

AS JOHN DURHAM PREPS FOR HIS CLOSING REPORT, HIS OWN WITHHOLDINGS BECOME KEY

Update: Judge Trenga has dismissed the Chuck Dolan charge because it was based entirely on the definition of “talk.”

It's sometimes helpful to think of all the witnesses at a trial as just tactical preparation for a closing argument. Their credibility is important, sure, but they also serve to get evidence admissible, which the two sides then use in their closing arguments to direct how the jury will assess it.

In the Igor Danchenko case, however, John Durham appears to be prepping not for his closing argument in this trial, but for the report he will write after it's clear who will run which houses in Congress next year.

At the end of the day yesterday, as part of a *second* redirect of Danchenko's handling agent Kevin Helson, Durham introduced evidence I suspect he'll use to argue that Danchenko – and not, say, Oleg Deripaska – was the prime mover of disinformation in the dossier. After duping poor Christopher Steele for years, Durham may argue in his report (but not necessarily to the EDVA jury), Danchenko succeeded in duping poor Kevin Helson and through him the poor FBI *for years*, and as a result led the FBI to believe a whole bunch of false information about Russian influence operations. Again, that's not what the record shows, but I suspect Durham is laying foundation to make that argument.

Based on what Durham pulled yesterday, if Republicans win at least one house of Congress, I expect there will be a concerted effort to force the Biden Administration to deport

Danchenko, whether or not he's acquitted (and thus far, both Durham's initial witnesses have testified that Danchenko didn't lie, so acquittal is a good possibility).

None of this makes any sense. But it only *has* to make sense for people like Jim Jordan and (if they're reelected) Ron Johnson and Chuck Grassley. They've never cared about the damage they do to national security by trying to criminalize being a Democrat (nevermind that testimony yesterday from Danchenko's handling agent said he's not one).

I'll return to this – as well as the damage that Grassley is alleged to have already done – tomorrow, after I get a chance to read the transcript for what will be Durham's continued questioning of Helson this morning.

But the likelihood that Durham is only trying to prep material for his own report, not for this jury, raises the stakes on Durham's own withholdings.

Key to Durham's materiality argument is that if Danchenko had told the truth about things Durham claims Danchenko lied about, there would have been a much closer immediate focus on Chuck Dolan and the access Danchenko facilitated between Dolan and his childhood friend, Olga Galkina. In Durham's mind, that would have allowed Crossfire Hurricane to ask questions of Dolan that Durham's own questions and an FBI investigation of Dolan didn't surface when they *did* investigate Dolan, starting in late 2017, some details of which Danchenko attorney Stuart Sears introduced during cross-examination of Dolan yesterday.

Q You're aware, Mr. Dolan, aren't you, that the government was investigating you at some point?

A Yes.

Q You're aware that they issued search warrants and subpoenas for your email communications?

A Yes.

Q You're aware that they issued subpoenas for your phone records?

A Yes.

Q Your work email records?

A Yes.

Q Your Facebook records?

A Yes.

Q And I think you have already testified to this, but even knowing everything that the government has done to look into you, it's still your testimony today that you've never talked to Mr. Danchenko about anything that ended up in the dossier, correct?

A Correct.

Durham imagines that if Danchenko had told the truth about a report no one much cared about and he was never asked about, the FBI would have proven that Chuck Dolan was behind the pee tape, even though neither a prior FBI investigation nor Durham's own have developed evidence he is (though that didn't stop Durham from falsely implying he had in the Danchenko indictment).

If Danchenko had told the truth about things Durham claims he lied about – again, I'm just thinking with Durham-brain here, the evidence thus far is that Danchenko didn't lie – then the FBI would have realized from the start that Danchenko lied to Christopher Steele *about ever speaking* to Millian. Such a claim is utterly useless to materiality of the Mueller investigation, both because Mueller didn't use the dossier and the FBI didn't integrate Danchenko's own warnings about the limits of his conversation with Millian into the FISA applications against Carter Page. But it would be useful if Durham wants to spin an even bigger conspiracy theory, that Danchenko duped first

Steele and then the FBI.

I mean, there are other reasons it wouldn't make sense (not least that Steele, not Danchenko, drove the focus on Millian). But it only needs to make sense for Jim Jordan and Chuck Grassley to have an effect.

