

JOHN DURHAM SUGGESTS APRIL LORENZEN THINKS HE BULLIED HER

In a truly hysterical self-own, the Federalist's Margot Cleveland read this John Durham filing and (in addition to claiming that Marc Elias' grand jury appearance must mean he testified to crime-fraud excepted matters even though he previously testified publicly about this matter without any such exception) predicted that the "corrupt media" would soon quote "false charges" of threats and intimidation "by this weekend."

Then she quoted precisely those charges.

In addition to detailing all of the information the special counsel's office had already provided Sussmann or would shortly, in requesting an extension to finish discovery, Durham's team stressed the breadth of Sussmann's discovery demands and the transparency with which those demands were met.

For instance, Sussmann's attorneys requested "all of the prosecution team's communications with counsel for witnesses or subjects in this investigation, including, 'any records reflecting any consideration, concern, or threats from your office relating to those individuals' or their counsels' conduct...and all formal or informal complaints received by you or others' about the conduct of the Special Counsel's office."

After noting that "communications with other counsel are rarely discoverable," the government said it expects to produce responsive documents later this week. But the special counsel office added, "it is doing so despite the fact

that certain counsel persistently have targeted prosecutors and investigators on the Special Counsel's team with baseless and polemical attacks that unfairly malign and mischaracterize the conduct of this investigation."

For instance, "certain counsel have falsely accused the Special Counsel's Office of leaking information to the media and have mischaracterized efforts to warn witnesses of the consequences of false testimony or false statements as 'threats' or 'intimidation,'" Durham explained to the court.

In other words, with Sussmann's lawyers soon to receive this cache of complaints against Durham's team, watch for the corrupt media to be quoting those false charges by this weekend, spinning a narrative of a corrupt special counsel's office.

Cleveland was, as far as I saw, the first to quote those charges and one of the only ones to do so before the weekend. But given that, in the past, she has presented evidence that undermined Durham's conspiracy theories without admitting that they did, I'd say she qualifies for her own designation as corrupt. A self-fulfilling prediction!

That said, I suspect that Durham is trying to get ahead of something potentially more problematic.

In the Sussmann indictment, Durham needlessly referred to April Lorenzen – who had used the pseudonym "Tea Leaves" to speak of the Alfa Bank allegations in 2016 and who could have been referred to by that same pseudonym here – by the moniker "Originator-1." That introduced additional confusion and with it implied, without charging Lorenzen, that she had made up the anomalous data at the core of the allegation. It's sort of like referring to

someone by the pseudonym “Forger-1” or “Lady-with-the-Knife-1” in an indictment; it respects DOJ’s rules against naming uncharged individuals, but does so in such a way that insinuates wrong-doing.

Indeed, in the indictment, Durham repeatedly called the anomalous data “purported,” barely hiding that he believes Lorenzen manufactured the data, even though a shit-ton of evidence from later in 2016 makes it clear Lorenzen believed the anomaly was real and important.

Durham’s treatment of Lorenzen is all the more problematic given that she was among those that, this NYT story credibly argued, Durham had cited out of context in the indictment.

The indictment quotes August emails from Ms. Lorenzen and Mr. Antonakakis worrying that they might not know if someone had faked the DNS data. But people familiar with the matter said the indictment omitted later discussion of reasons to doubt any attempt to spoof the overall pattern could go undetected.

[snip]

The indictment suggested Ms. Lorenzen’s reaction to the paper was guarded, describing an email from her as “stating, in part, that it was ‘plausible’ in the ‘narrow scope’ defined by” Mr. Joffe. But the text of her email displays enthusiasm.

“In the narrow scope of what you have defined above, I agree wholeheartedly that it is plausible,” she wrote, adding: “If the white paper intends to say that there are communications between at least Alfa and Trump, which are being intentionally hidden by Alfa and Trump I absolutely believe that is the case,” her email said.

So Lorenzen has good cause to be miffed with

Durham's insinuations in the indictment.

Which brings us to the passage that Cleveland face-planted on.

Durham brags that he has been so kind as to respond to Sussmann's request for records suggesting that Durham's team might be bullying or bribing witnesses.

