[redacted]

From: [redacted]
Sent: Friday, June 21, 2019 12:17 PM
To: [redacted]
Subject: FW: Campaign Legal Center Complaint - FEC

[redacted]

Got your message, I won't email him anymore. On the three occasions where Rich has finally acknowledged my questions, his answers usually contain some veiled threat I believe is intended to have a chilling affect and stop me from asking questions. In my [redacted] years of being an agent, a successful agent with a great reputation, I have never been met with such suspicion or responses intended to have me go away. It is a confrontational and condescending attitude. In my job I need to understand the violations and if something doesn't make sense to me I need to ask questions. I'm a worker, not a country club Agent who is satisfied with unsatisfactory answers, and I am not happy to go along to get along. The only possible Jencks created in this email exchange is potentially his insinuation that I am biased or rushing to judgment, which could not be further from the truth, and is actually him projecting.

- In March when discussing the HVF matter he suggested I was "picking on" a politician, inferring it was a fishing expedition, and trying to shut me down. You and I know it was not, and it was information I learned from my [redacted] case. Remember also that when pressed he acted like he didn't know what the HVF was, which we know cannot be true.
- On June 19th he emailed me after I asked perfectly reasonable questions to better understand this violation and he seemed to take it personally and fire back at me in a tone that to some Agents who are shy, or newer agents with less experience, would absolutely have stopped engaging in a reasonable exploration of how we predicated these cases. That chilling affect is shocking to me.
- Today he shuts down all future reasonable conversation regarding my questions about predication and tries to demean me as a "line agent" and insinuates that I am biased and rushing to judgement, which could not be any more farther from the truth. Between his insinuation and Jencks comment he is creating a chilling effect. I am asking questions about a matter to learn from it, a matter he has already made clear isn't going to be opened. There is no Jencks being created, this isn't even about a case that will be opened. It is trying to learn.

I am shocked he wants to hide behind policy and try to shut me down with innuendo. Next Friday should be interesting.

[redacted]

From: Pilger, Richard (CRM) [mailto:Richard.Pilger@[redacted]doj.[redacted]]
Sent: Friday, June 21, 2019 10:36 AM
To: [redacted]
Cc: [redacted] ; Cooney, Joseph (USADC) ; Tirol, AnnaLou (CRM)
Subject: Re: Campaign Legal Center Complaint - FEC

[redacted] the matter is not well predicated, and yes, I meant what I said about the FEC. This continued back and forth isn't what we do with line agents, and you are unique in doing it. In fact, we have written policy against it. At best, we are creating potential discovery on internal policy and deliberations. At worst, you are creating Jencks on yourself we might have to turn over in other matters to cross you for bias/rush-to-judgement, yada yada. If you remain dissatisfied, please have your ASAC call AnnaLou.

[redacted]

On Jun 21, 2019, at 9:55 AM, [redacted] wrote:

Thanks for the response, this is actually really helpful. I apologize for being so dense but I'm never going to be shy asking questions; and yes the case-opening experience with these matters is not clear to me. Also my intent was not to get under your skin, nor was my Elias comment meant in the way you interpreted (apologize, lost in translation through email); but I'm glad you're eager to fight the good fight when necessary and appropriate no matter who it is against!

So I can share with others interested in FECA case predication, I believe your salient points in plainer language are:

1- [redacted] - the facts prior to opening were compelling and most of the facts JP mentioned were known at opening (good case to study in Sentinel)
2 - Since the alleged concealment was by or through a law firm the advice of counsel hurdle cannot be overcome so we shouldn't try.
3 - A disbursement to a law firm labeled as "legal services" or "consulting" when it was really to a non-law firm vendor for opposition research by a foreign national, is too "mushy"/ambiguous so its "unappealing" to open and a hurdle that likely cannot be overcome so we shouldn't try.
*Thanks for the guidance on form 3s, I know the FEC site well and will look into the form 3s etc and get back to you.
4 - While FEC policy on disbursement reporting (as stated in the CLC complaint and pasted in my email below) seems pretty clear and unambiguous to someone like me; in truth it's not clear and its very ambiguous.
5- By opening on this matter, since there was likely advice of counsel, and the words are "mushy" we would risk a bunch of bad legal stuff happening with the FEC etc., and as you describe it, that bad legal stuff seems pretty dire.
*I've been told the FEC basically does nothing about these so are we really taking this off an administrative track?