And so, Durham wants the jury to believe that Danchenko was covering something up because he didn't hand over key communications – including:

- August 2016 emails with Dolan that might have sourced the arguably most accurate Steele report, one that –as Brian Auten testified the other day – “has absolutely nothing to do about collusion in Russia, which is the whole point that Crossfire Hurricane was opened”
- Any evidence of a mobile app phone call made by Millian (or anyone else) to Danchenko in late July 2016
- An August 2016 email with Millian (and/or possibly August 2016 emails with the RIA Novosti journalists who facilitated Danchenko's introduction to Millian)

FBI would have obtained the Dolan emails in question – including his much more extensive communications with Olga Galkina – both from FISA 702 collection on Galkina by June 2017 as well as from the investigative steps Sears laid out, above, and even still, the FBI was simply not interested in the report that Durham has made the centerpiece of this case.

As for the communications with or about Millian, after saying in his first interview that the call with Millian could have been on a phone app, Danchenko said from the third day of his first interview in January 2017 that he had deleted some communications.

[Danchenko] said that he had gone back to check for electronic communications records, but he said that he had deleted most of the election-related communications “months ago.” He also has a different phone from the one he used previously. He didn’t delete communication involving [Dmitry Zlodorev], and he had reported that communication to Christopher Steele.

Whether that’s true or not will likely be a key detail the lawyers will confirm or debunk in days ahead. It’s also true, however, that from the start Danchenko described both his emails to Millian and his exchanges with the RIA Novosti journalists, and email with whom Danchenko did turn over, and his original descriptions were consistent with what Durham eventually obtained.

And that’s why it’s interesting that Durham himself withheld things, and attempted to withhold critical evidence from the jury (and in the process, avoid having it made public to debunk his own eventual report).

Critically, Durham (who charged Danchenko without first getting a commitment that Millian wouldn’t hand him his ass, as he eventually did), attempted to withhold from the jury and *did* withhold from Brian Auten and Helson documents that show a phone call with Millian in late July was possible as well as documents that show Danchenko acted as if he believed he would meet someone he believed to be Millian.

Perhaps the most important exchange came when Durham led Auten through questions in which – possibly by cutting his review of a document one page short – he got Auten to say that Danchenko

said Millian called him on a telephony call.

Q You have a version of it. What you have in front of you is the portion relating to Report 95, correct?

A 100, sorry.

Q The excerpt you have relates to – on page 19 – starting on page 19 going to 20?

A Yes, correct.

Q And will you take a look at that and see if it refreshes any recollections on either the 24th or the 25th, which then appears at 37 as to what kind of device he purportedly received a phone call?

A On page 20 – this would have been the 24th – it says “phone call.”

Again, you can see that the reference in question carries over to page 21, but Durham asked Auten to review just pages 19 to 20.

Danny Onorato later went back and – in exchange that not only caught Durham in his deceit, but showed the hazards of claiming others were withholding material information – had Auten correct his testimony.

Q. Okay. And, again, I’m not giving you a hard time because you didn’t ask a lot of probing questions on that day because you were just trying to break the ice with him to see if you can get him to work with you. Somma said you’d have more time to work with him, right?

A. Correct.

Q. Okay. But I do want to try to correct something about what you testified about this morning. Okay?

A. Okay.

Q. And you prepared to testify with Mr.

Durham and his team, right?

A. Yes.

Q. Okay. And I think he asked you to look at Government Exhibit 100.

A. Yes.

Q. Okay. And when he asked you to look at Government one- – Exhibit 100, I think you may have answered that he did not mention a call app on Page 20, right, in response to his questions?

A. Yes.

Q. Okay. Well, do me a favor. Look at Page 20 and then 21, And see if that refreshes your memory the first day about what Mr. Danchenko told you.

A. I apologize. Yes, it basically says – would you like me to read it?

Q. Yeah.

A. Okay. I'll start at the middle of – middle of the last paragraph of Page 20. [As read:] "The two of them talked for a bit and the two of them tentatively agreed to meet in person in New York City at the end of July. At the end of July, Danchenko traveled with his daughter to New York but the meeting never took place and no one ever called Danchenko back. Altogether, he had only a single phone call with an individual he thought to be Millian. The call was either a cellular call **or it was a communication through a phone app.**"

Q. I'm sorry, what did you just say?

A. "Or it was a communication through a phone app."

Q. Okay. So remember when Mr. Durham asked you questions this morning, right?

A. Yes.

Q. **Did he omit** — ask you to look at page 21 to see what Mr. Danchenko told you that day?

A. I don't think he was omitting. I think I —

Q. Okay. And **did you intentionally omit, intentionally tell the jury something wrong**, right?

A. No.

Q. **But the import of the testimony was that, no, he never mentioned in that first meeting it could have been a phone app**, right?

