

JOHN DURHAM MAY HAVE MADE IGOR DANCHENKO “AGGRIEVED” UNDER FISA

Amidst a bunch of inaccurate quotations and insinuations, John Durham presented evidence in the Igor Danchenko indictment that Olga Galkina was (at least in part) seeking access when she claimed, in 2016, to be a fan of Hillary Clinton. And in the process, Durham may have created some significant discovery and FISA challenges for himself.

Olga Galkina, a friend of Igor Danchenko's whom he said was the source for a key claim about Carter Page and all the discredited Michael Cohen claims, described herself this way in a declaration submitted in Alfa Bank's lawsuit against Fusion GPS:

My name is Olga Aleksandrovna Galkina. I am a Russian citizen. I graduated with a law degree from Perm State University in 2002 and with a philology degree from Peoples' Friendship University of Russia in 2004. In addition to Russian, I speak English and Bulgarian, and have basic knowledge of Georgian and Spanish.

My background is in journalism and public relations. I now work as a communications advisor. Previously, I held a number of positions in public relations and government, including head of the Governor's Press Service in the Saratov Region (2005–2006); deputy head of the city administration in Saratov (2006–2007); and public relations advisor at Servers.com, a part of the XBT Holding group of companies that includes Webzilla (2015–2016).

[snip]

Igor Danchenko and I have been friends since our teen years in Perm, Russia. Through the years, Mr. Danchenko and I have communicated in person, over the phone, and through electronic messengers. I never gave my permission to Mr Danchenko to publish (or disclose to a third party) any part of our private discussions or private communications.

Mr. Danchenko and I met once in 2016. In connection with my job at Servers.com, I traveled to the United States in the spring of 2016 to participate in the Game Developers Conference event and investigate the prospects of running a public relations campaign for the company in the United States. I asked Mr. Danchenko to assist those efforts, and he introduced me to a third party, Charles Dolan, whom he thought could help. Mr. Danchenko and I did not discuss anything related to the Dossier or its contents during this meeting.

Note that this entire declaration is designed as a non-denial denial. The denial that she discussed the dossier in spring 2016, before the dossier project began, is in no way a denial that she discussed stuff – with Danchenko or Dolan – that ended up in the dossier, nor does she deny being the source of anything but the Alfa Bank allegations elsewhere in the declaration.

Durham describes Galkina this way.

At all times relevant to this Indictment, DANCENKO maintained communications with a Russian national (“Russian Sub-Source-I”) based in a foreign country (“Country-1”) who, according to DANCENKO, acted as one of DANCENKO’s primary sources of

information for allegations contained in the Company Reports. DANCHENKO and [Galkina] had initially met as children in Russia, and remained friends thereafter.

In or about early 2016, Russian Sub-Source-I began working at a business based in Country-1 ("Business-1") that was owned by a Russian national and would later appear in the Company Reports. [Galkina] conducted public relations and communications work for Business-1

Business-1 would be XBT Holdings, which appeared in the last dossier report.

The Danchenko indictment barely mentions the long ties between him and Galkina, and doesn't explain that she was the alleged source for the Cohen allegations (or even the claim that Danchenko named her as the source for a meeting Page had in Moscow, something utterly central to Durham's project). Instead, it focuses on the fact that, after Danchenko himself met PR Executive Charles Dolan (through Fiona Hill) in February 2016, the next month, Danchenko introduced Dolan to Galkina for obvious business reasons, and then they all continued to communicate, both with Danchenko included and without him.

In or about March 2016, and prior to the June 2016 Planning Trip, DANCHENKO learned from Russian Sub-Source-I that Business-I was interested in retaining a U.S.-based public relations firm to assist with Business-1 'sentry into the U.S. market. DANCHENKO brokered a meeting between PR Executive-I and Russian Sub-Source-I to discuss a potential business relationship. Thereafter, PR Firm-I and Business-I entered a contractual relationship.

In or around the same time period,

DANCHENKO, PR Executive-I, and Russian Sub-Source-I communicated about, among other things, the business relationship between Business-I and PR Firm-I. [my emphasis]

Thus far, this is garden variety networking, plopped into an indictment for reasons that do not directly relate to the crimes alleged.

