

JOHN DURHAM, ASK NOT FOR WHOM THE STATUTE OF LIMITATION TOLLS ...

As he did with Igor Danchenko, John Durham has raised a potential conflict as a way to air his conspiracy theories so he can jack up the frothy right. In this case, he describes an uncharged meeting at which Michael Sussmann, who no longer had anything to do with the DNC, shared an updated version of the Alfa Bank allegations with the CIA on February 9, 2017.

The Indictment further details that on February 9, 2017, the defendant provided an updated set of allegations – including the Russian Bank-1 data and additional allegations relating to Trump – to a second agency of the U.S. government (“Agency-2”). The Government’s evidence at trial will establish that these additional allegations relied, in part, on the purported DNS traffic that Tech Executive-1 and others had assembled pertaining to Trump Tower, Donald Trump’s New York City apartment building, the EOP, and the aforementioned healthcare provider. In his meeting with Agency-2, the defendant provided data which he claimed reflected purportedly suspicious DNS lookups by these entities of internet protocol (“IP”) addresses affiliated with a Russian mobile phone provider (“Russian Phone Provider-1”). The defendant further claimed that these lookups demonstrated that Trump and/or his associates were using supposedly rare, Russian-made wireless phones in the vicinity of the White House and other locations. The Special Counsel’s Office has identified no support for these

allegations. Indeed, more complete DNS data that the Special Counsel's Office obtained from a company that assisted Tech Executive-1 in assembling these allegations reflects that such DNS lookups were far from rare in the United States. For example, the more complete data that Tech Executive-1 and his associates gathered – but did not provide to Agency-2 – reflected that between approximately 2014 and 2017, there were a total of more than 3 million lookups of Russian Phone-Provider-1 IP addresses that originated with U.S.-based IP addresses. Fewer than 1,000 of these lookups originated with IP addresses affiliated with Trump Tower. In addition, the more complete data assembled by Tech Executive-1 and his associates reflected that DNS lookups involving the EOP and Russian Phone Provider-1 began at least as early 2014 (i.e., during the Obama administration and years before Trump took office) – another fact which the allegations omitted.

The frothy right is very excited that, among the data that someone heavily involved in cybersecurity like Rodney Joffe would have ready access to, was data that included the White House. They seem less interested that, to disprove the allegations Sussmann presented, Durham effectively (in their frothy minds) conducted the same “spying” on EOP networks of President Obama that Durham insinuates Joffe did of Trump.

Remember: This meeting is not charged. It's not clear such a meeting with the CIA could be charged. Durham presents zero evidence Sussmann knows anything about the comparative value of this data, either.

That'll become important in a bit.

The conflicts Durham raises to justify this

filing are a bit more interesting than the ones he raised with Danchenko. Latham Watkins used to represent Perkins Coie and Marc Elias in this matter, now they represent just Sussmann, and Elias will be asked to testify about instructions Sussmann got about billing records in his representation of the DNC. Latham represented the DNC. Latham represented Sussmann in December 2017 House Intelligence testimony that significantly undermines Durham's indictment (and shows that the allegations at the core of this indictment originally came from Kash Patel, who by the time of trial may be charged for his participation in helping Trump attempt a coup). Latham also provided Perkins Coie advice regarding a PR statement that, Durham admits, he's not been able to pierce the privilege of and he knows those who made the statement had no knowledge that could implicate the statement in a conspiracy. Somebody on Sussmann's team used to work at the FBI and then worked for the White House. Those are the conflicts – more substantive than the ones Durham raised about Danchenko, but probably nothing that problematic.

Which makes the relative timing of this filing all the more interesting.

With Danchenko, Durham raised the potential conflict, first, at a status hearing less than two weeks after Stuart Sears filed a notice of appearance for Danchenko, and then again, in a filing two weeks after Sears filed, for a less pressing imagined conflict involving different lawyers in Sears' firm.

With Sussmann, Durham waited for *almost five months* after indicting Sussmann to raise the conflict, even though all but one element of the imagined conflict would have been immediately apparent to Durham, not least that Latham had previously represented Elias.

