

SIX INVESTIGATIVE FILES FROM THE MUELLER INVESTIGATION DURHAM MAY HAVE JUST COMMITTED TO PROVIDING MICHAEL SUSSMANN

As I noted in this thread, while John Durham and Michael Sussmann have battling motions *in limine* about whether Durham can introduce evidence of his own conspiracy theory about the Democrats packaging dirt against Donald Trump, Durham somehow forgot to file a motion *in limine* to prevent Sussmann from raising facts that show how reasonable it was to search for ties between Trump and Russia in 2016.

It'd be hard to see how he could do that anyway. After all, there's abundant evidence that *the reason* researchers and Democratic operatives alike focused their effort to understand the DNS anomaly in late July and thereafter is because of the things Trump said on July 27, 2016.

TRUMP: Why do I have to (ph) get involved with Putin? I have nothing to do with Putin. I've never spoken to him. I don't know anything about him other than he will respect me. He doesn't respect our president. And if it is Russia – which it's probably not, nobody knows who it is – but if it is Russia, it's really bad for a different reason, because it shows how little respect they have for our country, when they would hack into a major party and get everything. But it would be interesting to see – I will tell you this – **Russia, if you're listening, I hope you're able**

to find the 30,000 e-mails that are missing. I think you will probably be rewarded mightily by our press. Let's see if that happens. That'll be next. Yes, sir...

[snip]

TRUMP: Excuse me, listen. We wanted to; we were doing Miss Universe 4 or 5 years ago in Russia. It was a tremendous success. Very, very successful. And there were developers in **Russia that wanted to put a lot of money into developments in Russia. And they wanted us to do it. But it never worked out.**

Frankly I didn't want to do it for a couple of different reasons. But we had a major developer, particular, but numerous developers that wanted to develop property in Moscow and other places. But we decided not to do it.

[snip]

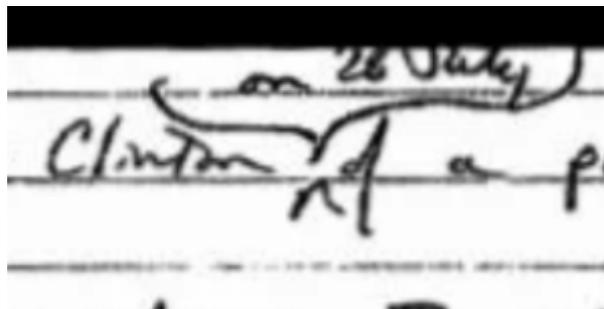
QUESTION: I would like to know if you became president, **would you recognize (inaudible) Crimea as Russian territory? And also if the U.S. would lift sanctions that are (inaudible)?**

TRUMP: **We'll be looking at that. Yeah, we'll be looking.** [my emphasis]

Particularly if Sussmann knew in real time – as the Hillary campaign did – that a renewed wave of attacks by Russia started immediately after Trump's comments, Sussmann can fairly explain that, in their attempt to understand the correlation suggesting causation between Trump's request and the attack, the anomalous DNS data seeming to suggest communication between Trump and Alfa Bank might explain the connection. In fact, the inference that Russia's back channel was Alfa Bank had some backing (LetterOne Board Member Richard Burt had been involved in reviewing Trump's first foreign policy speech),

though the actual back channels were Paul Manafort and Roger Stone. So it was reasonable to try to understand the possibility of that back channel and reasonable to share with the FBI data reflecting that possibility.

For his part, given the way that Durham has *always* obscured when in late July the effort to research Trump got started, he's likely to rely on a document – which may be dated July 26 or may be dated July 28, but which the Intelligence Community judged might be a fabrication in real time – claiming that Hillary had already decided to tie Trump and Russia together.



A photograph of a handwritten note on lined paper. The top portion of the page is blacked out. The visible text is written in cursive and includes the date 'on 26 July' and the name 'Clinton of a p'.

Given the timing of the increased effort to understand the Alfa Bank anomaly and the explicit references to Trump's July 27 comments, Sussmann must be permitted to show how Trump's July 27 comments were part of his state of mind when he went to the FBI and made his actions (and, indeed, the privilege claims Durham is now trying to pierce) reasonable.

Had Durham left well enough alone, that might be all Sussmann could ask to present at trial. But if Durham tries to rely on that sketchy intelligence report or if he wins his bid to present his full conspiracy theory, then it opens him up to far greater discovery obligations. They include the investigative files on the following people Mueller investigated:

Richard Burt: The Mueller Report describes that, after Vladimir Putin ordered Petr Aven to seek to establish a back channel with Trump after the election, Aven approached Richard Burt, with whom he served on the board of LetterOne, to attempt to reach out. But Burt had played a role in outreach to the Trump campaign long before

that, in an April 2016 Center for National Interest review of Trump's first foreign policy speech. Burt was also present at two CNI-hosted speeches, one in June and August, at which "the participants addressed U.S. relations with Russia, including how U.S. relations with NATO and European countries affected U.S. policy toward Russia." Indeed, according to Burt's interview report, *he* was the one focusing on NATO and Europe. Burt's publicly released interview report remains heavily redacted, including numerous redactions of material that was, in March 2020, still under investigation. Given that Durham wants to litigate whether it was realistic to think Trump might have a back channel through Richard Burt, Durham probably needs to provide the Burt-related materials to Sussmann.

