

The Durham Report – Justice Delayed



By Paul Engel

June 2, 2023

- What we've learned, or in some cases had confirmed, by the Durham Report should concern all of us.
- According to the report, when the FBI initiated the investigation into Donald Trump and his Presidential campaign, they had no probable cause that the campaign had been in contact with Russian government officials.
- Furthermore, the FBI ignored evidence of the innocence of those accused.
- After almost seven years of costly and disruptive investigations we should be asking the question, is justice delayed justice denied?

By now I'm sure you've heard about the Durham report. There have certainly been enough reports on it, at least on the non-corporate media sites. With all of the different points of view on the net, I thought it was time to review the document myself and share my thoughts with what I hope is an attentive audience. At 316 pages, the report is fairly long, so I will focus on the Executive Summary. Besides, what I found there was enough to fill an episode all by itself.

United States Attorney John Durham was appointed as Special Attorney to the Attorney General on February 6, 2020. Then, on October 19, 2020, the Attorney General ordered the appointment of Mr. Durham as Special Counsel, as allowed under U.S. law. Part of that 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.

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The report points to a substantial body of public records regarding former President Trump, the Trump Organization, and Russian entities gathered by previous investigations. The scope of the investigation conducted by Special Counsel Durham included:

- 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 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?
- 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?

Crossfire Hurricane

According to the Executive Summary of the Durham Report:

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. Indeed, based on the evidence gathered in the multiple exhaustive and costly federal investigations of these matters, including the instant investigation, neither U.S. law enforcement nor the Intelligence Community appears to have possessed any actual evidence of collusion in their holdings at the commencement of the Crossfire Hurricane investigation.

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The report goes on to explain that, at the direction of Deputy Director Andrew McCabe and Deputy Assistant Director for Counterintelligence Peter Strzok, the FBI swiftly opened the Crossfire Hurricane investigation upon receipt of the intelligence from Australia, even though that intelligence had not yet been evaluated.

The matter was opened as a full investigation without ever having spoken to the persons who provided the information. Further, the FBI did so without (i) any significant review of its own intelligence databases, (ii) collection and examination of any relevant intelligence from other U.S. intelligence entities, (iii) interviews of witnesses essential to understand the raw information it had received or (iv) using any of the standard analytical tools typically employed by the FBI in evaluating raw intelligence. Had it done so, again as set out in Sections IV.A.3.b and c, the FBI would have learned that their own experienced Russia analysts had no information about Trump being involved with Russian leadership officials, nor were others in sensitive positions at the CIA, the NSA, and the Department of State aware of such evidence concerning the subject. In addition, FBI records prepared by Strzok in February and March 2017 show that at the time of the opening of Crossfire Hurricane, the FBI had no information in its holdings indicating that at any time during the campaign anyone in the Trump campaign had been in contact with any Russian intelligence officials.

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This action was quite a departure from the FBI's previous investigatory standards. In fact, the Durham report noted that during the same presidential election season, the FBI had intelligence of the possibility of foreign election interference with another campaign.

The speed and manner in which the FBI opened and investigated Crossfire Hurricane during the presidential election season based on raw, unanalyzed, and uncorroborated intelligence also reflected a noticeable departure from how it approached prior matters involving possible attempted foreign election interference plans aimed at the Clinton campaign.

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The report then goes on to list no less than three times leading up to the 2016 presidential campaign that FBI was slow and cautious about investigating another candidate, specifically Hillary Clinton. Although the Clinton campaign was given “defensive briefings” regarding the investigations, none were provided to Donald Trump or anyone from his campaign. Rather, the FBI began working on requests to use the Foreign Intelligence Surveillance Act (FISA) to allow them to “spy” on several members of the Trump campaign. These efforts were unsuccessful until the FBI obtained the “Company Intelligence Reports” generated by Christopher Steele, also known as the “Steele Report” or “Steele Dossier”.

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

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So the FBI opened the Crossfire Hurricane investigation without any corroborating evidence of wrongdoing, while at the

same time cautiously approaching allegations against Mr. Trump's opponent, Hillary Clinton. That not only is a level of malfeasance that should lead to serious repercussions, but the Durham report found evidence that the FBI hid information showing the innocence of many involved.

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

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If all that weren't bad enough, an FBI attorney was prosecuted and convicted of falsifying a document required to obtain the Foreign Intelligence Surveillance Court warrant on Carter Page. Where did the FBI get all this uncorroborated information for their illegal warrants? From Christopher Steele.