Thanks,
[redacted]

SA [redacted]
FBI, WFO

From: Pilger, Richard (CRM) [mailto:Richard.Pilger@[redacted]doj.[redacted]]
Sent: Wednesday, June 19, 2019 4:03 PM
To: [redacted]
Cc: [redacted] Cooney, Joseph (USADC) <Joseph.Cooney@[redacted]doj.[redacted]>
Subject: RE: Campaign Legal Center Complaint - FEC

[redacted], I think JP is correctly applying his discretion about the matter at hand for the specific reasons he spelled out the other day. Predication is the process point that you are focused upon, but it is not much different in this context than for other complex, regulatory crimes under FBI operating procedures. It just has more sophisticated elements and sources of law—like the potential wild card of FEC action or deadlock on new theories implicating their regulatory authority, especially without very strong and unambiguous facts in open-source material.

[redacted]

The [redacted] predication you ask about under the [redacted] rubric was a WFO case initiated under the name [redacted], and the relevant materials should be fully available to you. That charged case was a spin-off of a declination, a declination in part for the reasons JP applied to your matter, consistently with that matter, including the advice-of-counsel factor. Further, while that was a novel criminal case insofar as it focused on the expenditure side, the regulatory law was already well-settled on the import of unambiguously false purposes reported to the FEC in open-source evidence on the campaign's Form 3s, and publicly aired by a rival primary candidate in real time (we could see payment for an endorsement falsely described as "video" or "graphics" services). I recently used the same standard for certain charges that we successfully predicated, investigated, and took to a jury in *United States v. Smuckler*, (E.D. Pa.), focusing on corruption in the Congressional primaries that tend to determine outcomes in Philadelphia. As JP explained, we don't have that stable regulatory base and unambiguous factual predication for your matter. Taking a case off an administrative track at the FEC and into the criminal lane without unambiguously false and uncounseled reporting is a course that risks not only bad law in the criminal courts, but it also risks provoking half or more of the FEC into declining abatement and then effectively stopping us in our tracks with a deadlock or worse that would muddy our progress to date on the more strongly predicated cases.

Like *Aguilar* obstruction and certain other cases, these expenditure cases tend to turn on magic words—in this context, the words of the Form 3. Please go to the FEC site and let us know what they are as to purpose of the expenditures. Your ECC has training to navigate the site. If it's facially a total lie ("catering"), we can discuss further. If it's mushy, like "consulting" or "legal services," I agree with JP that the regulatory law implicates an ambiguity as to the fact-gathering function inherent in those words. And that makes the predication unappealing.

The campaign finance case-opening experience has plainly been frustrating to you, [redacted], to an extent I haven't seen before. That appears to have triggered an extraordinary concern in your email below, which I have to address: I think you missed DC's point on the importance of Marc Elias evidence to an advice-of-counsel defense to willfulness, as opposed to some other kind of influence you suppose he could have, which would somehow create hills, cliffs, or other obstacles to us reviewing your predication without fear or favor. To my certain knowledge, no such influence exists, as one can see from how often and how recently the Department has indicted that lawyer's clients in my lane. Nobody inside or outside the government scares me, [redacted]. And nobody gets any slack from me that isn't already present in the facts and law appropriately used to review predication. Nobody. Ever.

Please note, no consult with PIN is required of you when you take a matter to DC or EDVA, which is why I left this to JP previously. The consult under the Justice Manual is then between PIN and the assigned AUSAs, who may decline to open a matter, or even consult me, on any basis within their discretion, and in whom I currently have complete confidence.

Regards, RCP

From: [redacted]
Sent: Tuesday, June 18, 2019 4:04 PM
To: Cooney, Joseph (USADC) <JCooney@[redacted].doj.[redacted]>; Pilger, Richard (CRM) <Richard.Pilger@[redacted].[redacted]DOJ.[redacted]>
Cc: [redacted]
Subject: RE: Campaign Legal Center Complaint - FEC

JP (and Rich if you want to chime in):

I was on the road last week and re-read the below email today to digest it and learn about a false reporting case; and I have some questions. On a side note, someone from PIN (maybe Rich?) is supposed

[redacted]

to come to train our squad on some of the themes of my questions on June 28, so maybe addressing these issues there will be useful. I'm trying to better understand three topics as they relate to FECA and this matter, so I can work these cases smarter. All three topics have the same theme, which is, what is the standard for opening a FECA investigation NOT prosecuting a FECA violation.

