

TRANSCRIPT OF PROCEEDINGS

In the Matter of,)
)
Democratic National Committee)
& Hillary For America) MUR 7291 & 7449
)
PROBABLE CAUSE HEARING)
)

Pages: 1 through 38
Place: Washington, D.C.
Date: December 14, 2021

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of,)
)
 Democratic National Committee)
 & Hillary For America) MUR 7291 & 7449
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 PROBABLE CAUSE HEARING)
)

Remote Hearing
 Suite 206
 Heritage Reporting Corporation
 1220 L Street, N.W.
 Washington, D.C.

Tuesday
 December 14, 2021

The parties met remotely, pursuant to notice, at
 1:07 p.m.

BEFORE:

CHAIR SHANA M. BROUSSARD
 VICE CHAIR ALLEN DICKERSON
 COMMISSIONER SEAN J. COOKSEY
 COMMISSIONER JAMES E. "TREY" TRAINOR, III
 COMMISSIONER STEVEN T. WALTHER
 COMMISSIONER ELLEN L. WEINTRAUB

APPEARANCES:

For the Complainant:

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APPEARANCES: (Continued)

For the Respondents:

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1 C.F.R. § 104.3(e)(4) and (5).

2 On December 6, 2021, the Respondents filed
3 its Reply Brief and notified OGC that the Respondent
4 was requesting a Probable Cause hearing. On December
5 7th, the Commission granted the request and scheduled
6 today's hearing shortly thereafter. Mr. Wilson, for
7 today's hearing, you were notified that the OGC on
8 December 8th, that we would follow the procedures set
9 forth in the Commission's policy statement on probable
10 cause hearings. You will be allowed 15 minutes to
11 make an opening statement and you will have five
12 minutes to make a closing statement.

13 The opening statement should only present
14 issues, arguments and evidence that you've already
15 briefed or brought to the attention of the Office of
16 General Counsel. You may reserve time for a closing
17 statement, if you desire. Following your
18 presentation, the Commissioners, the General Counsel
19 and the Staff Director will have the opportunity to
20 ask questions. Our Probable Cause hearing procedures
21 also permit Commissioners to ask verified questions of
22 the General Counsel and Staff Director.

23 I would like to remind everyone that only
24 Commissioners and not Respondent's counsel, may direct
25 questions to the General Counsel and Staff Director.

1 The Commission will make the transcript of this
2 hearing available to the Respondent which will become
3 part of the record for this matter. Welcome counsel,
4 and please proceed with your opening statement.

5 MR. WILSON: Madam Chair, thank you. Good
6 afternoon Commissioners. My name is Graham Wilson.
7 I'm here today as counsel to Respondents, Democratic
8 National Committee and Hillary For America. I know
9 that this hearing was scheduled with very short notice
10 and I very much appreciate the opportunity to address
11 you today.

12 There are really three things that I want to
13 make clear. First, legally, this is actually a very
14 simple and straightforward case despite the
15 complicated context in which it arose. Two, from the
16 factual record before you, it is clear that the DNC
17 and HFA were paying Perkins Coie for legal services or
18 legal consulting, including the legal work that was
19 supported by Fusion GPS. And three, that continuing
20 any enforcement action here really would be at odds
21 with formal Commission policy and practice for a
22 number of different reasons.

23 I think it would amount to the creation of a
24 new rule and really expanded disclosure obligation
25 concerning political committees' interaction with

1 their lawyers. It would be applied retroactively to
2 respondents all while the statute of limitations is
3 expiring. Really, the only appropriate action here is
4 for the Commission to find no probable cause that a
5 violation occurred in both these matters.

6 This matter before you today did originate
7 from the 2016 election cycle and the 2016 Presidential
8 election. And while the 2016 elections of course
9 involved some historically tumultuous events, I can
10 only think that it's because of this historic backdrop
11 that we're here today, more than five years later, to
12 address one of the most routine and mundane campaign
13 finance issues possible.

14 An issue that in the ordinary course and
15 under Commission policy, really is easily and, I
16 think, appropriately dealt with between the Committee
17 and over an ad analyst, if indeed requiring any
18 Commission action at all. And yet despite the context
19 in which this arose, the relevant legal question here
20 and the material facts before the Commission in these
21 matters are actually remarkably simple, clear and
22 straightforward.

23 The only question before you today is
24 whether the DNC and HFA used an acceptable purpose
25 description when reporting the payments they made to

1 their law firm, when their firm also used a
2 subcontractor to support its legal work. In other
3 words, whether it was correct for HFA and DNC to
4 report the purpose of their payments to their lawyers
5 as legal services and legal and compliance consulting.
6 That's it. There's not a foreign national
7 interference issue. Not even a sub-vendor itemization
8 question. The only issue before us today is the
9 wording of the purpose description.

