

3 Blockbuster Revelations From The Latest Special Counsel Court Filings

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New court filings in a Spycgate case solve some long-running mysteries and hint at serious developments.

Late Friday, three new memoranda and a handful of exhibits hit the [docket](#) in Special Counsel John Durham's criminal case against former Hillary Clinton campaign attorney Michael Sussmann. The filings analyzed about a dozen tedious issues concerning what evidence prosecutors may use at trial to prove Sussmann broke the law by lying to then-FBI General Counsel James Baker when he showed Baker information that supposedly indicated Donald Trump had a secret communications channel with the Russia-based Alfa Bank.

The evidentiary issues and the court's resolution of them will prove vital when the trial begins next month. The special counsel's office will try to prove Sussmann falsely told Baker he was not presenting the Alfa Bank information on behalf of a client, when in fact he represented both the Clinton campaign and tech executive Rodney Joffe. More on those evidentiary rules another time, but for now, here are three fascinating takeaways revealed in Friday's flurry of court filings.

The Mystery of the Appearing Text Solved— Sort Of

Two weeks ago, when the wave of pre-trial evidentiary filings began, the special counsel's office revealed for the first time that the day before Sussmann met with Baker, Sussmann sent this text to Baker's personal cellphone: "Jim—it's Michael Sussmann. I have something time-sensitive (and sensitive) I need to discuss. Do you have availability for a short meeting tomorrow? I'm coming on my own—not on behalf of a client or company—want to help the Bureau. Thanks."

The existence of this text is huge because, as the special counsel stressed in its filing, it shows that "the night before the defendant met with the General Counsel, the defendant conveyed the same lie in writing." That's the "same lie" Sussmann then allegedly told Baker in person during their September 19, 2019 meeting, namely that he was not presenting the Alfa Bank-Trump information on behalf of a client.

The text message thus [debunked](#) one of the main themes floated by those defending Sussmann: that the special counsel "is bringing a false statement charge based on an oral statement allegedly made five years ago to a single witness that is unrecorded and unobserved by anyone else."

The revelation of the text message, however, also raised numerous questions. From the court filings in the Sussmann case and comments made by Sussmann's attorneys, it appeared neither side knew of the text message at the time the indictment dropped. Why not? And why was the text just now becoming known?

On Friday we learned the answers to these questions, in part.

"On March 4, 2022, Mr. Baker apparently retrieved from his personal phone copies of text messages that he had sent and received with Mr.

Sussmann between 2016 and 2020," Sussmann's attorneys wrote in their brief. Sussmann further claimed the special counsel had said that "the text messages had been stored on the cloud and Mr. Baker had not thought to produce them earlier."

So Durham did not know of this text message at the time of the indictment, nor for five more months. But it was Baker, not the Department of Justice's Office of Inspector General, who provided the text.

The latter had been another possible [source](#) of the late-provided evidence, as the OIG had belatedly turned over two Baker cell phones to the special counsel's office in January. Left unanswered, however, is why Baker was just now sharing with the special counsel's office text messages he exchanged with Sussmann, including this coffin-nailing one.

The late reveal of this text message raises another question for the court to consider: Whether Sussmann's failure to preserve this text message indicates Sussmann attempted to "obstruct justice." In Friday's court filings, Sussmann's attorneys argued their client had no obligation to his former law firm, Perkins and Coie, to preserve the text message, so Sussmann's failure to do so when he replaced his personal cellphone in November 2016 was not an attempt to "obstruct justice." Conversely, the special counsel's office wants the jury informed that Sussmann did not provide this text message to his employer, Perkins and Coie.

This issue will be yet another for the trial court to resolve. The more interesting question here concerns Baker's behavior: after all, he is the one supposedly cooperating with the special counsel's office.

Yes, the Executive Office of the President Spying Was About Trump

The second blockbuster revelation from Friday's filings concerned the Russia Yota cell phone hoax Sussmann fed to the CIA during a February 9, 2017, meeting, allegedly on behalf of Joffe.

Approximately two months ago, the special counsel revealed how, as part of this hoax, Trump's enemies surveilled the internet traffic at Trump Tower, his New York City apartment building, a Michigan business, and later the Executive Office of the President of the United States (EOP). Sussmann then provided that data to the CIA, telling agents there were "suspicious lookups" of the "internet protocol or IP addresses affiliated with a Russian mobile phone provider" connected to the supposedly rare Russian Yota phone.

According to the special counsel's filings, Sussmann claimed "these lookups demonstrated that Trump and/or his associates were using supposedly rare, Russian-made wireless phones in the vicinity of the White House and other locations."

When news broke that to craft the Yota phone hoax Joffe had [accessed](#) data his internet company obtained "as part of a sensitive arrangement whereby it provided DNS resolution services to the EOP," the corrupt media framed that explosive detail as a [nothingburger](#) because the data appeared to have been collected while Barack Obama was still president.

