

IN HIS HOUSE JUDICIARY COMMITTEE TESTIMONY, JOHN DURHAM CONFESSED THAT MICHAEL HOROWITZ WAS RIGHT

Given all the discussion of Trump ordering prosecutors to go after his political enemies, I want to go back – way back – to comment on something John Durham said at his House Judiciary Committee testimony in June.

Adam Schiff observed that Durham violated DOJ policy when, in December 2019, he publicly disagreed with the conclusion DOJ's Inspector General had made in the Carter Page investigation.

Schiff: Mr. Durham, DOJ policy provides that you don't speak about a pending investigation, and yet you did, didn't you?

Durham: Um, I'm not exactly sure what–

Schiff: When the Inspector General issued a report saying that the investigation was properly predicated, you spoke out, in violation of Department of Justice, Department of Justice policy, to criticize the Inspector General's conclusions, didn't you?

Durham: I issued a public statement. I didn't do it anonymously, I didn't do it through third persons, there were –

Schiff: Nonetheless, you violated Department policy by issuing a statement while your investigation was ongoing, didn't you?

Durham: I don't know that. If I did, then I did. But I was not aware that I was violating some policy.

Schiff: And you also sought to get the Inspector General to change his conclusion, did you not, when he was concluding that the investigation was properly predicated. Did you privately seek to intervene to change that conclusion?

Durham: This is outside the scope of the report but if you want to go there, we asked the Inspector General to take a look at the intelligence that's included in the classified appendix that you looked at, and said that that ought to affect portions of his report.

The classified appendix, recall, pertained to what Durham called the "Clinton Plan," details Dutch intelligence found in purportedly hacked materials at GRU. That included documents purportedly stolen from a top Hillary Foreign Policy Advisor, on which a Russian intelligence product based a claim that,

Hillary Clinton had approved a campaign plan to stir up a scandal against U.S. Presidential candidate Donald Trump by tying him to Putin and the Russians' hacking of the Democratic National Committee.

From that allegation, Durham appears to have simply made up out of thin air a claim that Hillary planned to *fabricate* things to tie Trump to Russia, rather than just point to him begging Russia to hack the United States.

First, the Clinton Plan intelligence itself and on its face arguably suggested that private actors affiliated with the Clinton campaign were seeking in 2016 to promote a false or exaggerated narrative to the public and

to U.S. government agencies about Trump's possible ties to Russia. [my emphasis]

In another exchange with Schiff at the hearing, Durham professed to be utterly ignorant of all the things confirmed in the Mueller investigation that provided abundant reason to tie Trump to Russia. There was no need to invent anything.

In any case, what Durham revealed in his testimony is that he shared this information with Michael Horowitz, expecting it would change his mind about the predication of Crossfire Hurricane.

That's not all that surprising. After all, Durham described as the first mandate of his investigation to determine whether any personnel at the FBI violated federal law by not fully considering potential Russian disinformation before opening an investigation into Trump.

[D]id the FBI properly consider other highly significant intelligence it received at virtually the same time as that used to predicate Crossfire Hurricane, but which related not to the Trump campaign, but rather to a purported Clinton campaign plan "to vilify Donald Trump by stirring up a scandal claiming interference by Russian security services," which might have shed light on some of the Russia information the FBI was receiving from third parties, including the Steele Dossier, the Alfa Bank allegations and confidential human source ("CHS") reporting? If not, were any provable federal crimes committed in failing to do so?

To put it bluntly, Bill Barr told John Durham to figure out whether he could charge Peter Strzok (and presumably, Jim Comey and Bill Priestap)

for not letting a Russian intelligence report dictate American investigative decisions. And either in an attempt to preempt Horowitz' conclusion that the investigation was legally predicated or in an attempt to stave off any determination on criminality, Durham pitched him on this theory before publicly attacking his conclusion.

