

4 Eye-Poppers From Spycgate Cabal's Rush To Hide Their Tracks In Court

On April 19, a bunch of panicked participants in the Spycgate scandal rushed the courthouse to intervene in the special counsel's criminal case against former Hillary Clinton campaign attorney Michael Sussmann. They hope to prevent prosecutors from accessing a few dozen documents that might further reveal their role in peddling the Alfa Bank hoax.

The motions to intervene came just one day after Sussmann also sought to keep the documents away from prosecutors. The special counsel has requested the trial court review the documents in camera to assess whether they are in fact protected by attorney-client privilege.

Here are the top takeaways from these filings.

1. Sussmann Seeks to Keep the Documents Secret Based on Procedure

Two weeks ago, Special Counsel John Durham filed a motion to compel third parties to produce 38 documents withheld from prosecutors in response to grand jury subpoenas based on claims of attorney-client privilege. In his motion, Durham argued that the communications between tech executive Rodney Joffe and employees of the investigative firm Fusion GPS were not privileged, and that documents the Clinton campaign refused to turn over were not protected by

attorney-client privilege.

Sussmann faces trial next month on the charge that he lied to then-FBI General Counsel James Baker when he provided Baker "intel" supposedly showing that Donald Trump had established a back-door communication channel with the Russia-based Alfa Bank. Sussmann responded to Durham's motion on Monday. In his response, Sussmann attacked the special counsel's motion mainly on procedural grounds, claiming Durham "moved at the wrong time, in the wrong forum, using the wrong process, and seeking the wrong documents."

The special counsel waited too long to litigate the privilege, Sussmann first argued, claiming that prosecutors knew, in some cases, for as much as one year that Clinton and Joffe were asserting attorney-client privilege. Now, with trial just weeks away, it is too late to allow the special counsel to obtain access to these documents.

Further, because the documents at issue were sought pursuant to grand jury subpoenas, Sussmann argues the special counsel was required to seek to enforce the subpoenas with separate proceedings before the chief judge of the district, not as part of its criminal case against him. According to Sussmann, the special counsel also improperly used the grand jury subpoena in the first instance to obtain what was clearly intended to be trial evidence. Lastly, Sussmann claims the documents are irrelevant to the limited criminal charge against him.

The special counsel has until Monday, April 25, 2022, to respond to these arguments. In the meantime, it will also need to respond to the flurry of third-party motions filed yesterday.

2. Fusion GPS and Perkins Coie Doth Protest

Too Much

Yesterday saw four separate sets of motions to intervene, from would-be-intervenors Fusion GPS, Perkins Coie, Hillary for America, and Joffe. As of publication, the Democratic National Committee (DNC), which together with Hillary for America had hired Perkins Coie, has not filed a motion to intervene.

While there is nothing surprising about Hillary for America and Joffe seeking to intervene to protect their communications, Fusion GPS and Perkins Coie's involvement seems strange because it is blackletter law that the attorney-client privilege "belongs solely to the client." In other words, it is Hillary for America (and the DNC) holding the privilege, not the law firm of Perkins Coie, nor the investigative firm, Fusion GPS, that Perkins Coie hired. Similarly, it is Joffe who holds the privilege and not Sussmann or Fusion GPS.

Watch for the special counsel's office to oppose intervention by both Fusion GPS and Perkins Coie. Also, given that Hillary for America and Joffe both filed motions to intervene, the court may well deny Fusion GPS and Perkins Coie's attempts to jump into the case and leave the dispute to the clients to litigate.

Of course, Fusion GPS and Perkins Coie have already filed their proposed briefs in support of maintaining the secrecy of the 38 documents, so denying their motions to intervene will have little practical consequence. One unforeseen consequence, however, may be that the special counsel's office points to [inconsistencies](#) in Fusion GPS's brief and prior statements made by its [founders](#) to counter Hillary for America's claims of attorney-client privilege.

3. Joffe Seemingly Confirms the False Statement Part of the Crime

While Fusion GPS and Perkins Coie hold no right to attorney-client privilege, as Sussmann's claimed client, Joffe will likely be allowed to intervene to assert his claim of privilege. In seeking to intervene, Joffe filed with the court his proposed response to the special counsel's motion to compel the filing with the court of various documents concerning Joffe. In his response, Joffe seemingly confirms that Sussmann lied, just as the special counsel's office alleged.

Joffe "engaged Mr. Sussmann to assist him in a specific legal matter—namely to advise him how to share sensitive information concerning an extremely litigious Presidential candidate with either investigative journalists or Government agencies without revealing his identity and exposing himself to potential liability, frivolous litigation, and/or threats of violence and/or harassment," according to Joffe's brief.

This acknowledgment tracks precisely what the special counsel alleged Sussmann did: Sussmann allegedly told the FBI and the CIA that he was not representing a client when, in fact, he represented Joffe in meeting with the agencies. During those meetings, Sussmann shared with federal agents the supposed Alfa-Bank "intel," and in the case of the CIA, the Yotaphone material.

Sussmann's lines of defense seem to be shrinking by the day, with the text he sent to Baker the day before their meeting providing strong evidence that Sussmann told Baker he was not representing any client in sharing the Alfa-Bank material. Now Joffe seemingly confirms that he hired Sussmann to determine how to achieve that end, i.e., handing off the Alfa Bank data without revealing his identity.

But just hiring Sussmann is not enough to protect Joffe from the special counsel's subpoena, because Durham is not demanding Joffe's communications with Sussmann. Rather, the special counsel's office is seeking four emails (and attachments) between Joffe and an employee of Fusion GPS.

While Joffe claims that Fusion GPS served as "an intermediary" to Sussmann to assist Sussmann in providing legal advice to Joffe, that argument is likely to fail because there is no evidence that Sussmann retained Fusion GPS on behalf of Joffe—as opposed to on behalf of the Clinton campaign. And if Fusion GPS was not an intermediary between Sussmann and Joffe, then there is no attorney-client privilege for Joffe's communications with Fusion GPS.

4. Hillary's Chutzpah

Not too long ago, news broke the Federal Election Commission had fined the DNC and Hillary for America in the six digits after finding probable cause that they violated federal election law by misreporting the purpose of certain disbursements. The disbursements concerned payments made between July 15, 2016 and August 26, 2016 to Perkins Coie and were described in disclosure reports as "legal services." That money instead went to Fusion GPS for purported "opposition research."

While Hillary for America and the DNC entered into a conciliation agreement to resolve the issue without conceding the violations, they also agreed not to further contest the commission's finding of probable cause. Yet yesterday Hillary for America filed a motion to intervene to prevent the disclosure of materials in the possession of Fusion GPS and Perkins Coie that are supposedly protected by attorney-client privilege, supporting its motion with, among other things, a declaration by former

campaign manager Robby Mook.

In his declaration, Mook states that he believed “throughout the campaign that whatever work Perkins Coie performed, either through its own professionals or through any contractors it may have engaged to assist, the work was done for the purpose of providing legal services and legal advice to [Hillary for America.]”

Of course, what Mook believes and what he “believes” are likely two different things, given that Mook launched the Russia [collusion hoax](#) on behalf of the Clinton campaign live on CNN based on what he “believed” Russia was doing. But, in any event, what Mook believes is irrelevant—what matters is what the district court concludes in the weeks to come.

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