1) The standard for opening a FECA investigation, not to be confused with the standard for proving/prosecuting a FECA criminal violation.
2) The role of mitigating action by individuals subject to FECA violations, and how that affects opening investigations.
3) FECA rules on disbursement reporting, and how that affects opening investigations.

1) The standard for opening, NOT prosecuting:

From my experience with FECA thus far I have been told you want a viable path to a willful case before opening and generally that viable path thread is some sort of concealment. If that articulable concealment is theoretically for a material reason (conduit, false reporting etc) all the more justification for opening. From my experience with all violations, to find those "compelling facts" for a prosecution, you have to do some investigating.

- Is that generally correct?

Standard for opening on your [redacted] case:

- At what point in the fact pattern was the [redacted] false reporting case opened?
- The facts you provided are "compelling" (evidenced by a prosecution), but which of those facts were known before opening the case?
- Was the evidence of "direct concealment and purposeful use of a pass through" known before you opened the investigation?

For this matter, I sent it to you because, 1) there appears to be an unambiguous concealment (we don't know if it was willful yet), and 2) with hindsight on the events surrounding Fusion GPS these past three years, this concealment appears to bring on new meaning and represents a viable path to why it was reported this way (or not reported). Now I wasn't born yesterday, I know the name Marc Elias, and I know that path likely goes through a steep hill, if not a sheer cliff, to find those compelling facts. In other words, your points are well taken in terms of the difficulty of prosecuting or finding those compelling facts in this matter; but:

- Why it is not a good candidate to open an investigation? Possibly answered when responding to my above questions. But it also brings me to the next topics.

2) Mitigating action by individuals subject to FECA violations, and how that affects opening investigations:

One of your main mitigating points is "particularly […] given that Elias, when questioned, disclosed the existence of the PC-Fusion GPS contract" willfulness would be hard to prove. After a year of questioning, when push came to shove PC finally submitted a letter, but it is obvious this occured after many people at the DNC and HFA either denied it or avoided answering it (see the letter here: https://www.documentcloud.org/documents/4116755-PerkinsCoie-Fusion-PrivelegeLetter-102417.html - It appears it was due to legal action against Fusion GPS). It is not as black and white as, someone asked PC and they came clean; but regardless, I want to compare it to precedent from my own experience. I am the case agent for a FECA matter where an individual was questioned about a possible FECA violation by the press, and shortly thereafter that individual self-reported to the FEC. After that self-reporting occurred the FBI was asked by PIN to open a full investigation into that FECA matter.

[redacted]

- How is that any different from "once questioned, PC publically disclosed that it had contracted with Fusion GPS"? Hopefully this answer will help me understand the standard for opening a FECA investigation better.

3) FECA rules/law on disbursement reporting, and how that affects opening investigations:

From the CLC complaint:

> The Commission's Statement of Policy states that "[t]he 'purpose of disbursement' entry, when considered along with the identity of the disbursement recipient, must be sufficiently specific to make the purpose of the disbursement clear," and that "[a]s a rule of thumb, filers should consider the following question: 'Could a person not associated with the committee easily discern why the disbursement was made when reading the name of the recipient and the purpose?'" FEC, Statement of Policy: "Purpose of Disbursement" Entries for Filings With the Commission, 72 Fed. Reg. 887 (Jan. 9, 2007). The FEC has similarly advised candidates that "[t]he description must be sufficiently specific, when considered within the context of the payee's identity, to make the reason for the disbursement clear."

- Is this paragraph from the complaint accurate?
- If so, how can Fusion GPS's work have anything to do with Legal Services or Compliance Services? Stated another way, how is oppo research Legal or compliance services?
- Does the FEC approve of campaigns hiring law firms to then contract with third parties to provide <u>any service</u>?
- How do we know PC was not a purposeful pass-through?
- Is there a difference between "direct concealment" and concealment?
- Does the materiality of an ostensibly concealed disbursement affect Prosecutor decisions on whether or not to open an investigation?