Roger Stone: It is a fact that, on July 31, 2016 – during a period, starting at least by July 25, when he was actively seeking to optimize the files Russia stole from Hillary – Roger Stone had two conversations with Donald Trump and afterwards sent draft tweets promising a new peace deal with Putin for Trump to use in the coming days.

(U) On Sunday July 31, at 9:15 p.m., the day after speaking at length with Manafort, Stone called Gates.¹⁵⁵⁰ Ten minutes later, Stone had two phone calls with Trump that lasted over ten minutes.¹⁵⁵¹ Stone then emailed Jessica Macchia, one of Trump's assistants, eight draft tweets for Trump, under the subject line "Tweets Mr. Trump requested last night."¹⁵⁵² Many of the draft tweets attacked Clinton for her adversarial posture toward Russia and mentioned a new peace deal with Putin, such as "I want a new detente with Russia under Putin."¹⁵⁵³ (U) At 10:45 p.m. that same evening, Stone emailed Corsi again with the subject line "Call me MON[day]" and writing that "Malloch should see Assange."¹⁵⁵⁴ (U) The next morning,

August 1, Stone again spoke twice with Trump. 1555 Stone later informed Gates of these calls. 1556 According to an email that morning from Stone to Macchia, Trump had "asked [Stone] for some other things" that Stone said he was "writing now."1557

1551 (U) Records reviewed by the Committee showed a six minute call from Stone to Trump on July 31 at approximately 9:25 p.m. and a five-minute call from Stone to himself at approximately 9:36 p.m. See AT&T Toll records, Roger Stone/Drake Ventures (ATTSSCI00039). Evidence introduced at trial against Stone showed corresponding calls with Trump at those same times and for the same length of time, including a call from Trump at the number "-1" to Stone at 9:36 p.m. See United States v. Stone, Gov. Ex. 148; United States v. Stone, Gov. Ex. 164; Testimony of Michelle Taylor, United States v. Stone, pp. 348-349. This suggests that that Trump's phone would sometimes appear in another person's phone records as that person calling him or herself, or as a call with phone number "-1." A number of such calls appear in Stone's records and others, including records provided by Donald Trump Jr., during relevant time periods, but the Committee did not investigate those additional calls further.

1552 (U) Email, Stone to Macchia, July 31, 2016 (TRUMPORG_18_001307).

1553 (U) Ibid One draft tweet referenced the Clinton Foundation. Stone followed up about the tweets with Rhona Graff the following morning, August 1, to make sure Trump received them. Email, Stone to Graff, August 1, 2016 (TRUMPORG _18_001310).

1555 (U) AT&T toll records, Roger

Stone/Drake Ventures.

1556 (U) Text message, Stone to Gates, August 2, 2016 (United States v. Stone, Gov. Ex. 20) (“Spoke to Trump a cpl of times.”).

1557 (U) Email, Stone to Macchia, August 1, 2016 (TRUMPORG_l8_001315).

It is also a fact that while most of Trump’s aides said that Trump ad-libbed that “Are you listening” comment, Rick Gates testified that Stone was stating – before flip-flopping on the issue days later – that Russia may have the emails, implying that Stone could have been the source of that comment along with the scripted tweets. Indeed, from that April 2016 foreign policy speech, Stone was demanding that Gates allow him to have input on Trump’s foreign policy statements.

RG-RS1	4/23/2016	12:26:22 AM	Roger Stone	Rick Gates [REDACTED]	I cannot learn about a foreign policy speech from the media . This is personally embarrassing, I'm out . Good luck
RG-RS1	4/23/2016	12:27:59 AM	Rick Gates [REDACTED]	Roger Stone	I called Maggie to leak it. You gave me her number last night. Remember?
RG-RS1	4/23/2016	1:31:11 AM	Roger Stone	Rick Gates [REDACTED]	No detail on venue and no input into content-no follow thru with carefully selected reporters while PJM meets with reporters who have fucked us and are close to Corey - I can go on but why? I am having no impact. Won't be treated this way
RG-RS1	4/23/2016	2:19:41 AM	Roger Stone	Rick Gates [REDACTED]	Just blowing off steam - want bail out but damned pissed off-going to have a drink-talk in the morning-
RG-RS1	4/23/2016	2:26:46 AM	Rick Gates [REDACTED]	Roger Stone	Stay focused. We have a long way to go.