In the spring of 2016, Perkins Coie, a U.S.-based international law firm, acting as counsel to the Clinton campaign, retained Fusion GPS, a U.S.-based investigative firm, to conduct opposition research on Trump and his associates. In mid-May 2016, Glenn Simpson of Fusion GPS met

with Steele in the United Kingdom and subsequently retained Steele and his firm, Orbis Business Intelligence (“Orbis”), to investigate Trump’s ties to Russia. Steele described himself as a former intelligence official for the British government, and was also at the time an FBI CHS. Beginning in July 2016 and continuing through December 2016, the FBI received a series of reports from Steele and Orbis that contained derogatory information about Trump concerning Trump’s purported ties to Russia. As discussed in Section IV.D.1.b.ii, Steele provided the first of his reports to his FBI handler on July 5th. These reports were colloquially referred to as the “Steele Dossier” or “Steele Reports.”

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Remember when the report pointed out that the investigations into several members of the Trump campaign were unsuccessful, at least until the FBI received the “Steele Dossier,” which was used to support their FISA applications? Instead of performing the due diligence required by the FBI and good investigatory procedures that one would expect, these actors took this fictitious rumor mongering and used it to initiate a multi-year, multi-million dollar, politically based investigation without just cause.

Alfa Bank

While the fraud of Crossfire Hurricane was going on, another line of investigation was sent to the FBI.

The Office also investigated the actions of Perkins Coie attorney Michael Sussmann and others in connection with Sussmann’s provision of data and “white papers” to FBI General Counsel James Baker purporting to show that there existed a covert communications channel between the Trump Organization and a Russia-based bank called Alfa Bank. As set forth in Section IV.E.1.c.iii, in doing so he represented to Baker by text message and in person that he was acting on his own and

was not representing any client or company in providing the information to the FBI. Our investigation showed that, in point of fact, these representations to Baker were false in that Sussmann was representing the Clinton campaign (as evidenced by, among other things, his law firm's billing records and internal communications).

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Further investigations by FBI cyber experts showed that the data provided to James Baker did not prove what Sussman claimed. Digging deeper into the report, it appears that the server in question was used to send marketing emails, not for clandestine communication with the Russians.

Conclusion

Based on the review of Crossfire Hurricane and related intelligence activities, we conclude that the Department and the FBI failed to uphold their important mission of strict fidelity to the law in connection with certain events and activities described in this report.

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The evidence collected by Mr. Durham seems to show that the FBI, under the Obama administration and beyond, was used as a tool of the Clinton campaign, if not the Democratic National Committee, in an attempt to steal an election and hamper the duly elected President of the United States. Their actions included criminal activity.

As noted, former FBI attorney Kevin Clinesmith committed a criminal offense by fabricating language in an email that was material to the FBI obtaining a FISA surveillance order. In other instances, FBI personnel working on that same FISA application displayed, at best, a cavalier attitude towards accuracy and completeness. FBI personnel also repeatedly disregarded important requirements when they continued to seek

renewals of that FISA surveillance while acknowledging – both then and in hindsight – that they did not genuinely believe there was probable cause to believe that the target was knowingly engaged in clandestine intelligence activities on behalf of a foreign power, or knowingly helping another person in such activities. And certain personnel disregarded significant exculpatory information that should have prompted investigative restraint and re-examination.

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With all of this information, what can we expect as an outcome of the millions of dollars spent, the years of investigation, and the slander committed by both FBI personnel and many in the media?

This report does not recommend any wholesale changes in the guidelines and policies that the Department and the FBI now have in place to ensure proper conduct and accountability in how counterintelligence activities are carried out. Rather, it is intended to accurately describe the matters that fell under our review and to assist the Attorney General in determining how the Department and the FBI can do a better, more credible job in fulfilling its responsibilities, and in analyzing and responding to politically charged allegations in the future.

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In short, we can expect nothing to really change, at least not under this administration. Unless and until we have a chief executive that will uphold the rule of law, not only against their political opponents but upon those in their administration, we will continue to see not only justice delayed, but justice denied. As Mr. Durham concludes his executive summary.

The promulgation of additional rules and regulations to be learned in yet more training sessions would likely prove to be a fruitless exercise if the FBI's guiding

principles of “Fidelity, Bravery and Integrity” are not engrained in the hearts and minds of those sworn to meet the FBI’s mission of “Protect[ing] the American People and Uphold[ing] the Constitution of the United States.”

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It’s neither rules nor laws that restrain evil, but the threat of punishment of their violation. If there is no punishment, there is no incentive to deviate from the path of injustice.

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