I don't doubt there are reasonable answers to all my questions and the answer is still this is not a good candidate to <u>open</u> a FECA investigation, but I hope using this matter as a case study to ask questions will help me better understand the violation in general. This is a complex violation and so far what is opened and what is declined makes very little consistent sense to me. Whatever I learn I will be sure to share with our squad so your energy will not be wasted just on me.

Thanks

[redacted]

SA [redacted]
FBI, WFO

From: Cooney, Joseph (USADC) [mailto:Joseph.Cooney@[redacted]doj.[redacted]]
Sent: Friday, June 14, 2019 11:42 AM
To: [redacted] Pilger, Richard (CRM) <Richard.Pilger@[redacted]doj.[redacted]>
Cc: [redacted]
Subject: RE: Campaign Legal Center Complaint - FEC

[redacted]

[redacted]

Thank you for sending me this. I apologize – I thought that we had gotten back to you on this. My office is really interested in working FECA matters – so please keep them coming. (Richard and I happened to successfully try a false expenditure reporting case together in Iowa, alongside your squad, back in 2016 – it is the only such prosecution of which I am aware.)

I do not, however, think this is a good candidate to open for a false reporting case. The FEC has approved campaigns hiring vendors—or in this case, a law firm—and that vendor contracting with third parties to provide services. Although I have not looked at the FEC report, any money paid to Fusion GPS for the dossier through PC was probably reported as legal services or something like that. Although not typically what we think of as legal services, I think that we would have an exceedingly difficult time proving it was a willfully false report. That is particularly so given that Elias, when questioned, disclosed the existence of the PC-Fusion GPS contract.

In the case that Richard and I did together with your squad, we charged [redacted] staffers with false reporting based on their concealment of a $[redacted] payment to a [redacted] to induce him to [redacted] We were armed with the following compelling facts, none of which I see present in this case:

- The press found out about the payment to the [redacted] almost as quickly as he [redacted]—which happened to be four days before the [redacted]--and began questioning the campaign about it;
- The morning after [redacted], at the direction of the [redacted] staffers, the [redacted] took two national interviews with CNN and Fox in which he denied accepting the payment and challenged the press to look at the next quarter's FEC reports;
- The [redacted] subsequently paid the [redacted] in three installments. The payments were made first to a [redacted] "communications" firm [redacted], which had never before done any work for the campaign; the [redacted] communications outfit then paid the money out to an [redacted] LLC formed by the [redacted] to accept the payments.
- The [redacted] outfit created false invoices to the campaign for the payments, indicating that they were for communications equipment.
- The [redacted] allowed their treasurer to book the payments to the [redacted] outfit on the FEC report as being for "Communications." So on the report all you could see was the name of the [redacted] firm and the purpose "Communciations." That was false: the payments were actually to the [redacted].

Here, the Clinton campaign made payments to PC for legal services, which it did in fact perform, including subbing out to a vendor like Fusion GPS; and once questioned, PC publicly disclosed that it had contracted with Fusion GPS. We just don't have the type of direct concealment and purposeful use of a pass through that we had in the [redacted] case, which was essential to carrying our high burden of willfulness.

Sorry for the long email, but I wanted to give you as detailed an explanation as possible for why this is not a good candidate for a criminal investigation. Please feel free to give me a call if you want to discuss it more.

J.P.

From: [redacted]
Sent: Friday, June 14, 2019 11:06 AM
To: Pilger, Richard (CRM) <Richard.Pilger@[redacted]doj[redacted]>; Cooney, Joseph (USADC) <JCooney@[redacted].doj[redacted]>

[redacted]

Cc: [redacted]
Subject: Re: Campaign Legal Center Complaint - FEC

Rich / JP
Following up on below.
Thanks
[redacted]

-

On Jun 5, 2019 9:44 AM, [redacted] wrote:

Rich and J.P.:

[redacted] liaises with government watchdog groups. I'm new to the squad, inherited the watchdog file and have recently made my rounds. A complaint from over a year and half ago was ultimately brought to my attention. I wanted to provide it to you so we can obtain an informal consultation on whether this unambiguous concealment of a disbursement is sufficient to open a FECA case.