10 And the law and the facts here are really
11 quite easy. HFA and DNC used approved purpose
12 descriptions the purpose descriptions matched the work
13 that was actually done.

14 So let's break it down. Start with the law.
15 It's simple, it's not contested. Acting Commission
16 regulations require political committees to report the
17 disbursements on the reports and for each, to list a
18 purpose. The Commission regulations define what is a
19 purpose. It's a "brief statement or a description of
20 why the disbursement was made." As the Commissioners
21 are well aware, these are very general, short
22 statements. A few words, sometimes one word. Phrases
23 like "campaign consulting," "wages" are all approved
24 purpose descriptions.

25 In 2007, the Commission adopted a formal

1 policy on purpose descriptions to assist the
2 regulating community in figuring out what it was
3 supposed to list. It included a bunch of adequate and
4 clearly inadequate purpose descriptions. In that list
5 in 2007, 'consultants/legal' is an approved purpose
6 description and since then, the Commission has added
7 legal consulting, legal fees, legal services and of
8 course simply, legal. These are the terms that the
9 Commission has instructed the regulating committee to
10 use when describing payments for all kinds of legal
11 work and there really has never been any indication
12 that some additional description or differentiation is
13 required. That's it. That's the law.

14 So, let's talk about the facts. The
15 material facts here are also actually straightforward
16 and simple and really not just new. HFA and DNC hired
17 Perkins Coie to be their law firm in 2016 to provide a
18 wide range of legal services. Perkins Coie in turn
19 hired a sub vendor, Fusion GPS, to provide research
20 support the firm's work for its clients. As I said,
21 this is really uncontested. So, where do we diverge
22 here? Where do we get off?

23 I think what the issue is that OGC is
24 misconstruing and completely relying on the fact that
25 Fusion GPS was doing research. That Fusion GPS was

1 doing research with the entire basis of OGC's
2 recommendation of finding probable cause. Of course
3 GPS was doing research. Everyone agrees that Fusion
4 GPS was doing research. I think that Respondents made
5 it clear to the Commission and on our initial response
6 over four years ago now, that Fusion GPS was doing
7 research.

8 Fusion GPS was doing research but they were
9 doing research for Perkins Coie at Perkins Coie's
10 direction to inform Perkins Coie's legal advice that
11 Perkins Coie then provided legal services to HFA and
12 DNC. So how did Fusion's research support Perkins
13 legal services. First of all, I did want to note that
14 the work that Perkins Coie did for HFA and DNC in 2016
15 is subject to the Attorney-Client privilege and
16 Fusion's work at Perkins Coie's direction is subject
17 to the work product privilege. Respondents have made
18 this clear to the Commission for years.

19 They have asserted, not waived, these
20 privileges and there's never been any disagreement
21 from the Commission or OGC in any instance that the
22 attorney-client privilege and work product doctrine
23 apply to the issues here. And I want to say that at
24 the onset because in some ways it limits the detail
25 that Respondents can provide to the Commission about

1 the substance of the work. But we have done
2 everything we can to provide as much substance as
3 possible and I think more than enough for the
4 Commission to make a determination here.

5 Fusion was involved in helping Perkins Coie
6 evaluate potential litigation risks associated with
7 the 2016 election cycle and pulling, compiling,
8 analyzing legal records. There's really a number of
9 complex issues at play. I think we can recall the
10 2016 general election regarding the Republican nominee
11 as well as Russia separately. You may recall that at
12 this time, both the DNC and HFA's co-chair were being
13 attacked by Russian State-sponsored hackers and were
14 figuring out what legal implications that may have for
15 them and how they were to respond.

16 The response of opponent in the general
17 election had a complex series of business dealings
18 around the world, numerous legal entanglements that
19 really stretch back over a period of many decades and
20 in many countries. I think it's also probably no
21 secret there was perhaps an increased chance in 2016,
22 given the opponent, that any misstatement by
23 Respondents could have been met with prompt defamation
24 lawsuit. HFA and DNC needed help to understand legal
25 documents, understand legal proceedings and help

1 evaluate their potential legal exposure for making
2 statements about their opponent and to evaluate the
3 potential legal fallout from the events of the
4 election. This is what they sought Perkin Coie's help
5 for and this what Perkins Coie turned to Fusion GPS
6 for research support for. To identify, compile,
7 analyze records in order to inform the kind advice it
8 was providing to DNC and HFA.

9 There's really no evidence in the record
10 that Fusion GPS wasn't in furtherance of Perkins
11 Coie's legal services. I think maybe we the
12 Commission found RTB and authorized an investigation,
13 they thought perhaps that they would, under some grand
14 conspiracy theory or some kind of proof that this
15 wasn't part of an active -- or that Perkins Coie
16 wasn't working with Fusion directly after all but that
17 it was all some kind of sham. Of course the
18 investigation found no such thing.

