

INDICT FIRST INTERVIEW LATER: DURHAM'S BELATED EFFORTS TO SUBSTANTIATE HIS CLAIMS THAT MICHAEL SUSSMANN COORDINATED WITH HILLARY

Among the accusations John Durham made when he charged Michael Sussmann with a single false statement count in September 2021 was that Sussmann had coordinated with the Hillary Campaign.

SUSSMANN, [Rodney Joffe], and [Perkins Coie] had coordinated, and were continuing to coordinate, with representatives and agents of the Clinton Campaign with regard to the data and written materials that SUSSMANN gave to the FBI and the media.

Coordinating with a client is not a crime. Working with a client to share suspicious data with the FBI is also not a crime. Indeed, Sussmann spent a great deal of his time in 2016 doing just that after the Hillary Campaign and several other Democratic Party committees were hacked by Russia.

The allegation that Sussmann “coordinated” with a client is included as one of three materiality claims regarding Sussmann’s alleged lie. To prove Sussmann is guilty, Durham has to prove not just that Sussmann made a willfully false claim to James Baker in a meeting on September 19, 2016, but that it mattered. One way Durham claims he will do that is, first, by proving *that* this effort was coordinated with

the Hillary campaign and then establishing that,

it was relevant to the FBI whether the conveyor of these allegations (SUSSMANN) was providing them as an ordinary citizen merely passing along information, or whether he was instead doing so as a paid advocate for clients with a political or business agenda. Had SUSSMANN truthfully disclosed that he was representing specific clients, it might have prompted the FBI General Counsel to ask SUSSMANN for the identity of such clients, which in turn might have prompted further questions.

One of the first things Sussmann did after being charged was ask – first, informally, and then, via a Motion for a Bill of Particulars – *with whom* on the Hillary Campaign he coordinated.

Fifth and finally, the Indictment conceals the actual identity of certain individuals and entities alleged to have witnessed and otherwise been involved in the conduct giving rise to the false statement charge, including the names of the agents and representatives of the campaign on whose behalf Mr. Sussmann was allegedly working. Id. ¶ 6. The entire animating theory of the Special Counsel’s Indictment is that, in meeting with the FBI and the other government agency, Mr. Sussmann was secretly working on behalf of Hillary Clinton’s 2016 campaign for president (the “Clinton Campaign”). The Special Counsel should be required to identify with which agents and representatives of the Clinton Campaign Mr. Sussmann was allegedly working so that Mr. Sussmann can adequately prepare his defense.

Counsel for Mr. Sussmann previously asked the Special Counsel to provide the detail and particulars identified above, but the Special Counsel declined to do

so. The Special Counsel should not be permitted, on the one hand, to allege that Mr. Sussmann was working on behalf of the Clinton Campaign, but on the other hand, decline to identify the specific individuals with whom he was purportedly working.

7 The Special Counsel has identified virtually all of the other anonymous individuals and entities referred to in the Indictment (except, as noted above, the Agency-2 employees).

That motion was filed on October 6. In a response filed on October 20, Durham refused to provide the names of those on the Clinton Campaign with whom Sussmann coordinated, but instead pointed to these paragraphs of the indictment, only one of which even names people from the campaign, and none of which describes Sussmann speaking directly to anyone from the campaign.

d. In or around the same time period [mid-August 2016], **SUSSMANN**, [Marc Elias], and personnel from [Fusion GPS] began exchanging emails with the subject line, "Connecting you all by email."

[snip]

g. Later in or about August 2016, [Rodney Joffe] exchanged emails with personnel from [Fusion GPS].

[snip]

e. On or about September 15, 2016, [Elias] exchanged emails with the Clinton Campaign's campaign manager, communications director, and foreign policy advisor concerning the [Alfa Bank] allegations that **SUSSMANN** had recently shared with [Franklin Foer]. [Elias] billed his time for this correspondence to the Clinton Campaign with the billing entry, "email

correspondence with [Jake Sullivan], [name of campaign manager], [name of communications director] **re: [Alfa Bank] Article.**" [emphasis added by Durham]

On October 20, over a month after indicting Sussmann, Durham was still refusing to name *any* Clinton Campaign personnel with whom Sussmann had coordinated directly.

That's why this detail in Sussmann's response to Durham's conflict motion matters so much:

[T]he Special Counsel has alleged that Mr. Sussmann met with the FBI on behalf of the Clinton Campaign, but it was not until November 2021—two months after Mr. Sussmann was indicted—that the Special Counsel bothered to interview any individual who worked full-time for that Campaign to determine if that allegation was true.

When Durham refused to answer Sussmann's requests, in September and October, to tell him with whom on the Clinton campaign he had been coordinating, Durham *still had never interviewed a single Clinton staffer*. He first did so in November.

The discovery update submitted on January 25 reveals that that single Clinton staffer remained the sole Clinton staffer Durham had interviewed to that date.

Yesterday, Durham added a securities fraud prosecutor to his team, suggesting he's going to try to change the theory of his case (I suspect, by suggesting Sussmann's billing practices show he was trying to hide Rodney Joffe's role).

But as I'll lay out, there's tons of instances of this, where Durham demonstrably failed to do basic investigative work before charging Sussmann five years after a claimed lie.

Update: Sussmann has filed his motion to dismiss. It is entirely a challenge to the

materiality of his alleged lie. Motions to dismiss rarely work. He's got good lawyers and he's making a solid argument. Of note, he points out that Durham has never claimed that the tip wasn't true or that Sussmann should have known it was not.