The indictment then turns to laying out that, in conversations not including Danchenko, Dolan and Galkina spoke of their mutual enthusiasm for Hillary Clinton. Except the second paragraph Durham uses to substantiate “their [shared] support for Hillary Clinton” has nothing to do with Hillary Clinton, but in fact shows that Galkina was using Dolan’s ties to senior Russian officials for her own career advantage.

41. During the same time period, [Galkina] and [Dolan] communicated regularly via social media, telephone, and other means. In these communications and others, [Galkina] and [Dolan] discussed their political views and their support for Hillary Clinton.

[snip]

b. Additionally, on or about July 13, 2016, [Galkina] sent a message to a Russia-based associate and stated that [Dolan] had written a letter to Russian Press Secretary-I in support of [Galkina]’s candidacy for a position in the Russian Presidential Administration.

This is important, presumably, because it shows Dolan had better access to some figures in the dossier than Galkina did, but it has nothing to do with Hillary Clinton. It does, however, show that Galkina used her relationship with Dolan for access, even in Russia. And Durham is likely to argue that she used that access to obtain information that she then shared with Danchenko, which ended up in the dossier.

But it's also important because, in the later communications quoted, Durham shows that Galkina was leveraging her relationship with Dolan – and bragging about it to an associate – in hopes of access under a Hillary presidency.

d. In or about August 2016, [Galkina] sent a message to a Russia-based associate describing [Dolan] as an “advisor” to Hillary Clinton. [Galkina] further commented regarding what might happen if Clinton were to win the election, stating in Russian, “[W]hen [[Dolan] and others] take me off to the State Department [to handle] issues of the former USSR, **then we’ll see who is looking good and who is not.**”

e. In or about September 2016, [Galkina] made a similar comment in a message to the same associate, stating in Russian that [Dolan] would “take me to the State Department if Hillary wins.”

f. On or about November 7, 2016 (the day before the 2016 U.S. Presidential election), Russian Sub-Source-I emailed [Dolan] in English and stated, in part: [] I am preparing you some information on former USSR/UIC countries, Igor [DANCHENKO] possibly told you about that. Tomorrow your country is having a great day, so, as a big Hillary fan, I wish her and all her supporters to have a Victory day. Hope, that someday her book will have one more autograph on it) Thank you for your help and support, Best regards, [First Name of Russian Sub-Source-I] [my emphasis]

All this Hillary support – shared with Dolan, but not (at least in this indictment) with Danchenko – does matter to Durham’s project. The allegations Danchenko attributed to Galkina were the most damning in the dossier, including the post-election (purportedly free) report that Michael Cohen had actually *paid* for Russian

hackers. If she genuinely supported Hillary, it's possible she knowingly fed Danchenko bullshit in hopes of helping Hillary's chances.

But those Cohen allegations were also the earliest claims debunked in the dossier. By January 12, 2017 (so, importantly, weeks before Danchenko's first FBI interview and before Galkina tasked Danchenko with a collection request in the wake of the dossier's release), the FBI had obtained information marking the Cohen allegations as likely disinformation.

A January 12, 2017, report relayed information from [redacted] outlining an inaccuracy in a limited subset of Steele's reporting about the activities of Michael Cohen. The [redacted] stated that it did not have high confidence in this subset of Steele's reporting and assessed that the referenced subset was part of a Russian disinformation campaign to denigrate U.S. foreign relations. A second report from the same [redacted] five days later stated that a person named in the limited subset of Steele's reporting had denied representations in the reporting and the [redacted] assessed that the person's denials were truthful.

This report should have led the FBI to treat any allegation sourced to Galkina, including the damning Carter Page one, with caution. All the more so after Danchenko told them (as he did in his January interviews) that Galkina recognized Cohen's name almost immediately when he asked her for information about Trump's associates.

