

HOT AND COLD RUNNING JOHN DURHAM CONSPIRACY CONSPIRACIES

I'd like to congratulate Assistant [Durham] Special Counsel Michael Keilty. In what is close to a first from Durham's team, he submitted a filing without obvious glaring errors (like the Criminal Information for Kevin Clinesmith that revealed the Durham team didn't even know for what crime Carter Page had been investigated or their persistent cut-and-paste errors).

The filing is a motion for miscellaneous relief, asking Judge Anthony Trenga to require Igor Danchenko to waive any conflict he might have because his new defense attorneys, Danny Onorato and Stuart Sears, are at the same firm as (according to Josh Gerstein) Robert Trout, who is representing, "the 2016 "Hillary for America" presidential campaign (the "Clinton Campaign"), as well as multiple former employees of that campaign, in matters before the Special Counsel."

The filing is entirely reasonable.

It simply asks that Judge Trenga inquire into the conflict presented by partners from the same firm representing multiple investigative Durham subjects and ensure that if Danchenko chooses to continue with Onorato and Sears as his attorneys, he does so waiving any potential conflict down the road.

Notwithstanding the potential conflicts involved, the government believes that this potential conflict is waivable, should the defendant so choose, assuming a knowing, intelligent and voluntary waiver is executed.

Based on the foregoing, the government respectfully requests that Court inquire

into the conflict issues set forth herein.

It's how Keilty gets there – as well as the Durham's team uneven treatment of the connectivity of their investigation – that I find interesting. Remember: The Clinton campaign is referenced in Michael Sussmann's indictment, though Durham already had to confess that the indictment overstated Sussmann's contacts with members of the campaign.

But Durham's effort to implicate the Hillary campaign in Danchenko's actions is more of a stretch, going through Charles Dolan and entailing treating Hillary as a more dangerous adversary than Russian intelligence.

Again, the Paul Manafort report may be the most provably correct report in the entire dossier. Claiming (correctly) that Manafort was ousted not just because of his corrupt ties in Ukraine – a claim that Republicans have spent five years claiming was just a propaganda campaign launched by Democrats – but also because others wanted him out actually undercuts the story that has always claimed to be the most useful to Democrats. The report on Embassy staff changes was, Durham suggests, based directly off quotes Dolan got from the staffer in question; indeed, Durham points to the accuracy of those quotations to prove the report came from Dolan. There was a flourish added – that the person in question was untainted by involvement with the Russian election operation – which Danchenko disclaims, but there's no evidence the flourish comes from Dolan (or even Danchenko – it's the kind of thing Steele seems to have added). In other words, assuming Dolan was the source for the things Durham claims he was, Dolan seems to have been the most accurate source for the dossier.

There was an unbelievable amount of shit in the dossier and it would be useful if there were an accounting of how that happened (which Durham is not doing here). The Danchenko-to-Steele reporting process (which, contrary to Durham's claims, Danchenko candidly laid out in his first interviews with the FBI) was one source of the problems with the dossier. But at least as much of the shit seems to come from Danchenko's sources, several of whom had ties to Russian intelligence and who may have been deliberately injecting disinformation into the process. Instead of focusing on that – on Russians who may have been deliberately feeding lies into the process – Durham instead focuses on Dolan, not because Durham claims he wittingly shared bad information to harm Trump (his one lie served to boost an accurate story that went against the grain of the Democrats' preferred narrative), but because as a Democrat he – not Russian spies – is being treated by Durham as an adversary.

Plus, at least as alleged in the Danchenko indictment, there's no firsthand Hillary witness necessary to Danchenko's conviction. The witnesses to Danchenko's five alleged lies are all FBI personnel. The evidence against Danchenko regarding the four claimed lies about Sergei Millian involve Danchenko's own emails and – !!! – the hearsay Twitter account of someone once and possibly still suspected of being a Russian agent. Dolan's testimony about what he and Danchenko discussed six years ago at the Moscow Ritz will undoubtedly be of interest to the jury and still more interest to the frothy right, but not only is that not necessary to prove the single count claiming Danchenko lied about Dolan's role in all this, it falls short of proof that Danchenko didn't go from that lunch to speak to personnel at the Ritz himself.

Even though no one with a paid gig on the Hillary campaign is needed (or even, at least as charged, conceivably useful) as a witness against Danchenko, here's how Keilty lays out the potential conflict.

As discussed above, the Clinton Campaign, through Law Firm-1 and U.S. Investigative Firm-1, commissioned and financed the Company Reports in an attempt to gather and disseminate derogatory information about Donald Trump. To that end, U.K. Person-1 relied primarily on the defendant to collect the information that ultimately formed the core of the allegations contained in the Company Reports. The Indictment alleges that certain statements that the defendant made to the FBI about information contained in the Company Reports, were knowingly and intentionally false. Thus, the interests of the Clinton Campaign and the defendant could potentially diverge in connection with any plea discussions, pre-trial proceedings, hearings, trial, and sentencing proceedings. Areas of inquiry that may become relevant to defense counsel's representation of the defendant, and which also may become issues at trial or sentencing, include topics such as (1) the Clinton Campaign's knowledge or lack of knowledge concerning the veracity of information in the Company Reports sourced by the defendant, (2) the Clinton Campaign's awareness or lack of awareness of the defendant's collection methods and sub-sources, (3) meetings or communications between and among the Clinton Campaign, U.S. Investigative Firm-1, and/or U.K. Person-1 regarding or involving the defendant, (4) the defendant's knowledge or lack of knowledge regarding the Clinton Campaign's role in and activities surrounding the Company Reports, and (5)