19 OGC sent numerous questions and documents
20 requests to Respondents, which we answered, conducted
21 an extensive document review, four or five years after
22 the events of this. And there were questions there
23 were questions that OGC brought where -- who really
24 from DNC and HFA talked to Fusion. Show us all the
25 communications between DNC and HFA staff and Fusion.

1 And the answers were clear. No one from Fusion GPS
2 ever met with anyone from DNC or HFA other than
3 counsel. There weren't any communications between
4 Fusion GPS and DNC or HFA. The Commission may have
5 had an idea about what might have happened that was
6 incorrect but the investigation proved that wasn't the
7 case. Perkins Coie engaged Fusion GPS and used its
8 legal -- but used that work to inform its legal
9 advice.

10 So, what's the basis of OGC recommendations?
11 We really have two things. One, that there was some
12 reference to Russia on Fusion's invoices or in the
13 sub-vendors that they were using. Of course, it's the
14 2016 election. They're doing research to support
15 legal advice about on what DNC and HFA can say. Of
16 course Russia is going to be one of the topics given
17 the 2016 election. That doesn't change the
18 fundamental nature that it's legal advice.

19 Two, that Perkins Coie split out a time for
20 its attorneys and other disbursements on its invoices.
21 OGC makes a lot of this fact. Again, this is really
22 just a routine way of the lawyers and law firms know
23 their time. Of course there's going to be one entry
24 on a invoice for the lawyer's time and another for all
25 the disbursements. It doesn't mean that those

1 disbursements weren't part of the legal services. In
2 the same way you might list Lexis Nexis as a second
3 disbursement, but still part of the legal services.
4 These were legal services. Respondent's purpose
5 descriptions were accurate and there's no basis to
6 find probable cause that they violated the act.

7 So, taking a step back now. I think really
8 taking any continued enforcement action would be
9 contrary to FEC policy and practice in at least three
10 different ways. First, it would be creating a new
11 rule through the enforcement process that would be
12 retroactively applied to Respondents really expanding
13 political committee's disclosure obligations and
14 infringing on the attorney-client privilege. It's
15 well known and it's really understood that lawyers
16 perform lots of different kinds of legal services and
17 use a variety of subcontractors to support their work.

18 And yet, the Commission has only ever
19 suggested in its entire history that a general-purpose
20 description like 'legal consulting' or even just
21 'legal' is appropriate. There's never been any
22 suggestion, let alone a requirement or a policy that
23 some further differentiation is required for the wide
24 range of services that lawyers provide for their
25 political committee clients. Indeed, I think careful

1 policy consideration would need to be given to any
2 such rule like that because an expanded disclosure
3 obligation concerning the interactions between
4 political committees and their counsel would clearly
5 encroach on the attorney-client privilege in addition
6 to the already sensitive First Amendment environment
7 that limits FCA disclosure requirements generally.

8 Regardless, this kind of expanded purpose
9 description for different kinds of legal advice is
10 clearly not the rule now and to forge such a rule
11 through the enforcement of process and apply it
12 retroactively to Respondents would really raise
13 clearly due process violations.

14 As Commissioners have said in a number of
15 instances, it is really necessary for due process
16 needs to first create a rule, make sure that the rule
17 is clear to the public before taking any adverse
18 action. And here, Respondents followed the clear rule
19 that the Commission had made about how to describe
20 legal services.

21 Second, any kind of ongoing enforcement
22 action here would be really radically out of approach
23 -- out of line with the Commission's policy and
24 approach on handling purpose enforcement matters
25 generally. In the Commission's 2007 policy statement,

1 it described these as rare. And that's appropriate.
2 These are general purpose descriptions submitted by
3 committees to the Commission in the millions from all
4 Verif-c (phonetic) reports. Committee should not to
5 be expected that if someone at the Commission quibbles
6 with exactly how these one or two word phrases was
7 used that the Committee would find themselves being
8 called into year's long burdensome enforcement
9 process. The only kinds of enforcement matters that
10 the FEC has pursued against perfect descriptions are
11 just radically different than the case before you.

12 They're instances where committees just have
13 totally disregard their obligations and have really
14 systemic widespread failures with missing purpose
15 descriptions or using a number of explicitly
16 inadequate descriptions like miscellaneous or other
17 expenses, which is just nothing like the case before
18 you.

19 Finally, moving forward here I think would
20 be really dramatically out of line with how the
21 Commission has handled a number of other 2016 cases of
22 a similar posture that presents similar statute of
23 limitations issues. OGC has indicated in a footnote
24 that the Commission should consider seeking some kind
25 of equitable remedy here, even after the five year

1 statute of limitations runs on the disbursements in
2 these issues. This really doesn't match how the
3 Commission has handled a number of 2016 matters. Even
4 if there is some kind of question around reporting.
5 The Commission has recently dismissed a MURC involving
6 the Make America Great Again Pack, formerly known from
7 President, which involved a number of ongoing
8 questions about potential reporting issues. And
9 determined that the impending statute of limitations
10 demands dismissal.