A. Correct.

Q. **And now we all know that that's false**, right?

A. Correct.

Q. So he did mention a mobile app?

A. That is correct. [my emphasis]

I expect that Danchenko's team has a follow-up or two for days ahead on this issue. Note that in this case, unlike the Michael Sussmann case, Durham intends to put his case agent on the stand.

The point, however, is that Onorato caught Durham eliciting *knowingly false* testimony about a central issue in the case: whether Millian could have called Danchenko using a phone app, leading Danchenko to honestly believe they might meet face to face in NYC on July 28, 2016.

But, for all Durham's claims that withholding emails are evidence of guilt, Danchenko's team caught him doing that too. Here's how Onorato walked Auten through an email Millian sent bragging about his ties to Trump in July 2016.

Q And, again, I don't want to discuss whether the information in this email is

truthful, okay. But it purports to be an email from Sergei Millian, right?

A 481, yes.

Q Okay. And it purports to be sent on July 15 of 2016?

A Correct.

Q And it purports to be to someone named bridgeusa –

A @aol.com, yes.

Q And the subject matter is Trump?

A Trump, yes.

Q Okay. And do you remember when Mr. Durham asked you questions about if you had certain facts, would they have been material or helpful to you? Right?

A Yes. Yes.

Q Okay. So in July 15 of 2016, again, the same time frame that Mr. Danchenko allegedly received this anonymous phone call, right?

A Yes.

Q If you had known that Mr. Millian was telling people that he would be meeting with Trump and his people, would that be significant to you?

A Yes.

Q Okay. So I'm going to ask you to look at 4 – and that's what that email purports to say, that Mr. Millian was going to be meeting with Trump and his people?

[snip]

Q Okay. So that would have been material and important when evaluating whether the anonymous caller could have been Mr. Millian? A Yes, this would have been

helpful.

Q Correct. Did anybody from Mr. Durham's team ever show you that document?

A This is the first time I've seen this document.

Similarly, Onorato walked Auten through an email – of uncertain content – between Millian and Dmitry Zlodorev, the RIA Novosti journalist who gave Danchenko Millian's contact information.

Q Okay. So let's go to the next document. That's 482, again, the translated page. It's also dated the same day. So it's July 15, 2016, but this time it's from Millian to a person named Zlodorev, right?

A Correct.

Q And Zlodorev is someone that Mr. Danchenko discussed with you in your January meetings, correct?

A That is correct.

Q In fact, he told you that Zlodorev was actually the individual that put him in touch with Millian, right?

A That is my recollection, yes.

Q Okay. And it's fair to say, again, not whether a meeting happened or it was truthful, but that Millian was saying at the beginning of August, "I'm meeting with Trump and his people. I assume we will discuss Russia." Right?

A Yes.

Q And, again, that fact would be important for you as an analyst, right?

A Yes.

Q And that's a document that Mr. Danchenko, of course, was not copied on, right?

A Correct.

Q But did the special counsel show you that document before today?

A I have not seen this document.

Yesterday, Stuart Sears walked Helson through the fact that neither the Mueller team nor Durham ever told him that Danchenko had turned over emails relating to Millian.

Q. And I think you already testified to this, but were you aware that Mr. Danchenko had told Mr. Auten about that email in January 2017?

A. No.

Q. Okay. Were you also aware that he had provided them with an email during the January interviews between him and Mr. Zlodorev, which is the person he got Mr. Millian's contact information from in August?

A. No.

Q. He actually gave him a screenshot of the email?

A. No.

Q. You were not aware of that?

A. No.

The most important of these is a Facebook message Danchenko sent, apparently to his spouse, on July 28, 2016, referencing that he had one more meeting that day. Outside the presence of the jury, Durham fought hard against admitting the communication, arguing it was hearsay, even though he had planned on introducing the exhibit himself until just days ago.

The government has evidence in its possession that is, frankly, Brady or exculpatory. And what they're telling

this Court is – and this was co-marked as Government Exhibit 607 until Friday night, so we relied on this to be used by them. And, again, I don't want to say that it's truthful that there was a meeting, just a statement of intent, because there was no meeting. He told them there was no meeting, and this supports that notion. And there's going to be evidence that he left New York City later that night in a window where that meeting could have taken place.

