

THE STAPLES RECEIPT AND FBI'S DESCRIPTION OF MICHAEL SUSSMANN SHARING A TIP FROM HILLARY

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Both sides in the Michael Sussmann case will give their closing arguments today. I'll try to watch the live tweets, but will be driving around Achill Island so likely will have little Internet access.

I have yet to see the jury instructions, which will dictate a few details of the closing arguments. Most important – as I have noted before – is whether Durham will have to prove the actual allegations in his indictment.

Mr. Sussmann proposes modifying the last sentence as follows, as indicated by underlining: Specifically, the Indictment alleges that, on or about September 19, 2016, Mr. Sussmann, did willfully and knowingly make a materially false, fictitious, and fraudulent statement or representation in a matter before the FBI, in violation of 18 U.S.C. § 1001(a)(2), namely, that Mr. Sussmann stated to the General Counsel of the FBI that he was not acting on behalf of any client in conveying particular allegations concerning Donald Trump, when, in fact, he was acting on behalf of specific clients, namely, Rodney

Joffe and the Clinton Campaign.⁵ The government objects to the defense's proposed modification since it will lead to confusion regarding charging in the conjunctive but only needing to prove in the disjunctive.

4 Authority: Indictment.

5 Authority: Indictment.

Durham's single witness is the only one who claims to have remembered this meeting, but he has had about six *different* memories of the meeting, and Sussmann made a really good case that Baker's evolving testimony (as well as that of several other witnesses) is an attempt to avoid legal jeopardy himself. Sussmann has shown a receipt that did not bill his \$28.00 taxi to Hillary, and I believe he affirmatively took the meeting time off his bill to Hillary before the election (though I need to check the records).

That leaves Durham with a September 13, 2016 \$12.99 receipt for two thumb drives and a Google map from his office to Staples to buy it.

BY MR. KEILTY: Q. Ms. Arsenault, what, generally, is this document?

A. This is an expense report we received from Perkins Coie.

Q. And can you walk the jury through the information in this document.

A. Sure. In the top left corner, the report name is "Purchase of flash drives" on September 13, 2016. The expense owner is Michael Sussmann. The submission date is September 22nd in 2016. If you go all the way down to the allocation summary, the allocations charged is 116514.0001, confidential, for \$58.56.

Q. Ms. Arsenault, in your review of records, have you seen that number under the allocations charged, the 116514.0001

number before?

A. I have. Q. Is that related to a certain client?

A. Yes.

Q. What client is that?

A. It's Hillary For America.

MR. KEILTY: Okay. Mr. Algor, can we next look at Government Exhibit 553.19 – I'm sorry, can you leave it there. (Pause) Can you go down to the next document in 380.

(Pause) Okay. And could you go down to the next document, please, in the same exhibit. Could you blow this up, please.

Q. Ms. Arsenault, what is this particular document?

A. This is the receipt for the expenses reflected in the previous two pages of the expense report.

Q. And was this receipt contained in the records the government obtained from Perkins Coie?

A. It was.

MR. KEILTY: And if you go about halfway down the document, Mr. – sorry, the receipt. Could you blow up the section where it says "PNY 2 Pack," Mr. Algor. Thank you.

Q. Ms. Arsenault, I think you might have said this, but where is this receipt from? A. Staples.

Q. And what does the blown-out part say?

A. "PNY 2 pack 16GB," as in gigabyte. And then there's a UPC code. And the cost was \$12.99.

MR. KEILTY: Okay. And moving out of that, can you just blow up the address

of the Staples.

Q. Okay. And what's the address?

A. 1250 H Street N.W., Suite 100,
Washington, D.C., 20005.

MR. KEILTY: Okay. And can we please pull
up Government Exhibit 553.19 in
evidence.