11 Similarly, and in the RAN pack where OGC
12 advised against seeking equitable remedies after the
13 statute of limitations passed because the
14 disbursements at issue were "at least reported in some
15 way" and they were paid for with hard money. The same
16 is definitely here.

17 Similarly, in a recent MURC that was
18 dismissed from 2016 involving Debbie and Wasserman
19 Schultz, and whether there was inappropriate support
20 from her campaign. The Commission dismissed the matter
21 because it had not discretion because the statute of
22 limitations had run.

23 The same is really true here. It's a case that
24 for all of these reasons, taking any action other than
25 closing these MURCs would be really against Commission

1 policy and practice and raise due process issues;
2 questions of selective prosecution, which the
3 Commission has always strenuously worked to avoid. I
4 appreciate again the time to address you and I'm happy
5 to answer any questions that the Commissioners may
6 have.

7 CHAIR BROUSSARD: Thank you, Mr. Wilson.
8 Are there any questions for counsel? Commissioner
9 Cooksey.

10 COMMISSIONER COOKSEY: Thank you, Madam
11 Chair and Mr. Wilson for the opening statement. I
12 guess I have a few factual questions to understand the
13 record, I mean, and what's in the record and the
14 payments. First, I just want to clarify what I think
15 is a discrepancy between DNC's initial response and
16 then some of the responses to the Subpoenas. On the
17 initial response of the DNC, this is on page 2,
18 footnote 2, it says that the first disbursement from
19 DNC to Perkins Coie that involved work that included
20 the work of the sub-vendor, Fusion GPS, was on August
21 16, 2016.

22 But then a response, your April 13th, 2021,
23 response to subpoenas and requests providing a table
24 of all disbursements that included work for -- that
25 included some billing, I guess, for Fusion GPS, the

1 first payment is July of 2016. So I guess I want to
2 just clarify what is -- whether that's the fully
3 accurate table or what the full scope is.

4 MR. WILSON: Yes, I believe that the first
5 payment was in fact on July 20th, 2016.

6 COMMISSIONER COOKSEY: Thank you. And so,
7 on this table that was provided on the April 13th,
8 2021, subpoena responses, this is your response to
9 question 6 perhaps. All of these disbursement that
10 are responded as saying they include work for --
11 include billing for the sub-vendor, Fusion GPS, are
12 all of these -- what is there in the record about
13 whether these payments are solely for Fusion GPS. In
14 other words, do these disbursements represent payments
15 that are 100 percent for work from Fusion GPS or do
16 they represent a mixture of payments both for services
17 provided by Perkins Coie and by Fusion GPS and other
18 things.

19 MR. WILSON: Yes, thank you, Commissioner.
20 Without going through each one of those invoices, to
21 the best of my recollection from my recollection or
22 the record, I believe that there is one disbursement
23 on August 16th that covered just a disbursement to
24 Fusion GPS and that all of the rest of the
25 disbursements covered both Perkins Coie's legal fees

1 as well as disbursements that Perkins had made to
2 Fusion GPS in furtherance of its work and so the rest
3 of those payments included both attorney time as well
4 as the time for Fusion -- the disbursements to Fusion.

5 COMMISSIONER COOKSEY: Okay, understood.

6 And so, the -- this, I think you're referring to the
7 August 16th, 2016, disbursements for \$66,500.00 with
8 the purpose listed as research consulting. That's the
9 only payment that was solely a one-for-one payment for
10 Fusion GPS services and the rest are -- represent a
11 mixture of payments owed to Perkins. Some for Perkins
12 own work and others for sub-vendor work. Is that
13 correct?

14 MR. WILSON: That's correct, Commissioner.

15 COMMISSIONER COOKSEY: Why -- I guess, one
16 of the questions I have is, you make an argument about
17 the work of Fusion being different from other kinds
18 of, let's say, non-legal charges to the DNC; Travel,
19 supplies, data services and things like that. Why is
20 there a difference between how the purposes were
21 described? So, in other words, what was the rationale
22 between breaking out certain, I'll call non-legal
23 expenses or non-billable time of lawyer expenses and
24 then lumping in the sub-vendor amounts along with the
25 Perkins attorneys?

1 MR. WILSON: Yes, thank you. I think that
2 there in record before you there's not a clear
3 explanation for exactly why, in certain instances, the
4 DNC broke out a portion of a disbursement in some
5 instances and some not. I think the FEC and OGC
6 doesn't suggest that there is even potentially
7 anything incorrect about breaking out those others.
8 But what I want to highlight is, all of that is right.
9 All of that is correct. I think that it is correct,
10 if the DNC or HFA wanted to, for example, on some
11 report spell I paid this much for Lexis Nexis.

