

JOHN DURHAM AND THE FIRST FIGHT OVER A DOCTORED MEMCON OF TRUMP'S MEETINGS WITH RUSSIA

A year ago, John Durham was investigating who leaked the fact that Mike Flynn had secretly worked with Russia to undermine sanctions that served, in part, to punish Russia for helping Trump get elected. Mike Flynn and KT McFarland had been claiming that David Ignatius forced them to lie about conversations that they made active efforts to cover-up even when they were secret, an obviously bullshit claim, but one that DOJ adopted as credible nevertheless.

The problem with that prong of the investigation (even beyond the fact that Flynn and McFarland were already covering Flynn's calls before they had been made public) – as I pointed out when it was reported – that the most likely sources of the news that Flynn had been having secret conversations with the Ambassador were several groups that could leak this information legally: Original Classification Authorities, outgoing or not, or members of Congress. For the record, Peter Strzok and Lisa Page appear to have assumed the leak came from Congress. But if James Clapper or Jim Comey or another OCA leaked it as part of a counterintelligence inquiry into why Flynn did that, it would be entirely legal. All the more so given that Trump was not yet in office.

Given the new details we have on the Durham investigation – including yet more proof he and his investigators grossly misunderstand counterintelligence – I'd like to return to another leak: that Trump shared highly classified Israeli intelligence with Sergey Lavrov in their meeting on May 10, 2017. Given recent events, I think there is a decent chance

that Durham investigated and may still be investigating this one, too.

As I noted, among the last Mueller 302s released to BuzzFeed were three or four that dealt with this leak, a coincidence in timing that is among the reasons I suspect Durham may have reviewed these 302s. They first described how after a meeting around the time Jim Comey was fired, an FBI counterintelligence detailee to the White House got called into Acting Homeland Security Advisor John Daly's office after a meeting and grilled in a way that the detailee seemed to find inappropriate. Among other things, Daly asked the detailee what he thought of Trump's decision to fire Comey.

A second interview with the detailee conducted on the same day appears to describe the aftermath of the meeting on May 10, 2017, at which Trump shared this intelligence. It appears the detailee read the MemCom of the meeting and realized what Trump had done. He appears to have first alerted his boss of what happened (it's unclear whether that boss was at the White House or FBI), and then escalated it. He tried to tell Tom Bossert, but instead told Daly, which led to the grilling by Daly laid out in the first interview. After that meeting, the detailee told Bossert what happened. The detailee's notice to Bossert led him to take measures to minimize the damage, as described by the original report on the meeting.

Senior White House officials appeared to recognize quickly that Trump had overstepped and moved to contain the potential fallout. Thomas P. Bossert, assistant to the president for homeland security and counterterrorism, placed calls to the directors of the CIA and the NSA, the services most directly involved in the intelligence-sharing arrangement with the partner.

One of Bossert's subordinates also called for the problematic portion of Trump's discussion to be stricken from

internal memos and for the full transcript to be limited to a small circle of recipients, efforts to prevent sensitive details from being disseminated further or leaked.

Over two years before similar events would lead to impeachment, Trump's aides were trying to doctor the record of his calls with Russia to hide how he had damaged our allies.

According to the 302, Bossert applauded the detailee for alerting him of the problem. "Thank god you came to us."

But then after the story leaked to the WaPo and NYT, the detailee was summoned to Bossert's office, only to be grilled by both Bossert and Daly. After the detailee was grilled for 20-30 minutes, someone else was, as well. Almost immediately after his grilling, the detailee saw HR McMaster give a press conference at which, per the detailee, McMaster "gave a misleading account of what happened during TRUMP's meeting with LAVROV." Like Flynn had earlier that year, McMaster was lying publicly about something the Russians knew was a lie.

After he was grilled, the detailee appears to have informed FBI chain of command, including Bill Priestap.

Shortly thereafter, it appears that the detailee learned from Bossert that he was not getting a job he expected. The detailee asked when that decision was made, Bossert appears to have lied either about the job offer or about the decision to alter the MemCon in real time.

Not long after, the detailee left the NSC. Before he did, he put copies of emails recording all this as well as the partially redacted MemCon he had seen in a safe. The 302 suggests that the White House fired all the other people who had seen the MemCon.

Among the other 302s released last week include a record of FBI obtaining copies of Bill

Priestap's discussions with Ezra Cohen-Watnick and what appears to be the detailee at the time, which almost certainly includes notes relaying the events surrounding the MemCon. There's also an almost entirely redacted 302 from Ted Gistaro, which was at least his second interview. Gistaro was Trump's briefer both at Mar-a-Lago during the Transition period when Flynn was secretly calling Sergey Kislyak and probably still during the May 2017 period. Another 302 might be the FBI picking up the documents that the detailee had left behind.

