

Special Counsel ‘Clarification’ Reveals The DOJ’s Inspector General Is Not A Team Player

Last Tuesday, Special Counsel John Durham’s office filed a “discovery update” along with a request for an extension of time to provide Michael Sussmann documents related to the government’s pending criminal case against the former Clinton campaign lawyer. Much like the talking indictment Durham filed against Sussmann late last year, the discovery update made public several significant revelations, one of which the special counsel’s office was forced to “clarify” on Friday.

Rather than cast a shadow over the details revealed in the special counsel’s original filing, Friday’s clarification should cause a renewed focus on the most shocking revelation in Durham’s “discovery update”: that early on in the Trump administration, Sussmann met with the inspector general and conveyed a claim that his client, Rodney Joffe, had “seen” a Department of Justice Office of Inspector General (OIG) employee’s computer connect to a foreign IP address.

Why? Because the OIG apparently found nothing for Durham to “correct” concerning the Sussmann-Joffe connection detailed in the special counsel’s initial “discovery update.”

The public has known about Sussmann’s connection to “Tech Executive-1,” Joffe, since September 2021. The special counsel’s indictment of Sussmann alleged Joffe “had exploited his access to non-public data at multiple Internet companies to conduct opposition research concerning Trump.” Then, according to the indictment, Joffe and Sussmann “coordinated . . . with representatives and agents of the Clinton Campaign with regard to the data and written materials that SUSSMANN gave to the FBI and the media,” concerning a supposed communications channel between the Trump Organization and the Russian Alfa-Bank.”

In providing that information to the FBI, specifically the FBI’s General Counsel James Baker, the indictment charged that “Sussmann lied about the capacity in which he was providing the allegations to the FBI.” Sussmann falsely stated that “he was not doing his work on the aforementioned allegations ‘for any client,’” when in fact he was working on behalf of both the Hillary Clinton presidential campaign and Joffe, the special counsel’s indictment alleged.

A Second Sussmann-Joffe Connection

Last week, the special counsel’s office revealed a second connection between Sussmann and Joffe, with this contact involving the OIG rather than the FBI. In the “discovery update” filed last Tuesday by the special counsel’s office, Durham explained that in mid-December, the OIG provided Durham a written forensic report concerning a “cyber-related matter.”

That forensic report summarized a claim Sussmann had made on behalf of one of his then-unnamed clients to an OIG Special Agent in Charge that, in early 2017, his client “had observed that a specific OIG employee’s computer was ‘seen publicly’ in ‘Internet traffic’ and was connecting to a Virtual Private Network in a foreign country.”

In providing Durham’s team the “forensic report,” the OIG office represented “that it had ‘no other file[] or other documentation’ relating to this cyber matter.” However, in last week’s discovery update, Durham’s team told the court it later learned from Sussmann’s attorneys that Sussmann had personally met with the DOJ inspector general in March 2017, when he passed on this “tip” to the OIG.

Also, significantly, while Sussmann had not told the OIG his client’s name at the time, his lawyers informed the special counsel’s office that his client who had “seen publicly” the OIG employee’s computer connecting to a VPN in a foreign country was Tech Executive-1—i.e., Joffe.

After learning these additional details, the special counsel’s office contacted the OIG again and then learned for the first time that Sussmann had met not just with the inspector general but also his then-general counsel about the cyber matter involving Joffe’s tip. That follow-up resulted in the OIG providing Durham additional documentation related to Sussmann’s meeting with the OIG office, even though the OIG had previously claimed there was no further documentation related to that incident.

A Cascade of Questions!

As I wrote following this revelation last week:

So many questions!

First, why did the OIG not inform the Special Counsel’s office that Sussmann had met with both the Inspector General and his then-General Counsel? And why did the OIG falsely represent that there was no ‘further documentation?’ Sure, it could have been accidental, but given that Durham’s attorneys publicly exposed this ‘mistake,’ it suggests something more is afoot.

Then there is the question of the veracity of the claim and what happens to the investigation. Was there really an OIG employee connecting on a foreign VPN? Who was it? Why? Did the OIG ever find out?

What about Joffe: How in the world did he discover the OIG employee’s computer connecting to a VPN in a foreign country? Was Joffe monitoring other government computers? How? Why? Was anyone else involved? Who knew?

The Sussmann Indictment Revisited . . . Again

Given the allegations about Joffe contained in the Sussmann indictment, the revelation that Joffe, through Sussmann, told the OIG about its employee's computer connecting to a foreign VPN is jaw-dropping. Here's why.