And Durham did so even though – accepting all his conspiracy theories about inventing false claims about Trump were true – that theory never made sense. As Phil Bump (one, two) and Dan Friedman showed when the report came out, Hillary's concerns about Trump *couldn't* have been the cause of the investigation into Trump. By the time (a Russian intelligence product claimed) that Hillary approved a plan to tie Trump to Russia on July 26, 2016, the events that would lead FBI to open an investigation were already in place. Here's Friedman:

This isn't just false. It would require time travel. Durham himself *confirms* that the FBI launched its investigation into Trump and Russia based on events that occurred months prior to Clinton's alleged July 26 approval of the plan. In April 2016, George Papadopoulos, a foreign policy adviser to the Trump campaign, met with a professor with Kremlin ties, who informed him that Russia "had obtained 'dirt' on...Clinton in the form of thousands of emails," as Robert Mueller's final report noted. A week later, according to Mueller, Papadopoulos "suggested to a representative of a foreign government that the Trump Campaign had received indications from the Russian government that it could assist the Campaign through the anonymous release" of damaging material. When hacked Democratic emails were indeed published—by WikiLeaks on July 22—this foreign diplomat alerted US officials

about what Papadopoulos had said. The FBI quickly launched an official investigation into the Trump campaign's Russia ties in response to that tip, Durham notes, while arguing they should have begun only a "preliminary investigation."

It was the same Russian hack, not Hillary Clinton, that drove media attention, even before the documents were leaked to the public.

There's another problem with telling Horowitz that his Clinton conspiracy theory should have changed Horowitz' conclusions. At the earliest, analysts and Priestap only became aware of the intelligence (though probably without Durham's spin on it) on September 2, well after the opening of Crossfire Hurricane.

When interviewed by the Office, Auten recalled that on September 2, 2016 – approximately ten days after Headquarters Analyst-2's email – the official responsible for overseeing the Fusion Cell briefed Auten, Moffa, and other FBI personnel at FBI Headquarters regarding the Clinton Plan intelligence. 411 Auten did not recall any FBI "operational" personnel (i.e., Crossfire Hurricane Agents) being present at the meeting. 412 The official verbally briefed the individuals regarding information that the CIA planned to send to the FBI in a written investigative referral, including the Clinton Plan intelligence information. 413

[snip]

Separate and apart from this meeting, FBI records reflect that by no later than that same date (September 2, 2016), then-FBI Assistant Director for Counterintelligence Bill Priestap was also aware of the specifics of the

Clinton Plan intelligence as evidenced by his hand-written notes from an early morning meeting with Moffa, DAD Dina Corsi and Acting AD for Cyber Eric Sporre. 415

And despite looking for four years, Durham never confirmed that CIA's formal referral memo got shared with Peter Strzok, to whom it was addressed.

In spite of never acquiring such proof, not even after four years of searching, recently confirmed Connecticut Supreme Court Justice Nora Dannehy has confirmed that Barr pushed Durham to release an interim report on those claims. NYT described that plan this way:

By summer 2020, with Election Day approaching, Mr. Barr pressed Mr. Durham to draft a potential interim report centered on the Clinton campaign and F.B.I. gullibility or willful blindness.

On Sept. 10, 2020, Ms. Dannehy discovered that other members of the team had written a draft report that Mr. Durham had not told her about, according to people briefed on their ensuing argument.

Ms. Dannehy erupted, according to people familiar with the matter. She told Mr. Durham that no report should be issued before the investigation was complete and especially not just before an election – and denounced the draft for taking disputed information at face value. She sent colleagues a memo detailing those concerns and resigned.

By that point, Durham hadn't yet interviewed Priestap and others who might inform him of what they actually learned.

From the start, Durham was pursuing this conspiracy theory. He tried to forestall the

damning but inconvenient conclusions of the Horowitz report to sustain his conspiracy theory. And he tried to interfere with the 2020 election with his physics-defying conspiracy theory.

Bill Barr didn't just order John Durham to investigate Hillary Clinton and all the FBI agents who had deigned to investigate Trump's ties to Russia. He did so based on a conspiracy theory rooted in Russian intelligence.