For instance, The New York Times [reported](#) that the data relating to the White House's EOP "came from Barack Obama's presidency." The Times then quoted two lawyers representing one of the researchers

who aided Joffe: "To our knowledge," the attorneys claimed, "all of the data they used was nonprivate DNS data from before Trump took office."

Of course, as I [noted](#) at the time, as "a matter of pure logic, the data Sussmann presented to the CIA related to the White House *must* have somehow related to Trump or it would not 'demonstrate' that 'Trump and/or his associates were using' the Russian cell phones 'in the vicinity of the White House.'" Most likely, "the data presented concerned the transition period"—a fact Durham's team later [confirmed](#) in a filing noting Joffe exploited the EOP data "both before and after the Presidential election."

Friday's filings did more, however, than merely reconfirm that the EOP data Joffe exploited was collected after the election: Two exhibits filed by the special counsel revealed that the mining of the EOP data, as well as of the internet traffic at Trump Tower, Trump's New York City apartment building, and a Michigan business, were targeted to Trump's physical presence at those locations. This raises the further question of whether the cybersecurity experts were using geolocation technology to surveil Trump's movements.

An exhibit filed Friday by the special counsel's office, consisting of a "Memorandum of Conversation" that summarized a CIA agent's conversation with Sussmann, revealed these new details. That memo reported that Sussmann had claimed "the presence and activity of a unique Russian made phone around President Trump." The alleged use of this phone started in April 2016, when "Trump was working out of the Trump Tower on its Wi-Fi network." After his move to the White House, "the same phone surfaced on the [Executive Office Building] network."

The Yota cell phone that was purportedly “close to” Trump at the Trump Tower network also surfaced “at Wi-Fi used at Trump’s apartment at Grand Central Park West,” and “when Trump traveled to Michigan to interview a cabinet secretary the phone appeared with Trump in Michigan,” Sussmann claimed, according to the memo. Sussman also claimed “the phone was never noticed in two places at once, only around the President’s movements,” with Sussmann further stressing that “in December 2016 the phone disappeared from Trump Tower Wi-Fi network and surfaced on [the Executive Office Building network.”

In addition to establishing beyond doubt that the mining of the sensitive EOP data concerned Trump, these new details suggest it was not merely the Yota cell phones and the internet at locations connected to Trump being surveiled, but Trump’s own physical movements. This is far from the nothingburger the press has been pushing.

It’s Tech Researcher-2, David Dagon, Who Has Immunity

The third piece of news flowing from Friday’s filings concerns the special counsel’s grant of immunity to Georgia Tech researcher David Dagon—and only to Dagon. “The only witness currently immunized by the government, Researcher-2, was conferred with that status on July 28, 2021,” Durham’s memorandum explained. “And the Government immunized Researcher-2,” it continued, “because, among other reasons, at least five other witnesses who conducted work relating to the [Alfa Bank] allegations invoked (or indicated their intent to invoke) their right against self-incrimination.”

Durham’s decision to grant Dagon immunity proves intriguing for

several reasons. First, unlike Researcher-1, who has been identified by his attorney as Georgia Tech researcher Manos Antonakakis, Dagon continued to work with Joffe and April Lorenzen to craft the second set of [data](#) Sussmann provided to the CIA related to the supposed Yota cellphone connection to Trump. The Sussmann indictment also alleged Dagon had drafted a white paper apparently related to the Alfa Bank allegations and that Sussmann asked Dagon to “speak on background with members of the media” regarding the Alfa Bank allegation.

An email from Fusion GPS’s Peter Fritsch, who was working with Sussmann and Joffe to peddle the Alfa Bank story, also [told](#) a media contact to “call David Dagon at Georgia tech” when a Reuters reporter indicated the publication had not run the story because of an inability to authenticate the data.

These details suggest Dagon holds a wealth of knowledge related to both the Alfa Bank hoax and the Yota cell phone charade, including various players’ parts in crafting the plots. More significantly, Dagon likely knows what information he and his fellow cyber researchers conveyed to Sussmann regarding the data and its weaknesses.

This insider’s view will prove significant if, at trial, Sussmann attempts to frame his motive in passing the information on to the FBI and CIA as altruistic. Likewise, Dagon’s firsthand knowledge of any efforts by Sussmann to peddle the Alfa Bank theory to the press will be important to the special counsel’s efforts to show Sussmann was working on behalf of the Clinton campaign.

Dagon also has the ability to counter Sussmann’s claims of ignorance about the technicalities of DNS data. The Georgia Tech researcher is prepared to testify that when he raised concerns with Sussmann about

whether the Trump-Alfa Bank data had been "lawfully collected and used," in assuring him that there were no legal issues, Sussmann demonstrated an understanding of the data sources.

Yet, according to last week's filings, Durham has not yet definitively decided which tech researchers to call as witnesses at Sussmann's trial. Those seeking to more fully understand the scope of Spycgate had better hope Dagon is among the witnesses called. From Friday's filings, it is clear there is still much more to learn.

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