All that is to say that among the very last documents that Bill Barr's DOJ cleared for public release deal with a very complex set of problems central to questions of Trump's relationship with Russia during the days that FBI would expand its counterintelligence investigation to incorporate Trump, as well. There's the matter of the leak, which has never been charged. The original WaPo, which appears to have relied on more sources, cites both current and former officials, including at least one who remained close to Trump officials.

President Trump revealed highly classified information to the Russian foreign minister and ambassador in a White House meeting last week, according to current and former U.S. officials, who said Trump's disclosures jeopardized a critical source of intelligence on the Islamic State.

[snip]

"It is all kind of shocking," said a former senior U.S. official who is close to current administration officials.

"Trump seems to be very reckless and doesn't grasp the gravity of the things he's dealing with, especially when it comes to intelligence and national security. And it's all clouded because of this problem he has with Russia."

[snip]

“Russia could identify our sources or techniques,” the senior U.S. official said.

A former intelligence official who handled high-level intelligence on Russia said that given the clues Trump provided, “I don’t think that it would be that hard [for Russian spy services] to figure this out.”

Given that Bossert called NSA and CIA to alert them, there would be many candidates for this, including the OCAs for the intelligence and the partnership with our ally. Indeed, the journalists on the original story cover CIA and the Pentagon, not FBI. But the grilling of the detailee suggests that the White House suspected him.

Then there’s the matter of what the FBI should do with this information – and it seems fairly clear that the detailee was one if not the primary source of the information for the people overseeing the Crossfire Hurricane investigation. It is absolutely within Trump’s right to give our enemies classified information. It also undoubtedly damages the US (as the Trump-friendly source[s] for the story seem to agree).

If Andrew McCabe included this exchange among the things he considered before opening a counterintelligence investigation into Trump, I can see how Durham – who has exhibited over and over that he doesn’t understand counterintelligence – would deem it inappropriate, particularly if egged on by Bill Barr. If an FBI counterintelligence detailee at the White House had a role in its dissemination, all the more so.

But I can also see how, from a counterintelligence investigation, McMaster’s lies about this (on behalf of Trump) would raise concerns about Trump’s compromise. As with Flynn before him, the Russians would know that Trump

was lying about his coziness with Russia.

Barr has set Durham up such that he can issue a report that the Attorney General – whoever it is – will be expected to make public (though if the report violates the rules that got Jim Comey fired, there would be a good excuse not to). If this is part of Durham's investigation, Barr may be trying to suggest that the counterintelligence investigation into Trump was wholly inappropriate.

There's a problem with that, of course. Trump had already probably committed a crime in working on a pardon for Julian Assange, well before he was even elected. That is, neither the leak to Ignatius (by whomever) nor the leak about the Russian meeting (by whomever) can be said to have inappropriately kicked off the counterintelligence investigation into Trump. His actions in October 2016 had already done that.

But, even if Durham showed any inkling of understanding of the counterintelligence matters he is investigating, there's no reason to believe he would know that there are seemingly ongoing matters that implicate Trump even before he was elected.

And if this is Barr's play, of course, it may be undercut once Trump leaves office. Already, HR McMaster has, years later, criticized Trump's efforts to coddle Russia. If asked to do so under oath in the next Congress, he may have far more to say about the damage Trump did to the country because he was so insecure about Russia's help in the election.

Update: Bill Leonard, the former head of IS00 (and as such the guy who was in charge of the entire US classification system during the W administration), has corrected me on my assertion that Trump could legally share this information. He could under US law, but doing so violated international law. He explains:

Based upon reporting, the

information Trump compromised was provided to the U.S. by an intelligence partner pursuant to a bilateral agreement. Under international law, this bilateral executive agreement obligated the U.S. to protect the information. Within the U.S., we have elected to utilize the classification system to protect such shared information.

While as President, Trump is free to abrogate the bilateral agreement, there is no indication that this was his intent. Thus, pursuant to International law, he was obligated to protect it which he clearly failed to do.

Reverse the situation. Foreign leaders do not have the right to unilaterally disclose U.S. classified information that has been shared with their country pursuant to a bilateral agreement. The same restrictions pertain to a U.S. president.

Classification is but one of the many authorities this president has abused. It needs to be called out as such.