12 If on the very next report, on their very
13 next disbursement, they made a single payment that
14 covered both a lawyer's time and Lexis Nexis, and
15 described that collectively as legal services, both of
16 those purpose descriptions would be correct. Both of
17 those purpose descriptions would be accurate, even if
18 they were done in different ways on different days.

19 There's no requirement that you always have
20 to report exactly the same thing exactly the same way
21 in the Commission purpose descriptions. Both of them
22 are accurate, is wholly accurate to have a single
23 disbursement that is for "legal services" or "legal
24 consulting." That folds in a bunch of the sub-
25 expenses and it's also correct if they're spelled out

1 differently.

2 COMMISSIONER COOKSEY: Who selected Fusion
3 GPS as a vendor?

4 MR. WILSON: Perkins Coie hired Fusion GPS.

5 COMMISSIONER COOKSEY: Was that done under
6 the direction of the client or did Perkins make that
7 decision?

8 MR. WILSON: Perkins Coie made the decision
9 to hire Fusion GPS.

10 COMMISSIONER COOKSEY: Do you agree that --
11 I understand your argument about there are more
12 than -- there's more than one way to properly pool
13 together payments in a single disbursement and then
14 label the purpose of that disbursement. Suppose that
15 a committee hired a law firm and directed the law firm
16 to commission polling data and the law firm does so
17 and obtains a polling -- commissions some polling from
18 an outside firm, get the polling reports, the results
19 of the poll and turns around and hands that, the
20 polling report, to the client committee and the
21 committee reimburses the law firm for the polling and
22 labels the purpose as legal services. Do you think
23 that would be acceptable or appropriate?

24 MR. WILSON: Yeah, I thought a lot about
25 this question because I think what it gets at is like,

1 where's the limit here? You know, does this just like
2 create some kind of extreme loophole where suddenly
3 now like every single expense can be run through a
4 lawyer and not disbursed. I think that, and I have a
5 couple of things that I want to respond. First, I
6 think your hypo is not the one before the Commission
7 today. It doesn't factually match up. Here it was
8 Perkins Coie, it was the lawyers who were engaged with
9 the researchers. It was them who had decided what
10 should be researched. There are no communications
11 between any HFA or DNC personnel other than counsel
12 and Fusion GPS. The committees did like an exhaustive
13 response in search of documents and there were none to
14 provide to the Commission.

15 The other thing though is that is if there's
16 a concern on the private commission about where does
17 it stop, the Commission already has a clear precedent
18 to deal with that kind of abuse and it's come up in
19 the sub-vendor context. There's a clear rule, right?
20 I mean, the FEC standard is committees do not need to
21 separately report disbursements that their vendors pay
22 to sub-vendors. Of course, there's an exception,
23 right? If the campaign, in the David Duker (phonetic)
24 the Commission found an exception.

25 If the campaign had a direct contract with

1 the sub-vendor or the vendor had really no involvement
2 whatsoever in the actual conduct of the work and
3 really the only role was to serve as a conduit for a
4 payment, then in that instance like a disbursement to
5 a sub-vendor would be required. But that wasn't the
6 case here. Perkins retained Fusion GPS. Perkins
7 managed the work. HFA and DNC never communicated with
8 Fusion GPS in any way. There is kind of a limit.
9 There's a catch. It's already in the Commission
10 precedent but this case doesn't trigger it.

11 COMMISSIONER COOKSEY: Thank you.

12 CHAIR BROUSSARD: Any further questions?
13 Commissioner Weintraub?

14 COMMISSIONER WEINTRAUB: Thank you, Madam
15 Chair. Mr. Wilson, you said legal services was
16 perfectly adequate purpose of a disbursement. Plainly
17 it is if what we're talking about is legal services.
18 So, that's -- that is the ultimate issue of what we're
19 trying to figure out here, is was this really legal
20 services. You kind of ducked Commissioner Cooksey's
21 question but you know, there's got to be a limiting
22 principle. You can't run your whole campaign out of
23 your law firm and then describe everything as legal
24 services. Would you agree with that?

25 MR. WILSON: I would agree with that.

1 COMMISSIONER WEINTRAUB: Okay, good.
2 Because the lawyers look at everything. I know this.
3 You know this. But, you know, if a campaign is run
4 right, the lawyers are going to look at everything at
5 some point. They're going to look at all the ads. But
6 you wouldn't want to have all of the media
7 disbursements described as legal services because the
8 lawyers looked at them and then you know, if you told
9 the lawyers, okay, once you approve it, go ahead and
10 put the order in. You still couldn't describe all of
11 the media expenses as legal services, agreed?