Campaign Legal Center Exec Summary:
FEC Complaint: Hillary for America & DNC Failure to Disclose DATE OCTOBER 25, 2017
CLC filed a complaint with the FEC alleging the Democratic National Committee and Hillary Clinton's 2016 campaign committee violated campaign finance law. They failed to accurately disclose the purpose and recipient of payments for the dossier of research alleging connections between then-candidate Donald Trump and Russia, effectively hiding these payments from public scrutiny, contrary to the requirements of federal law. [Actual complaint attached].

It appears it was first reported publically that the DNC funded Fusion GPS in October 2016, but for a year the DNC et al I'm told denied it or didn't respond to the allegation, until Perkins Coie confirmed it in October 2017, possibly b/c ignoring it was no longer tenable. From a quick internet search I pasted a snippet from two October 2017 cnn / nytimes articles, which appear to supplement the complaint; but I'm not going to dig into this until I hear from either of you.

<>CNN "Podesta was asked in his September interview whether the Clinton campaign had a contractual agreement with Fusion GPS, and he said he was not aware of one, according to one of the sources."
"Sitting next to Podesta during the interview: his attorney Marc Elias, who worked for the law firm that hired Fusion GPS to continue research on Trump on behalf of the Clinton campaign and DNC, multiple sources said. Elias was only there in his capacity as Podesta's attorney and not as a witness."
"On Tuesday, that law firm, Perkins Coie, wrote in a letter that it had retained Fusion GPS as part of its representation of the Clinton campaign and the DNC. The disclosure of the Democratic funding source for Fusion GPS is raising new questions for the congressional Russian investigators. The Perkins Coie letter suggested its clients -- the Clinton campaign and the DNC -- did not learn about the matter until recently.
"Senate intelligence Chairman Richard Burr told CNN Wednesday that the disclosure that Fusion GPS had been paid by the Clinton campaign and the DNC opens up a new line of inquiry for the panel to pursue as part of its investigation."

<>Nytimes "The firm worked directly with Perkins Coie and its lead election lawyer, Marc Elias, according to the law firm spokesperson, who spoke on condition of anonymity to discuss sensitive information about confidential business relationships. The law firm's payments to Fusion GPS for the Russia research ended just before Election Day, the spokesperson said.
"The spokesperson said that neither the Clinton campaign, nor the D.N.C., was aware that Fusion GPS had been hired to conduct the research.
"Earlier this year, Mr. Elias had denied that he had possessed the dossier before the election.

[redacted]

"Anita Dunn, a veteran Democratic operative working with Perkins Coie, said on Tuesday that Mr. Elias “was certainly familiar with some of, but not all, of the information” in the dossier. But, she said “he didn’t have and hadn’t seen the full document, nor was he involved in pitching it to reporters.” And Mr. Elias “was not at liberty to confirm Perkins Coie as the client at that point,” Ms. Dunn said.

Rich, Under separate cover I sent you a matter from a SAR that I also am seeking an informal consultation.

Thanks,

[redacted]

SA [redacted]
FBI, WFO
[redacted]

[redacted]

FD-1057 (Rev. 5-8-10)

FEDERAL BUREAU OF INVESTIGATION

Electronic Communication

Title: (U) USADC and PIN Prosecutorial consultation for Investigation: DNC and Fusion GPS FEC violations

Date: 07/09/2019

From: WASHINGTON FIELD
WF-CR15
Contact: [redacted]

Approved By: [redacted]

Drafted By: [redacted]

Case ID #: 56-WF-[redacted] (U) ELECTION LAWS - ZERO FILE
58A-WF-[redacted] (U) COMMUNITY WATCH DOG GROUPS - COMMUNITY WATCH DOG GROUPS-FEDERAL LIAISON CONTROL FILE
SENSITIVE INVESTIGATIVE MATTER

Synopsis: (U) To document [redacted]'s request for a prosecutorial consultation supporting the opening of an FBI Investigation into allegations that the Democrat National Committee violated Campaign Finance Law by falsely reporting disbursements to Fusion GPS. USADC's and PIN's opinion is the matter is not predicated for a criminal investigation.