Q. Ms. Arsenault, what are we looking at
in Government Exhibit 553.19?

A. This is a disbursement report from
the billing records from Perkins Coie.

Q. Okay. And can you walk the jury
through this – the blown-out part of
this report.

A. The client assigned for this
disbursement is Hillary For America. The
matter is General Political Advice under
116514.0001. And the description is
"Sussmann, Michael A. – M. Sussmann,
purchase of new, single use flash drives
for secure sharing of files, 9/13/2016."

Q. Okay. And finally, Ms. Arsenault, I'm
going to show you what's been marked for
identification as Government Exhibit 63,
which will show up on your screen. Ms.
Arsenault, what is Government's Exhibit
63?

A. It's a Google map displaying the
directions between the office for
Perkins Coie to the address listed on
the Staples receipt.

Q. And did you create Government Exhibit
63?

A. I did.

Q. And how did you create Government
Exhibit 63?

A. I went on Google and I typed in both
addresses, and I printed the result.

MR. KEILTY: Your Honor, the government would move Exhibit 63 into evidence.

MR. BOSWORTH: No objection.

THE COURT: So moved.

MR. KEILTY: Mr. Algor, can you blow that up.

Q. Okay. And, Ms. Arsenault, on this map Perkins Coie is listed, is that correct, with the red dot?

A. Yes.

Q. And then there's a series of blue dots, which apparently lead to a blue bubble; is that correct?

A. Yes.

Q. And what is that blue bubble? What address is that?

A. The blue bubble represents the address listed on the Staples receipt, which is 1250 H Street N.W., Washington, D.C., 20005. [my emphasis]

I expect Durham introduced the map to show that Sussmann went to buy these thumb drives immediately after some phone call or meeting.

As described, there are so many ways to explain these thumb drives. Remember: Sussmann admits he shared the story with the press and wanted it to come out. What he denies is that his intent in going to the FBI was in getting them to investigate to serve the story.

Durham will also claim, probably falsely, that Fusion or Sussmann had to have told Mark Hosenball about the investigation; I know of no evidence that's the case, Durham's repeated efforts to misrepresent the timeline on Fusion emails suggests he doesn't have that evidence, and plenty of reason to believe there are other ways he could have learned about this.

Perhaps Durham has more somewhere.

But, particularly depending on the outcome of that jury instruction, even that receipt may not be enough. That's because Sussmann has presented this piece of proof about *how the FBI understood* his tip.

9188	9/19/2016	20:31:21	From: begessford To: jpienka	Heads up. Moffa over here with some info that was dropped off to GC Baker this am. Essentially a lawyer representing DNC and Clinto brought an envelop to GC Baker this am with info that a private cyber group has identified an IP associated with Trump company (not necessarily campaign) is using a computer in a hospital in Michigan to talk to a Russian Bank. Nobody knows what that means but Moffa is going to drop the packet at Cyber Division because the lawyer said he also gave the info to the media and it will go public on Friday. REDACTED
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One of the first people to respond to this tip (this text is likely in UTC, not ET, so this is likely at 4:31 on September 19, four hours after the meeting) understood it to be:

- A tip about a Trump company, not Trump himself
- From the DNC and Clinton
- Bringing information a private cyber group had identified

That is, whatever Sussmann said in the meeting with Jim Baker, the best representation of what the FBI understood showed him identifying *both* his possible clients. And identifying a tip not about Trump himself, but his corporate person and a Russian bank that the FBI understood to have ties to Russian intelligence.

It's hard to claim this alleged lie was material if the FBI responded to it as if he had fully disclosed both Hillary and private researchers like Rodney Joffe's role in it.

Update: Corrected two errors (the UTC conversation and a spelling error). To make up for not covering the trial live, here's my excuse



Update: Here's Sussmann's Rule 29 motion for a judgment of acquittal. This is a routine motion defendants always file. Because of the political nature of the case, Judge Cooper would never grant it. And there's nothing terribly exciting in it.

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The Visibility of FBI's Close Hold: John Durham Will Blame Michael Sussmann that FBI Told Alfa Bank They Were Investigating