12 MR. WILSON: I agree. Look, I think
13 probably the practical catch is that lawyers are too
14 expensive to do all that. But, in reality, look, I
15 think, let's use the Commission's test. Alright, in
16 the 2007 Statement of Policy, the Commission adopted a
17 rule of thumb, right? To help ask whether the purpose
18 descriptions were right. And it's could a person, not
19 associated with the committee easily describe why this
20 disbursement was made when reading the name of the
21 recipient and the purpose. I think that the answer to
22 that here is clearly yes.

23 Lawyers do a lot different kinds of work.
24 They use a lot of different kinds of subcontractors
25 and the public knows that. Especially in the context

1 of I'm doing work with political committees. Lawyers
2 do advise on compliance with the Act, but they
3 negotiate contracts. They do litigation. They help
4 with debate prep. They do vetting. They advise
5 clients on whether or not they're going to get sued in
6 a defamation suit if they say things one way rather
7 than the other way. The public understands that in
8 the political committee context. And they also
9 understand that they use sub-vendors all the time.

10 Anybody who watches a lawyer show knows that
11 lawyers frequently use investigators to help confirm
12 facts. And this is 2016 so we can use a 2016
13 reference. You're watching The Good Wife. You know
14 that lawyers have an investigator go out to confirm a
15 couple of the facts. When there are legal questions
16 put the lawyers that in order to answer, you need to
17 understand a legal record. You need to dig into what
18 the actual legal records are and what the facts are.
19 And that's what happened here.

20 Now, would you know from the legal
21 description that Perkins Coie had hired Fusion? Would
22 you know from the legal description that what it was
23 that Fusion was researching? No, of course not. But
24 that's actually not the requirement under the current
25 rule and you would also, you know, putting that kind

1 of obligation I think really would infringe on the
2 attorney-client privilege in the area that already has
3 important First Amendment issues.

4 COMMISSIONER WEINTRAUB: If I may Madam
5 Chair. Well, first of all, I really wouldn't appeal
6 to television because whenever I watch a legal show on
7 TV, I'm constantly yelling at the television because
8 they get everything wrong. That's not a good way to
9 learn about how the law works by how it gets shown on
10 television. I'm not sure why TV shows are a source of
11 authority for us. You have said several times that
12 there were no communications directly between the
13 client and Fusion. But was the information that
14 Fusion provided given to the client?

15 MR. WILSON: The information that Fusion
16 provided to Perkins Coie informed Perkins Coie's legal
17 advice to the client, of course. That was the purpose
18 of Perkins Coie having the research done. I think the
19 specific substance of the communications that Perkins
20 Coie gave to its client are subject to the attorney-
21 client privilege.

22 COMMISSIONER WEINTRAUB: Well, you may not
23 want to answer this question due to attorney-client
24 and that's fine. What I'm -- there was a report.
25 We've all read about this report in the newspapers.

1 We know it exists. Was that report conveyed by
2 Perkins Coie to its client?

3 MR. WILSON: I think that you're referencing
4 what has come to be known as the Dossier that Buzz
5 Feed released in January. Look, I mean, if you look
6 at the record before you, and that's what we're here
7 today to do, to say, let's look at the record and that
8 has OGC has put together and see whether it supports a
9 finding of probable cause. There's no information in
10 the record before you that thing called the Dossier,
11 the Buzz Feed release was provided from, let alone to
12 the client, from Fusion GPS to Perkins Coie.

13 And there's nothing in the record before you
14 that says that it was provided from Perkins Coie to
15 the DNC or HFA. It's also, though, I think, not
16 really that relevant or dispositive to the question
17 before the Commission. There's nothing in the record
18 that would suggest that these were anything other than
19 legal services.

20 COMMISSIONER WEINTRAUB: Thank you, Madam
21 Chair.

22 CHAIR BROUSSARD: Thank you. Anything
23 further? Commissioner Cooksey?

24 COMMISSIONER COOKSEY: I want to ask two,
25 maybe three clarifying questions about the list of

1 disbursements. So, the August 16th, 2016,
2 disbursement for \$66,500.00, you said Mr. Wilson, is
3 the only disbursement that is 100 percent for Fusion
4 GPS services. It is in response to an invoice that
5 included no specific Perkins Coie charges, correct?

6 MR. WILSON: Yes. That's my recollection
7 sitting here today. I will say that I haven't while
8 we're on the phone here gone back and compared each
9 one of those disbursements to the invoice but that's
10 my recollection.

11 COMMISSIONER COOKSEY: Well, this is the one
12 disbursement that lines up with the invoice that is
13 included as an example in the General Counsel's
14 brief --

15 MR. WILSON: Yes.

16 COMMISSIONER COOKSEY: -- so that's why I'm
17 referencing it, so I know. Now that disbursement, the
18 purpose listed is research consulting. Is it your
19 position that a disbursement purpose of legal services
20 would also be an acceptable purpose?