the extent to which the Clinton Campaign and/or its representatives directed, solicited, or controlled the defendant's activities. On each of these issues, the interests of the Clinton Campaign and the defendant might diverge. For example, the Clinton Campaign and the defendant each might have an incentive to shift blame and/or responsibility to the other party for any allegedly false information that was contained within the Company Reports and/or provided to the FBI. Moreover, it is possible that one of these parties might also seek to advance claims that they were harmed or defrauded by the other's actions, statements, or representations. In addition, in the event that one or more former representatives of the Clinton Campaign (who are represented by defense counsel's firm) are called to testify at any trial or other court proceeding, the defendant and any such witness would be represented by the same law firm, resulting in a potential conflict. Finally, it is also likely that defense counsel's firm already has obtained privileged information from the Clinton Campaign regarding matters involving or relating to the defendant, the Company Reports, and the conduct alleged in the Indictment.

Some of this is the kind of fevered conspiracy theorizing that has fueled Durham for 950 days so far and sustains the Durham presumption that Hillary Clinton is a greater adversary to the United States than Russian intelligence operatives. None of it is contained within the existing indictment. It doesn't envision as a possibility that this was all a clusterfuck better suited to a child's game of telephone than the conspiracy Durham needs it to be. It also seems to forget that even if Danchenko lied to Christopher Steele, that would not amount to fraud on the Hillary campaign.

But it is a road map to what Durham is planning: an attempt to sic various participants in the 2016 efforts against each other such that they start entering cooperation agreements in which they spin up the grand conspiracy Durham is certain exists. It's certainly sound prosecutorial strategy for Keilty to alert Judge Trenga that down the road they seek to pit all the subjects of their investigation against each other such that down the road, people who have never been alleged to have interacted with Danchenko personally might one day testify against him, all to support the claim that the Hillary campaign engaged in a conspiracy to defraud the FBI, DOJ, and DARPA funders.

But it raises questions about something that happened in the other active prosecution of the Durham investigation, Michael Sussmann's. Based on court filings and what was said at a December 8 hearing in the Sussmann case, Durham has the following evidence about what Sussmann did or did not say:

- A report written by Durham investigators, probably in conjunction with a 2017 leak investigation, in which "Durham or someone on his team questioned James Baker's credibility."
- An October 3, 2018 Baker interview that conflicts with the indictment.
- An October 18, 2018 Baker interview that conflicts with the indictment.
- A July 15, 2019 Baker interview that conflicts with the indictment.
- The first Durham interview with Baker on this subject,

in June 2020, that conflicts with the indictment.

- Three more Durham interviews with Baker on this subject that align with the indictment.
- Grand jury testimony that must align with the indictment, but which had not been released to Sussmann's cleared lawyers before the December 8 hearing.
- Hearsay testimony from Bill Priestap that generally aligns with the indictment.
- Hearsay testimony from another FBI witness that differs in some respects from Priestap's and may or may not align with the indictment.
- Testimony from two CIA witnesses at a different meeting that may or may not align with the indictment.
- A report based on notes that have been destroyed, the final version of which differs somewhat from the indictment and may or may not align with it.
- A draft (there seems to be some disagreement whether it is a memorandum to the file or emails) of that CIA report that reflects

Sussmann mentioning a client – which therefore dramatically undermines the indictment.

- At least one 302 reflecting an interview with Baker about another aspect of the Durham investigation.

Had Mueller believed it ethical to charge someone with evidence this contradictory – and I'm really not exaggerating when I say this – he had the goods to charge Trump with agreeing to give Russia sanctions relief in exchange for an impossibly lucrative real estate deal in Moscow. He could have charged Paul Manafort with trading \$19 million in debt relief for the campaign strategy and help carving up Ukraine. He could have charged Roger Stone – and through him, Donald Trump – with entering into cooperation with the Russian hacking team before they spent September hacking Hillary's analytics, for a still unexplained purpose.

This list of conflicting evidence that Durham has is a testament to the recklessness with which he has decided to pursue his own feverish conspiracy theories. It doesn't mean he won't get there. He might! It means he's engaging in extraordinary conduct to get there.

It's the last bullet I find particularly interesting. In the December 8 hearing, AUSA Andrew DeFilippis explained, "We did a meeting w/Mr. Baker in which we did not touch on charged conduct. We did not produce to defense." That is, they're withholding at least one 302 of a Durham interview *in this investigation* with Baker. Judge Christopher Cooper responded that he, "won't disturb USG's view that this is not discoverable."

So on the one hand, Durham's prosecutors are arguing that a conspiracy not yet charged creates conflicts for an Igor Danchenko indictment that doesn't implicate any paid

members of the Hillary campaign. But on the other hand, they're arguing that the same investigation is sufficiently bracketed that they're not required to provide Sussmann the records of what exposure Baker himself may have that might persuade him to change his story.

Sussmann's attorney Sean Berkowitz observed that Baker had obviously changed his story. Durham's team explains that's because Baker refreshed his memory (though what we've seen of the contemporary records suggest there are two possible readings of them). But Sussmann could well argue that, because of criminal exposure himself, Baker changed his story to reflect what Durham wanted it to be.

As I have said, repeatedly, Durham *needs* Sussmann to have lied to have any hope of building this conspiracy case, and if he fails, each of the parts are far weaker.

And while claiming the conspiracy case he has not yet charged creates already existing conflicts, he's still going to withhold the evidence of the conspiracy he's trying to create.