That doesn't seem to reflect any real burning concern about this conflict.

But, as noted, it did give Durham an excuse to

float previously unreleased information that *may not even come in at trial*, given that it'll have to be presented as 404(b) evidence and it, in fact, as presented, undermines the claim that Sussmann was hiding his ties to Hillary from the Federal government.

If the information doesn't come in at trial, this may be Durham's only chance to jack up the frothy right with it.

And *that's* interesting because of the date of that CIA meeting: February 9, 2017, five years and two days before Durham filed this belated notice of a conflict.

As I keep noting, Durham is obviously trying to pull his fevered conspiracy theories into an actual charged conspiracy, one tying together the DNC, Fusion GPS, Christopher Steele, and Hillary herself. If he succeeds, these flimsy charges (against both Sussmann and Danchenko) become stronger, but if he doesn't, he's going to have a harder time proving motive and materiality at trial.

After charging Sussmann on almost the last possible date before the statute of limitations expired for his claimed lie to the FBI, though, Durham would need something on which to hang a continuing conspiracy to be able to charge the others. One of those events could have been the PR statement issued in 2018, which Durham says is inaccurate.

Privilege logs and redacted emails obtained from Law Firm-1 in this investigation reflect that in the days before the issuance of these statements, Latham attorneys sent, received, and/or were copied on correspondence relating to the drafting and dissemination of the statements. (Much of the substance of those emails was redacted and withheld from the Special Counsel's Office pursuant to Law Firm-1's assertion of attorney-client privilege and attorney work product protections). Because the

defendant was aware of and/or reviewed these media statements, the Government may seek to offer them as evidence pursuant to Rule 404(b) or other provisions of law to establish that the defendant sought to conceal the Clinton Campaign's ties to the Russian Bank-1 allegations from the FBI and others.³

³ According to counsel for Law Firm-1, the attorneys at Law Firm-1 and Latham who participated in drafting and/or reviewing these statements were unaware at the time that the defendant had billed work on the Russian Bank-1 allegations to the Clinton Campaign.

Except, as laid out here, none of the Perkins Coie people involved in writing the statement knew how Sussmann had billed his time. And Durham hasn't found a reason to otherwise pierce the privilege claims that went into the drafting of the statement.

So that's probably not going to work to establish his continuing conspiracy.

The other event on which Durham might have hung a continuing conspiracy was that February 9 meeting. It involved updated work from Joffe, after all. And Durham claims Sussmann again deliberately hid who his client was rather than (as he now knows Sussmann did for tips from Joffe that had nothing to do with Donald Trump) just shared a tip anonymously.

But instead of rolling out what Sussmann presented in that February 9 meeting five years and two days ago in a conspiracy indictment, Durham instead packaged it up in a filing pertaining to a potential conflict. This February 9 meeting, it appears, won't be the hook on which Durham gets to charge a conspiracy.

I'm not saying that Durham *won't* be able to pull together his grand conspiracy. He might next point to testimony in Congress (possibly Glenn

Simpson's) to claim that there was some grand cover-up of what he imagines was an attempt to smear Donald Trump. Except, as this filing admits, Sussmann's sworn testimony to the House Intelligence Committee shows that when asked – by future coup investigative subject Kash Patel – Sussmann testified consistently with sharing this information on behalf of Joffe, which is what Sussmann's currently operative story remains. Durham did suggest he thinks he can show Sussmann misled members of Congress because he claims it was, "knowingly and intentionally misleading insofar as it failed to disclose that the defendant billed work on the Russian Bank-1 allegations to the Clinton Campaign," except (as with the alleged lie more generally) that's not what he was asked about.

By all means, John Durham, make Kash Patel a witness at your trial. Give Sussmann an opportunity to ask how Kash came to learn of this meeting in the first place, to say nothing about whether Kash has recently been involved in efforts to overthrow the US government.

Whatever Durham hopes to use to sustain the claim of a continuing conspiracy, this filing seems to concede that the lies Durham claims Sussmann told in that meeting that took place five years and a few days ago will not be charged.

Ask not for whom the statute of limitations toll, John Durham. They toll for you.