ADVENTURES IN CUT-AND-PASTE: JOHN DURHAM SAYS, "NO SPECIFIC CLIENT" IS THE SAME AS, "NOT DOING THIS FOR ANY CLIENT"

John Durham's team has responded to Michael Sussmann's request for a May trial date with a bunch of mostly nonsense.

AUSA Andrew DeFilippis does the following:

- Blows off Susssmann's observation that Durham promises to be ready for Igor Danchenko's EDVA trial, which will involve far more complex classification issues, in April, even while saying classified discovery is what requires a later trial date in this case.
- Does not deny Durham only belatedly provided Brady, while accusing Sussmann of "cherry-picking excerpts," when Durham is the one providing excerpts.
- Complains that Sussmann doesn't note "law enforcement reports of Mr. Baker's subsequent three interviews with the Special Counsel's Office in which he affirmed and then re-

affirmed his now-clear recollection of the defendant's false statement," which seems to suggest that like the one fragment already provided (which shows at least one sign of irregularity), Durham is claiming interview reports are more accurate than transcripts.

- Complains that Sussmann didn't mention a second potentially inadmissible hearsay document, written by someone else in the General Counsel's office.
- Accuses Sussmann of neglecting to mention a CIA report about a *different* meeting that Sussmann already discussed at length (indeed, Durham was the one withholding information on it when last it came up) — and which Durham admitted was based off notes that have been destroyed.
- Mentions "three grand jury transcripts" but doesn't describe any of them as Baker's.
- Invokes "serious national security equities" in a case that criminalizes reporting a cybersecurity concern.

To look on Durham's case in the best light: After Baker reviewed notes that others took, he came to remember that Sussmann affirmatively said he was not representing a client at the meeting (though Durham doesn't claim to have the specific words Sussmann said, nor does he quote any in his discussion of the three other 302s).

And Durham does not deny that he's slow-walking Brady material.

But I want to look at DeFillippis' cut-and-paste again. In the response to Sussmann, DeFillippis suggests that this second hearsay document from someone in his office matches the first, Bill Priestap's notes taken immediately after the meeting.

> Those notes, **like the notes cited in the Indictment** taken by an FBI Assistant Director, reflect that the defendant told Baker he had "no specific client." [my emphasis]

Except that's not what the indictment says Priestap's notes say. Those say:

> Michael Sussman[n] — Atty: [Perkins Coie] — said not doing this for any client
>
> > ▪ *Represents DNC, Clinton Foundation, etc.*

"Not doing this for any client," and "no specific client," are undoubtedly close, but they are not the same thing, particularly given the great stake Durham and others have placed on whether Sussmann believed he was doing something important for cyber security, particularly given that neither mentions billing or representing. The differences suggest that even in these near-contemporaneous records taken by professional note-takers of what Baker said, either he himself was not consistent in the language he used to relay what happened, or the meaning his interlocutors took from it was not. Probably

that's because none of them accorded it the great import that Durham has, in part because they were all trying hard to deal with a very real cyberattack by Russia.

Maybe these quotes look more similar in context. Right now, Durham seems to be desperately trying to show that he has quotations *of something*.

But John Durham accused Michael Sussmann of cherry picking. And right now, his own cherry picking reaffirms that there are differences in the exact quotations that he claims are the same. He may, in fact, have reason to believe Sussmann lied. Sussmann may have lied. But the question is whether his evidence — even assuming he'll find a way to get hearsay admitted — is strong enough to rebut Baker's repeated contradictory statements.