21 MR. WILSON: Yes, I think that it would.

22 COMMISSIONER COOKSEY: So, in your view, it
23 could be one or the other. Both would meet the
24 standard?

25 MR. WILSON: I think so, yes.

1 COMMISSIONER COOKSEY: Okay, that was my
2 question. Thank you.

3 MR. WILSON: I think, I really do think
4 about this in the same way as a Lexis Nexis
5 disbursement, you know. If you disburse something
6 just for Lexis Nexis, when the Committee received that
7 work and what they were paying for, was fundamentally
8 legal services.

9 COMMISSIONER COOKSEY: Madam Chair.

10 CHAIR BROUSSARD: Before Commissioner
11 Cooksey speaks, another Commissioner unmuted. Let me
12 just check first.

13 COMMISSIONER TRAINOR: I'm good. I'll let
14 Commissioner Cooksey finish.

15 COMMISSIONER COOKSEY: Thank you,
16 Commissioner Trainor. I guess one follow up on that.
17 Suppose, going back to my hypothetical of polling,
18 commissioning a polling, suppose that it is very clear
19 in the record that the law firm commissions polling.
20 Their sole work is to find a pollster, hire that
21 pollster, commission the polling, receive the report
22 of the polling results, turn around and hand that
23 report to the committee client. Is it your position
24 that -- a disbursement and reimbursement for that
25 could be described as legal services?

1 MR. WILSON: I haven't thought about that
2 specific hypo because I do think it's not the one
3 before us today. But I think that there is a
4 difference in having polling. I think the key is does
5 the work that is being subcontracted inform legal work
6 in some way? That to me is the crux of the question.
7 Is there a purpose in doing that work and having the
8 other disbursement that informs the lawyer's work, the
9 lawyer's advice, the lawyer's activities that are
10 being provided to the client. I think that is kind of
11 the crux of the matter and it's clearly the case in
12 the matter before you.

13 COMMISSIONER COOKSEY: Does it matter if
14 legal work is actually done or if the law firm just
15 commissions the sub-vendor and then turns around and
16 hands the product to the client? Or does there need
17 to be some minimum level of actual services rendered
18 by the lawyer in order for it to qualify as legal
19 services?

20 MR. WILSON: Yeah. I appreciate the
21 question, Commissioner. I think that in the case
22 before you today, there was legal work done and I want
23 to state that emphatically and that the research did
24 inform Perkins Coie's legal work. I think the
25 questions you're asking are good ones. I think that

1 if the Commission wants to consider a new rule making
2 or to create, you know, update the website to have
3 different or additional terms listed for legal
4 services, those are definitely the right questions to
5 ask that would apply to different situations than this
6 one.

7 COMMISSIONER COOKSEY: And my final
8 question, I know you have repeated many times that
9 it's very clear and it's very straightforward the
10 extent to which Fusion GPS's work supported legal
11 services. I also know that you have invoked
12 privileges of attorney-client privilege and attorney
13 work product, so I guess let me give you an
14 opportunity to state with as much detail as possible
15 that your permitted to give, what legal services were
16 supported by Fusion GPS's research?

17 MR. WILSON: Yes, so, I do want to say that
18 Respondents have spent a lot of time trying to figure
19 out how to make this clear to the Commission. How to
20 explain that this was legal work without waiving the
21 attorney-client privilege. It's a difficult position
22 to be in. I know that the Commission is not asking
23 political committees to kind of waive their attorney-
24 client privileges in this area and so, we try to be
25 forthcoming to explain it.

1 The work that Fusion's research was
2 supporting was a couple of different matters. One of
3 the most significant was in Perkins Coie helping and
4 providing advice to HFA and DNC in order to help them
5 evaluate their litigation risks. And specifically in
6 the context of potential defamation suits or the kind
7 of legal -- a number of the legal entanglements that
8 followed from the Russia breach in 2016. And in order
9 to provide that advice, Perkins Coie needed to have a
10 detailed understanding of number of facts, legal
11 records, legal proceedings, a number of which were in
12 different countries, and that's the work that Fusion
13 supported.

14 I think the other way to think about this
15 Commissioner, though, is the flip side of this. The
16 Commission authorized an investigation here, I know
17 which it doesn't do lightly, and sent subpoenas. And
18 the Respondents spent a lot of time to conduct in
19 detailed document, searches on their systems and do
20 privilege reviews of those documents and produce
21 documents and what was the Commission looking for?
22 What was OGC looking for? The questions that they
23 asked I think are telling.

24 They said show us who is really talking to
25 Fusion. Show us -- tell us, what were the

1 communications between Fusion and HFA and DNC
2 personnel. And there weren't any. And the engagement
3 was with lawyers. Those are the questions that OGC
4 brought. Those are the -- we answered them. And I
5 think we answered all of those answers and all of the
6 information in the record supports the same
7 description that HFA and DNC has provided to the
8 Commission now for four or five years.