MR. DURHAM: The issue is that it is not admissible under the rules of evidence. And the defense –

THE COURT: Well, I'm not sure – I'm not sure that's dispositive, though, as far as what importance he would have attached to it, had he known of it. I understand your point.

MR. DURHAM: But the point is – Your Honor had observed earlier – you don't know what's even being talked about here. You don't know whether it's a meeting that Mr. Danchenko is supposed to intend, that he was invited to, if it relates to the L messages. You just don't – you don't know if it is a meeting involving other people that he'll get information on down the road. It just – it is unclear and it just invites speculation on the part of the jury. So to incorporate that same information in a question would be, respectfully, inappropriate.

MR. ONORATO: And, Your Honor, I just have one more point to make. It's almost as if Mr. Danchenko would be omniscient, right? I mean, to have his state of mind where I have a meeting tonight and then he leaves New York, you know, five or six hours later, and knowing that he's going to be sitting in this courtroom and, my god, he's so lucky this email

exists and they want to suppress the fact – not that it happened, but that was part of the intent from the agent who they said – you believe he’s now lying because we showed you a couple of emails you haven’t seen.

THE COURT: This was previously a proposed Government Exhibit?

MR. ONORATO: Yes. Government’s Exhibit 607.

What didn’t get mentioned in this colloquy is that what appears to be the same communication *was included in the Danchenko indictment.*

c. Also on or about July 28, 2016, DANCHENKO messaged an acquaintance the following: **“Another meeting tonight.** Thanks to my reporting in the past 36 hours, [U .K. Person1] and [U.K. Investigative Firm Employee] are flying in tomorrow [i.e., July 29, 2016] for a few days so I might be busy-don’t know when but in Downtown D.C.”

Here’s how Onorato walked Auten through the Facebook message Danchenko sent during the afternoon of July 28 expressing a belief that he had another meeting that day.

Q. But somewhere in that ballpark between 2:23 and 4:23, Mr. Danchenko makes a post. And I want to focus on the third line of that post. Can you highlight that? Okay. What does that say?

A. [As read:] “Another meeting tonight.”

Q. Okay. And Mr. Danchenko was posting at some point in the afternoon from New York City that he had another meeting tonight between 2:23 and 4:23 p.m., depending on how you interpret UTC time, right?

A. Correct.

Q. Okay. And I think – and he told you that he went to New York City for the purpose of having a meeting, right?

A. Correct.

Q. Okay. And the special counsel never showed you this exhibit, I take it?

A. I have not seen this.

Q. And so you've never been aware before today that Mr. Danchenko professed in the evening hours on the 28th that he believed he had a meeting at the time?

A. No. This is the first I am seeing this.

Q. Okay. And would you say that's material to your consideration as to whether there's a probability that would support the fact of his belief that it could have been Millian, that he had a meeting, first of all –

A. Right.

Q. It's corroborative that he thought he had a meeting, right?

A. Correct.

Q. Okay. And that it would also corroborate that it could be Millian because you saw Millian's travel records, right?

A. It is the possibility that it could be Millian.

Here's how Stuart Sears walked Helson through the same material.

Q. Did they share with you evidence they had uncovered that Mr. Danchenko had sent a Facebook message to his wife from the Bronx Zoo in New York where he wrote, among other things, another

meeting tonight on July 28th of 2016?

A. No.

Q. Did they share with you when they were sharing you the evidence they had uncovered in their investigation, that Mr. Millian had been reaching out to George Papadopoulos who was a foreign policy advisor to President Trump at the time, during the same time frame or very close to it, that Mr. Danchenko believed he spoke to Mr. Millian?

A. No.

Q. Would you agree with me, Agent Helson, that those additional facts that were uncovered by the Durham team tend to offer some support for Mr. Danchenko's belief that the caller may have been Sergei Millian?

A. It could, yes.

Durham had in his possession abundant communications that showed not only that it was possible that Millian called Danchenko, but that Danchenko took action that suggested he believed someone, whether Millian or someone else, had set up that meeting.

But he tried to keep it away from the jury – even a detail he himself included in the indictment, that on the afternoon of July 28, Danchenko still believed he had one more meeting in New York.

John Durham is arguing that when someone withholds communications that are material to an investigation, it is proof he's lying.

Thus far, the trial has shown he did far more of that than Igor Danchenko.