

KONSTANTIN KILIMNIK'S PRISM-ACCESSIBLE COMMUNICATIONS

I doubt I'll be done working my way through the new Paul Manafort and Rick Gates charges before such analysis would be overtaken by events (like the on-again flip of Gates). For now, Quinta Jurecic's analysis is quite good.

Before I start, though, I want to go back and look at a detail from the Alex van der Zwaan plea materials (information, plea, statement of offense).

Best as we understand, former Skadden associate van der Zwaan pled guilty, with no forward cooperation requirement, for having hidden some communications he had with Rick Gates, Greg Craig (who must be the senior partner described), and Konstantin Kilimnik (believed to be Person A) in September 2016 about the aftermath of a report Skadden had done on the prosecution of Yulia Tymoshenko.

In or about September 2016, VAN DER ZWAAN spoke with both Gates and Person A regarding the Report. In early September 2016, Gates called VAN DER ZWAAN and told him to contact Person A. After the call, Gates sent VAN DER ZWAAN documents including a preliminary criminal complaint in Ukraine via an electronic application called Viber. VAN DER ZWAAN then called Person A and discussed in Russian that formal criminal charges might be brought against a former Ukrainian Minister of Justice, Law Firm A, and Manafort. VAN DER ZWAAN recorded the call. VAN DER ZWAAN then called the senior partner on the Report at Law Firm A and partially recorded that call. Finally, VAN DER ZWAAN called Gates and recorded the call. VAN DER ZWAAN also took notes of

the calls.

Prior to the November 3, 2017, interview, VAN DER ZWAAN did not produce to Law Firm A and deleted and otherwise did not produce emails he possessed that he understood had been requested by either the Special Counsel's Office or Law Firm A, or both, including an email in Russian dated September 12, 2016 in which Person A asked VAN DER ZWAAN to contact Person A and to use an encrypted application.

One thing Van der Zwaan would have hidden was that he communicated with Gates after Paul Manafort had left the campaign, September 2016, as the Trump campaign was trying to clean up their taint from Manafort's Ukraine stench.

Given the details in the information, it appears that in his November 3, 2017 interview, after he lied about when he had most recently talked with Kilimnik and Gates, he was asked about the email he didn't turn over to Skadden and the government.

During the November 3, 2017, interview, VAN DER ZWAAN knowingly and intentionally falsely stated the following:

- a. his last communication with Gates was in mid-August 2016, which consisted of an innocuous text message;
- b. his last communication with a longtime business associate of Manafort and Gates in Ukraine (Person A) was in 2014, when he talked with Person A about Person A's family; and
- c. he did not know why Law Firm A had not produced to the Special Counsel's Office a September 2016 e-mail between him and Person A.

This seems to suggest that before the end of Van

der Zwaan's first interview, they already confronted him with the fact that he was lying.

But that wasn't his only interview. Van der Zwaan had a second interview (where he apparently added to his lies) on December 1. (NYCSouthpaw made this observation.)

In consideration of your client's guilty plea to the above offense, your client will not be further prosecuted criminally by this Office for the conduct set forth in the attached Statement of the Office, for any other false statements made by him to the Office on November 3 and December 1, 2017, any destruction, deletion, and withholding of documents and evidence in connection with requests by this Office or his law firm, and any violations of the Foreign Agent Registration Act or other law arising from the preparation and/or roll out of the Tymoshenko report for the Ukraine Ministry of Justice.

I'll probably return to the second interview.

For now, what I'm primarily interested in is that on November 3, 2017, the government had the email between Van der Zwaan and Kilimnik where the latter told the former to move their conversation to an (unnamed) encrypted app, and by the end of the interview confronted him with that fact.

I previously noted (with surprise) that Kilimnik used Gmail for his November 2017 correspondence with Paul Manafort helping to edit an op-ed to push back against his charges. If Manafort didn't already know the Feds had obtained a bunch of Gmail (and – as yesterday's superseding indictment makes clear, his own firm's email), a sealed December 8 declaration that was unsealed on January 3 would have made that clear.

It continues to surprise me that these thugs never thought about how accessible PRISM-based communications were to the Feds, unless Kilimnik has reason to be happy that his American correspondents will be seen by the FBI.

I guess it's not just Hope Hicks who underestimates how accessible email is to criminal investigators.