9 COMMISSIONER COOKSEY: Thank you.

10 CHAIR BROUSSARD: Any questions?

11 COMMISSIONER TRAINOR: Madam Chair.

12 CHAIR BROUSSARD: Commissioner Trainor.

13 COMMISSIONER TRAINOR: Mr. Wilson, I
14 appreciate your presentation, so, I want to talk a
15 little bit about how the information from Fusion GPS
16 would have been treated if there had been litigation
17 that came out of the election. What would the nature
18 in a courtroom of the Fusion GPS information be?

19 MR. WILSON: I'm not sure I understand your
20 question, Commissioner.

21 COMMISSIONER TRAINOR: So, would fusion GPS
22 be maybe a consulting expert to the law firm or would
23 they be just someone who you might put on the stand to
24 prove business records if the documents that they had
25 produced became relevant in the litigation? Would

1 they be disclosed as having worked with the firm in
2 litigation? Those type of things.

3 MR. WILSON: Great. I understand. And I
4 think I might not have the most satisfying answer for
5 you. I'm not sure the answer to your question because
6 we never got there. And the work here was in
7 anticipation of potential litigation to help evaluate
8 for HFA and DNC their potential exposure. But, I've
9 not addressed those questions that you're asking.

10 COMMISSIONER TRAINOR: Okay. And if you
11 have any other information that you feel like would
12 help in our deliberations, I'd be happy to take a look
13 at it when you get done with the hearing today.

14 CHAIR BROUSSARD: Commissioner Weintraub.

15 COMMISSIONER WEINTRAUB: Hypothetically
16 speaking, Mr. Wilson, if a law firm were to commission
17 opposition research and that opposition research were
18 conveyed to the law firm from another entity and then
19 the law firm conveyed it to the client, presumably
20 with a cover memo that conveyed the lawyer's analysis
21 of the opposition research, would it be appropriate
22 for the committee to disclose the expenses that the
23 law firm incurred in commissioning the opposition
24 research as legal expenses?

25 MR. WILSON: Commissioner, I think that is

1 not a fact -- those are not the facts before you. And
2 so, I appreciate the hypothetical and thinking about
3 different ways that the Commission rules should apply
4 to disclosure obligations, but what I know is what's
5 in the record before you and how the law applies to
6 the disbursements that HFA and DNC made and how they
7 reported them. And I think that they were accurate.

8 CHAIR BROUSSARD: Anything further? Mr.
9 Wilson, would you like to -- you have five minutes
10 reserved for a closing statement. Would you like to
11 take advantage of that?

12 MR. WILSON: I really appreciate the
13 opportunity to speak to the Commission today. I think
14 that this is a complicated area and it raises a lot of
15 complex questions in terms of the right -- the level
16 of detail that the Commission has requested and
17 required in the past. But, in fact, the Commission
18 has provided clear guidance that 'legal services',
19 'legal' are the right purpose descriptions and when
20 you have the regulating community saying I've got a
21 bill here, you know, I got a bill from my lawyer,
22 what's the right way to list this? That happens
23 thousands or hundreds of thousands of times every
24 month. And the Commission's given guidance.

25 You look at the list. It's on the website.

1 Here are the approved purpose descriptions and when
2 staff and treasurers choose which term to describe,
3 they should be able to rely on that list and not
4 assume that every time they write one of those words
5 that there is going to be a quibble about whether it
6 was the most precise or the most accurate or does
7 somebody think that this term could have been
8 different instead. And it's -- with those kinds of
9 purpose descriptions I think that the enforcement
10 policy that the Commission has brought in the past,
11 the purpose description is accurate, is appropriate
12 and I don't think that there's any cause from a
13 departure here. Relying on these facts, I think that
14 the only appropriate course of action is to close this
15 file and I hope the Commission will vote accordingly.
16 I really appreciate the time to address you today.
17 Thank you very much.

18 CHAIR BROUSSARD: Thank you. Thank you for
19 appearing today.

20 MR. WILSON: It was my pleasure.

21 CHAIR BROUSSARD: The hearing is adjourned.

22 MS. BENITZ: Madam Chair, we've ended the
23 recording.

24 CHAIR BROUSSARD: Thank you.

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1 (Whereupon, at 1:55 p.m., the hearing in the
2 above-entitled matter adjourned.)

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REPORTER'S CERTIFICATE

DOCKET NO.: MUR 7291 & 7449
CASE TITLE: Democratic National Committee & Hillary
For America Probable Cause Hearing
HEARING DATE: December 14, 2021
LOCATION: Washington, DC

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Election Commission.

Date: December 16, 2021



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