[Danchenko] began his explanation of the Prague and Michael Cohen-related reports by stating that Christopher Steele had given him 4-5 names to research for the election-related tasking. He could only remember three of the names: Carter Page, Paul Manafort and Michael Cohen. When he talked to [Galkina] in the fall

of 2016 – he believes it was a phone call – he rattled off these names and, out of them, he was surprised to hear that [she] immediately [later [Danchenko] softened this to “almost immediately”] recognized Cohen’s name.

But her emails boasting that Dolan would get her access to State in a Hillary Administration are naked influence-peddling, whether for banal careerist reasons or for more malign purposes of access. They are what you’d expect from anyone with growing ties to a well-connected person, regardless of political leanings.

And we already knew – *and the FBI knew* – that Galkina had sent communications indicating strong support for Hillary (whether good faith or feigned for access purposes). That was revealed in a footnote to the DOJ IG Report declassified in response to Chuck Grassley and Ron Johnson demands in April 2020. That footnote strongly suggests that FBI learned it from obtaining Galkina’s communications under FISA Section 702 (the footnote only makes sense if they had 702 collection on Galkina and only Galkina), and they learned it by “early June 2017.”

FBI documents reflect that another of Steele’s sub-sources who reviewed the election reporting told the FBI in August 2017 that whatever information in the Steele reports that was attributable to him/her had been “exaggerated” and that he/she did not recognize anything as originating specifically from him/her. 347

347 The FBI [received information **in early June 2017** which revealed that, among other things, there were [redacted]] personal and business ties between the sub-source and Steele’s Primary Sub-source; contacts between the sub-source and an individual in the Russian Presidential Administration in

June/July 2016; [redacted] and the sub-source voicing strong support for candidate Clinton in the 2016 U.S. elections. The Supervisory Intel Analyst told us that the **FBI did not have Section 702 coverage on any other Steele sub-source.** [my emphasis]

Galkina is the one Danchenko sub-source that the FBI interviewed directly. The business ties between her and Danchenko reflect loans back and forth. The contacts reflected here with someone in the Presidential Administration in June/July may reflect Dolan's recommendation of Galkina for a job. The second redaction here may even include a reference to Dolan.

There are a whole slew of implications from this detail, if it indeed reflects that FBI obtained Galkina's communications using Section 702, which by description included the communications with Dolan about Hillary and would have included any US-cloud based communications she had Danchenko as well.

The first implication is that, in relying on communications involving Danchenko, Galkina, and Dolan (bold and underlined above), Durham may have made Danchenko an "aggrieved person" under FISA.

The term "aggrieved" under FISA is a technical legal one, and one that the US government makes great efforts to obscure. But anyone whose communications "were subject to electronic surveillance," is aggrieved.

"Aggrieved person" means a person who is the target of an electronic surveillance or any other person whose communications or activities were subject to electronic surveillance.

And FISA mandates that the government provide FISA notice to someone if they intend to use evidence obtained *or derived from* electronic surveillance "in any trial, hearing, or other

proceeding in or before any court.”

Whenever the Government intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, against an aggrieved person, any information obtained or derived from an electronic surveillance of that aggrieved person pursuant to the authority of this subchapter, the Government shall, prior to the trial, hearing, or other proceeding or at a reasonable time prior to an effort to so disclose or so use that information or submit it in evidence, notify the aggrieved person and the court or other authority in which the information is to be disclosed or used that the Government intends to so disclose or so use such information.

While the government treats information obtained from the cloud as a physical search, after the Snowden releases, DOJ started notifying some defendants of 702 surveillance and in 2018 (before Durham was appointed), Congress mandated that information obtained under FISA 702 be treated as electronic surveillance for FISA's notice provision.

Information acquired from an acquisition conducted under section 1881b of this title shall be deemed to be information acquired from an electronic surveillance pursuant to subchapter I for purposes of section 1806 of this title.

In 2018, Congress has also imposed restrictions on the searches of 702 data for criminal prosecution, restrictions that the FBI famously blew off under Bill Barr.

Also in 2018, Congress demanded that the government keep better records of how US person names get unmasked in FISA surveillance.

