.	The OIG’s Prior Evaluation of Systemic Problems in the FBI’s Counterintelligence Program (Robert Hanssen)	290
B.	FBI Investigations.....	293
1.	The New York counterintelligence investigation.....	293
2.	Predication of Crossfire Hurricane.....	294
3.	Opening of individual investigations	295
4.	Compartmentation.....	296
5.	Interaction with the Trump campaign	297
6.	Defensive briefings	298
C.	FISA Issues	299
1.	Clarity of applications	299
a.	Transparency of sourcing information	299
b.	Information from Congress	300

c.	Masking of information	300
d.	Use of news reports.....	300
e.	Need to share important information.....	301
2.	Completeness of applications.....	301
3.	Reliance on prior FISA applications	302
4.	Timely renewal requests.....	302
D.	Bias or improper motivation	303
E.	Possible FBI reform	306

INTRODUCTION

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

I. THE SPECIAL COUNSEL’S INVESTIGATION

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

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

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

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

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

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

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

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

⁵ *Appointment Order* (introduction).

⁶ *Appointment Order* ¶ (b).

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

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

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

The Special Counsel structured the investigation in view of his power and authority “to exercise all investigative and prosecutorial functions of any United States Attorney.”⁹ Like a U.S. Attorney’s Office, the Special Counsel’s Office considered in the course of its investigation a range of classified and unclassified information available to the FBI and other government agencies. A substantial amount of information and evidence was immediately available to the Office at the inception of the investigation as a result of numerous congressional investigations¹⁰ and Special Counsel Mueller’s investigation. The examinations by the Office of the Inspector General (“OIG”) of the Crossfire Hurricane investigation, the Foreign Intelligence Surveillance Act (“FISA”) applications targeting Carter Page, and other matters provided additional evidence and information,¹¹ as did an internal report prepared by the FBI’s Inspection Division.¹² The Office reviewed the intelligence, counterintelligence, and law-enforcement activities directed at the 2016 Trump campaign and individuals associated either with the campaign or with the Trump administration in its early stages. The Office structured its work around evidence for possible use in prosecutions of federal crimes (assuming that one or more crimes were identified that warranted prosecution). The Office exercised its judgment regarding what to investigate but

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

⁹ 28 C.F.R. § 600.6.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹⁴ 1 *Mueller Report* at 2.

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

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

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

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

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

We will continue our work to ensure that the public views the Department as objective, impartial, and insulated from political influence. . . .

The Justice Department['s] . . . foundational norms . . . include the principled exercise of discretion; independence from improper influence; treating like cases alike; and an unwavering commitment to following the facts and the law.

Reaffirming and, where necessary, strengthening the Justice Department policies

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

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

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

II. EXECUTIVE SUMMARY

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

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

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

¹⁷ See *supra* footnote 11.

¹⁸ See *supra* footnote 2.

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

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

- Was the opening of Crossfire Hurricane as a full investigation on July 31, 2016 consistent with how the FBI handled other intelligence it had received *prior to* July 31, 2016 concerning attempts by foreign interests to influence the Clinton and other campaigns?
- Similarly, did the FBI properly consider other highly significant intelligence it received at virtually the same time as that used to predicate Crossfire Hurricane, but which related not to the Trump campaign, but rather to a purported Clinton campaign plan “to vilify Donald Trump by stirring up a scandal claiming interference by Russian security services,” which might have shed light on some of the Russia information the FBI was receiving from third parties, including the Steele Dossier, the Alfa Bank allegations and confidential human source (“CHS”) reporting? If not, were any provable federal crimes committed in failing to do so?
- Was there evidence that the actions of any FBI personnel or third parties relating to the Crossfire Hurricane investigation violated any federal criminal statutes, including the prohibition against making false statements to federal officials? If so, was that evidence sufficient to prove guilt beyond a reasonable doubt?
- Was there evidence that the actions of the FBI or Department personnel in providing false or incomplete information to the Foreign Intelligence Surveillance Court (“FISC”) violated any federal criminal statutes? If so, was there evidence sufficient to prove guilt beyond a reasonable doubt?

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

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

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

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

²¹ See *infra* § IV.A.3.b.