On December 10, 2021, the defense requested, among other things, all of the prosecution team's communications with counsel for witnesses or subjects in this investigation, including, "any records reflecting any consideration, concern, or threats from your office relating to those individuals' or their counsels' conduct. . . and all formal or informal complaints received by you or others" about the conduct of the Special Counsel's Office." Although communications with other counsel are rarely discoverable, especially this far in advance of trial, the Government expects to produce certain materials responsive to this request later this week. The Government notes that it is doing so despite the fact that certain counsel persistently have targeted prosecutors and investigators on the Special Counsel's team with baseless and polemical attacks that unfairly malign and mischaracterize the conduct of this investigation. For example, certain counsel have falsely accused the Special Counsel's Office of leaking information to the media and have mischaracterized efforts to warn witnesses of the consequences of false testimony or false statements as "threats" or "intimidation." Despite the inflammatory and unfounded nature of these accusations, the Special Counsel's Office intends to produce these materials to the defense to avoid any suggestion that it seeks to conceal

these communications for some bad purpose.

Sussmann made this request after having been shown – months after he was indicted – James Baker’s interview reports with Durham’s team, which Sussmann’s lawyers noted at a December 8 status hearing had radically changed from his past sworn statements. Sussmann’s lawyers made it clear they may argue at trial that Baker’s testimony changed because Durham threatened to charge the former FBI lawyer if he didn’t change his story. And that’s clearly why, just days after seeing how dramatically Baker’s sworn testimony did change, Sussmann made this discovery request. Sussmann wants to test whether Durham has been pressuring witnesses – Baker, as well as others – to back Durham’s baseless conspiracy theories.

Durham is turning over this material not, as he suggests, out of the spirit of generosity. Rather, he’s turning it over because, to survive as Special Counsel long enough to write his report, he needs to avoid giving Merrick Garland cause to fire him. Sussmann has effectively put Durham on notice that he’s going to ask every witness whether they were bullied to tell a false story. And if Durham were to sit on records even hinting at such bullying, withholding them in discovery when the complaint is bound to come out at trial would provide Garland that cause for firing.

Which makes it all the more interesting that Durham stated he had included reports of calls with Lorenzen’s lawyer specifically.

numerous reports of phone calls between the Special Counsel team and counsel for several witnesses or subjects in this investigation, including counsel for the individual referred to in the Indictment as “Originator-1;”

Complaints from Lorenzen would be neither Jencks

– the requirement to provide the interview reports and grand jury testimony from witnesses the prosecution plans to call at trial – nor Giglio – the requirement to tell defendants about any benefits witnesses received for their testimony. That’s because Durham is treating Lorenzen as a subject of the investigation, not a witness. Like all Fusion employees, Rodney Joffe, and all but one employee of the Clinton Campaign, she is not listed as having been interviewed. That suggests either that Durham still wants to charge Lorenzen as part of his conspiracy charge or that he tried to subpoena her and she told him she’d invoke the Fifth. (According to an earlier Sussmann filing, Durham has immunized at least one witness and he could do so with Lorenzen as well if he really wanted her testimony.)

Of course Lorenzen has a complaint. While I don’t think Durham *leaked* her identity (he doesn’t need to because there’s a whole slew of researchers, including suspected Russian agents, who guarantee anything he says will soon be attached to a name), he improperly included insinuations about Lorenzen not backed by any evidence as part of his grand conspiracy theory about why Sussmann lied. He has done real reputational damage to Lorenzen without presenting any evidence to back such damage.

Durham provided Sussmann whatever complaints she made about the reputational harm he had done to cover his ass – to ensure it doesn’t get him fired – because Sussmann has the ability to obtain (and may have already obtained) such records from Lorenzen directly.

For now, then, Durham has protected himself.

But if it were to come out, as I think is likely, that DOJ has in its possession information about someone who claimed to have brokered one of the more incendiary parts of the Alfa Bank story, someone who fabricated *other* Internet routing data in May 2016 (the month that, Alfa Bank claims, its own data started getting spoofed), it might make any bullying

Durham has done of Lorenzen the kind of thing that would be actionable against Durham. All the more so if Durham had not provided such information in discovery to Sussmann (which would be shocking, but I'm getting used to being shocked by Durham's incompetence).

Durham has covered his ass, for now. But if it came out that Durham insinuated Lorenzen had fabricated this data even though DOJ knows of a more likely candidate to have done so, that would cause all sorts of new problems for him.