It is also a fact that by August 2018, the FBI had evidence that led them to suspect that Stone had learned of the Guccifer 2.0 persona before it went live on June 15, 2016. Given how centrally Durham has made the July 2016 start date of the research into the Alfa Bank anomalies, he may be on the hook for providing details showing that Stone already had a back channel by then. That’s all the more true if Durham wants to rely on that intelligence product focusing on Guccifer 2.0.

Paul Manafort, Konstantin Kilimnik, and Alex Van der Zwaan: With his motion *in limine*, Durham has formally noticed that he wants to litigate at trial whether it was fair for people acting on behalf of Hillary – to say nothing of researchers collaborating with DARPA and the FBI or a private citizen with an established record conducting infosec inquiries into threats to the

United States – to want to inquire into the following topics:

- Illegal financial relationships between Oligarchs close to Putin and those close to Trump
- Laundering of Russian-backed money through Cyprus
- The actions of those married to the children of Alfa Bank's founders
- Sanctions violations and FEC regulations implicated by Fancy Bear's ongoing attack on the election

Durham suggests the only reason someone would want to research such topics was unfounded animus directed at Trump. But the results of the Mueller inquiry – to say nothing of what the ongoing investigation confirming Konstanin Kilimnik did, in fact, share Trump's campaign strategy with Russian intelligence agencies – prove that all these concerns not only had merit, but proved to be absolutely correct.

At least one person close to Donald Trump, Manafort, *did* have illegal financial relationships with Oligarchs close to Putin: the Campaign Manager who got fired for such ties in the middle of this intensifying focus on the Alfa Bank anomalies. That person *did* launder the money he made from them through Cyprus. How that Campaign Manager – who was working for “free” – got paid remains a mystery, implicating FEC regulations. And some of the other actions implicating the Russian operation that FEC's General Counsel found reason to believe amounted to a campaign finance violations include:

- Trump's request, “Russia are you listening?”

- Illegal donations from Cambridge Analytica
- An in-kind donation for hacking Hillary
- Internet Research Agency donation of trolling to support Trump

While Democrats didn't block the much smaller violation tied to the dossier, Republicans have blocked Trump from any accountability for his likely campaign finance violations involved with accepting help from Russia.

Meanwhile, in the very same weeks when those Durham claims were involved in a malicious conspiracy targeting the children-in-laws of Alfa Bank's founders, German Khan's son-in-law, Alex Van der Zwaan, was taking action on Rick Gates' orders to cover up Manafort's ties to those Oligarchs. Van der Zwaan would, at first, lie to Mueller about the actions he took in response to Gates' orders starting on September 7, 2016, including a call to Kilimnik, whom Van der Zwaan understood to be a former Russian spy.

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.

If Durham wants to argue that it was unreasonable to inquire into whether German Khan's son-in-law might be involved in illicit doings with Oligarchs tied to Putin and people close to Trump, he needs to provide Sussmann the details of the cover-up that Van der Zwaan conducted with Kilimnik and Rick Gates just days before Sussmann's meeting with James Baker. He needs to allow Sussmann to show that evidence in DOJ's possession shows that not only was it a valid subject of inquiry, but precisely the thing April Lorenzen was concerned *might* be going on *was* going on, in real time.

Michael Cohen: With his untimely 404(b) notice, Durham informed Sussmann that he also wants to claim the dossier was part of the conspiracy he was trying to cover up by lying, even though he has provided no evidence that Sussmann knew Christopher Steele was sharing those reports with the FBI. By making it an issue, though, Durham also makes Michael Cohen's real secret communications with the Kremlin, which disinformation in the dossier seemed tailored to obscure, an issue. That's all the more true given that Trump's "Russia are you listening" comments also included statements that – Cohen has described recognizing in real time – were a lie that covered up that Trump was still chasing an impossibly lucrative real estate deal that involved a former GRU officer and one of two sanctioned banks when he claimed to have decided not to pursue one. This topic is all the more pertinent given that Trump Organization withheld the documents reflecting these secret back channel communications from Congress and Trump demonstrably lied to Mueller about the topic. If Durham wants to argue it was implausible to think Michael Cohen had back channel communications with the Kremlin, then he needs to give Sussmann all the evidence that not only was it not implausible, but it was fact.

I've seen no hint that Sussmann's attorneys want to turn Sussmann's trial into the trial of

Donald Trump's 2016 campaign that we never got. They seem content to argue that the alleged lie was not material and the evidence that Sussmann lied in the way Durham thinks he did is thin, if not inadmissible.

But Durham has chosen a different path. He has wildly expanded the scope of what kind of questions he think are material to this case. And because he has chosen that dramatically expanded path, he has made all of this evidence material under discovery obligations.

The evidence to prove that the suspicions Sussmann and others had in 2016 were not just justified, but turned out to be true, are now material to discovery. If Durham doesn't start turning over vast swaths of material about the ties of Trump's top associates with Russia to Sussmann, he risks dismissal for discovery violations.