Enclosure(s): Enclosed are the following items:
1. (U) CLC Complaint DNC
2. (U) Email Correspondence
3. (U) Email Correspondence
4. (U) Email Correspondence
5. (U//FOUO) Open Source Articles regarding matter - supporting concealment
6. (U//FOUO) Open Source Articles regarding matter - supporting concealment
7. (U//FOUO) Open Source Articles regarding matter - supporting concealment
8. (U) Congressional Letter

[redacted]

9. (U) articles
10. (U) Perkins Coie Letter regarding Fusion GPS disbursements
11. (U) FEC.gov records - Form 3 and DNC/HFA disbursements summary
12. (U) FEC.gov records - Form 3 and DNC/HFA disbursements summary
13. (U) FEC.gov records - Form 3 and DNC/HFA disbursements summary

Details:

Prior to the FBI opening an investigation (PI or FI), while it is not required, it is common practice to obtain an opinion and prosecution commitment from an United States Attorney's Office. This is done for two main reasons: (1) to prevent the FBI from devoting resources to a matter that will not be federally prosecuted;(2) to ensure the FBI is not pursuing a matter that is merely a technical or an ethical violation that will not be prosecuted. An initial prosecutorial opinion and commitment allow the FBI to develop an investigative plan directed toward proving identified elements of specific federal criminal statutes. Additionally, prosecutorial support and tools such as Grand Jury Subpoenas are essential to effectively collect evidence and conduct a proper investigation. It is possible, if not common, to predicate election matter investigations solely on publicly available facts. Typically journalists, or more likely a government watchdog group, will assemble fact patterns, sometimes in the form of official complaints to the FEC, DOJ or FBI, which can then be verified by Special Agents. Once those facts are verified a prosecutorial opinion is sought as described above. To that end, a publicized and well-known allegation against the Democrat National Committee was articulated by the Campaign Legal Center (A well-known Government watchdog) and provided to PIN and USADC (Richard Pilger, PIN Election Crimes Director and Joseph "JP" Cooney's, Chief of Public Corruption, US Attorney's Office for the District of Columbia) in an effort to obtain a prosecutorial opinion.

Title: (U) USADC and PIN Prosecutorial consultation for Investigation: DNC and Fusion GPS FEC violations
Re: 56-WF[redacted], 07/09/2019

The official complaint from the Campaign Legal Center (CLC) is attached digitally as a 1A. Prior to obtaining an informal consultation from DOJ the writer believed it was reasonable to conclude that if the facts presented in the CLC complaint could be verified this matter met the evidentiary threshold for opening an investigation into the allegation that the DNC falsely reported disbursements in violation of FECA, specifically becuase there was evidence of concealment. The CLC Executive summary is:

> FEC Complaint: Hillary for America & DNC Failure to Disclose
>
> DATE OCTOBER 25, 2017
>
> CLC filed a complaint with the FEC alleging the Democratic National Committee and Hillary Clinton's 2016 campaign committee violated campaign finance law. They failed to accurately disclose the purpose and recipient of payments for the dossier of research alleging connections between then-candidate Donald Trump and Russia, effectively hiding these payments from public scrutiny, contrary to the requirements of federal law.

In the email providing the official complaint to PIN/USADC, and requesting a prosecutorial consultation, the writer explained that it appears the facts support an unambiguous concealment of a disbursement, in this case a very material disbursement (The payment to Fusion GPS for opposition research). [Admin note: Previously PIN Attorney Richard Pilger explained to the writer that in general it is important that a fact shows concealment before opening a FECA investigation. Concealment tends to suggest a possibility an investigation can prove willfulness. See 56-WF[redacted], Serial [redacted]].

Attorney's however did not support the opening of an investigation as can be read in the attached email. Specifically Joseph Cooney states: "I

[redacted]

do not, however, think this is a good candidate to open for a false reporting case. The FEC has approved campaigns hiring vendors—or in this case, a law firm—and that vendor contracting with third parties to provide services. Although I have not looked at the FEC report, any money paid to Fusion GPS for the dossier through PC was probably reported as legal services or something like that. Although not typically what we think of as legal services, I think that we would have an exceedingly difficult time proving it was a willfully false report. That is particularly so given that Elias, when questioned, disclosed the existence of the PC-Fusion GPS contract."

After receiving that opinion the FBI, specifically [redacted], will not seek to open an investigation or an Assessment. The complete record of emails involving this request for a prosecutorial opinion is attached digitally in a 1A.

♦♦