To be very clear: this doesn't help Danchenko all that much. The government's precedents seem to say that notice provisions only trigger in an actual trial, so including reference to communications that would have first been obtained under 702 in an indictment probably wouldn't normally trigger the notice requirement. If Durham restricted himself to using only those communications involving Galkina and Dolan but not Danchenko at trial, it would not render Danchenko "aggrieved," because a person is only aggrieved if his own communications are used, not if communications of two associates he introduced are used to prosecute him.

Moreover, as anyone not named Carter Page would discover, FISA's due process protections are basically useless. If DOJ determined that Danchenko was, indeed, aggrieved, he'd get notice and a judge would review how Galkina got targeted and almost immediately determine that Galkina was lawfully targeted under 702 (she was) and FBI was not primarily trying to get Danchenko's communications with her (they weren't), and that would be that.

Plus, DOJ has developed a number of ways to launder 702 information, such as getting the same information first obtained with a 702 directive with a warrant, and then claiming, implausibly, that the criminal process was not "derived from" the FISA process. Durham might even try to claim he didn't discover this information via FISA, he obtained it via completely independent parallel means. In any case, DOJ has well-developed ways of parallel constructing information collected via sensitive means to hide its sourcing.

Still, Danchenko might have cause to question whether Durham complied with search requirements and whether the FBI properly documented any searches of Galkina's communications used in a

non-national security investigation, but even there, the original investigation implicating Galkina was undeniably a national security one, investigating whether Carter Page was a foreign agent, and so that original search would not require documentation (and preceded the rigorous application of that requirement in any case).

The point of all this is not that this helps Danchenko, at all, from a due process standpoint. But in the same way that Carter Page used his status as the first person to learn he was targeted under FISA without being prosecuted to cause a great deal of trouble, Danchenko might be able to use his status as someone whose prosecution appears to tie directly to 702 searches years ago to cause a great deal of trouble. Because DOJ has already declassified material that ties these communications to 702 collection, Danchenko may be able to demand transparency about FISA procedures that no one before him has ever been able to, and that may complicate prosecution of him.

And, at the very least, Danchenko will be able to demand discovery on the circumstances of this collection when otherwise, DOJ would be able to hide it under FISA disclosure protections. Normally, if DOJ did not rely on these communications, they would not have to inform Danchenko about them at all. But given that DOJ has already acknowledged them and seemingly identified them as Section 702 collection, DOJ will be forced to acknowledge that by early June 2017, they had these communications.

The fact that DOJ obtained information showing the ties between Dolan and Galkina in "early June" may go a long way (along with demonstrating Durham's inaccurate citation) to disproving the alleged lie charged in Count One of this indictment. It certainly undermines Durham's claims that the lie was material. It further will make it easy to suggest that this prosecution arises out of political animus (though that is always of limited use at trial).

In substantiating the case that Carter Page was

wrongly aggrieved under FISA thanks to rumors passed along by Igor Danchenko, Durham appears to have similarly made Danchenko aggrieved himself. And that may help him defend himself in ways that would not otherwise be available.

Related documents

- Igor Danchenko January 2017 interview report
- DOJ IG Report on Carter Page
- Declassified DOJ IG footnotes
- Olga Galkina Alfa Bank declaration

Danchenko posts

The Igor Danchenko Indictment: Structure

John Durham May Have Made Igor Danchenko “Aggrieved” Under FISA

“Yes and No:” John Durham Confuses Networking with Intelligence Collection

Daisy-Chain: The FBI Appears to Have Asked Danchenko Whether Dolan Was a Source for Steele, Not Danchenko

Source 6A: John Durham’s Twitter Charges

John Durham: Destroying the Purported Victims to Save Them

John Durham’s Cut-and-Paste Failures – and Other Indices of Unreliability

Aleksej Gubarev Drops Lawsuit after DOJ Confirms Steele Dossier Report Naming Gubarev’s Company Came from His Employee

In Story Purporting to “Reckon” with Steele’s Baseless Insinuations, CNN Spreads Durham’s Unsubstantiated Insinuations

On CIPA and Sequestration: Durham’s Discovery

Deadends

The Disinformation that Got Told: Michael Cohen
Was, in Fact, Hiding Secret Communications with
the Kremlin