According to the Sussmann indictment, Joffe served as an executive "of a particular Internet company ('Internet Company-I'), which offers various Internet-related services and products, including Domain Name System ('DNS') resolution services, to its customers." As the indictment explained, "DNS is a naming system for devices connected to the Internet that translates recognizable domain names, e.g., <http://www.google.com>, to numerical IP addresses, e.g., 123.456.7.89," and "a DNS 'lookup' refers to an electronic request by a particular computer or device to query information from another device or server."

"By virtue of his position at Internet and other companies," the indictment continued, Joffe "maintained direct or indirect access to, and the ability to provide others access to, large amounts of internet and cybersecurity data, including DNS data."

Joffe's access to "large amounts of internet and cybersecurity data," and his ability to "look up" numerical IPS address, coupled with his claim to have seen the OIG employee's computer "connecting to a Virtual Private Network in a foreign country," suggests Joffe may have been monitoring government computers.

Given that Sussmann shared Joffe's claim with the inspector general in March 2017—solidly within the new Trump administration's time in office and during the ongoing Crossfire Hurricane investigation—and given Sussmann and Joffe's earlier attempt to peddle the anti-Trump Alfa Bank story to the FBI, one must wonder if Sussmann's handing off of this second "tip" to the OIG was a continuation of the get-Trump project.

The special counsel's office seems concerned about these details as well. At least, that is the suggestion from last week's "discovery update," in which Durham explained the special counsel's office will "work expeditiously with the OIG to conduct interviews" related to the Sussmann-Joffe "cyber-related matter." That the special counsel's office plans to interview people related to this matter suggests Durham's interest extends beyond handing discovery material to Sussmann to probing the circumstances and handling of the underlying "tip."

Baker's (and Other's) Phones

The discovery update filed last week raised additional concerns about the OIG's candor and cooperation with the special counsel's office. Specifically, Durham's office noted that "in early January 2022, the Special Counsel's Office learned for the first time that the OIG currently possesses two FBI cellphones of the former FBI General Counsel" Baker, along with "forensic reports analyzing those

cellphones.”

On Friday, the special counsel’s office submitted a three-page “Supplemental Filing Regarding Government’s Discovery Update.” It began by quoting the special counsel office’s previous statement that it had learned for the first time in early January 2022 that the OIG possessed two of Baker’s cellphones. “The Government wishes to provide some additional context for this statement,” the supplemental filing continued.

The special counsel’s office then noted that, after reviewing the initial discovery update, the OIG “brought to our attention based on a review of its own records that, approximately four years ago, on February 9, 2018, in connection with another criminal investigation being led by then-Acting U.S. Attorney Durham, an OIG Special Agent who was providing some support to that investigation informed an Assistant United [States] Attorney working with Mr. Durham that the OIG had requested custody of a number of FBI cellphones.”

According to Friday’s filings, the OIG records indicate that one of Baker’s cellphones was among those the OIG requested, and that the OIG then obtained that phone on February 15, 2018. The OIG records also reflected that its special agent providing support to then-Acting U.S. Attorney Durham had a conference call on February 12, 2018 “with members of the investigative team, including Mr. Durham, during which the cellphones likely were discussed.” Durham had no recollection of that conference call, nor did he recall knowing the OIG possessed Baker’s two phones before January 2022, the supplemental filing explained.

Rather, the supplemental filing explained the special counsel’s current investigative team learned of the two cellphones on January 6, 2022, the day after they had a conference call with the FBI’s Inspection Division to discuss obtaining call log data for Baker. In a follow-up to that discussion, the FBI’s Inspection Division emailed the special counsel’s office, informing Durham’s team that the OIG was currently maintaining custody of Baker’s cellphones. At that point, the special counsel’s office requested information concerning the cellphones from the OIG, according to Friday’s filing.

Lots of Wordsmithing by the OIG

The supplement filing on Friday proves fascinating for several reasons. First, while a quick read of the three-page document seems to suggest Durham knew the OIG had Baker’s phone long before January 2022, that is not what the filing said: Durham maintains he does not remember ever being told the FBI had possession of Baker’s phones.

What the special counsel's office did do in the supplement filing was to tell the court what the OIG claimed happened. That, notably, was not that anyone told Durham—or anyone else on the special counsel's team—that it had possession of Baker's cell phones. Instead, the OIG maintained Durham was told that in February 2018, while he was leading another criminal investigation. That was before Durham was even confirmed as the U.S. attorney for Connecticut and more than a year more before then-U.S. Attorney General William Barr would assign Durham to investigate Crossfire Hurricane.

As part of that earlier investigation, an OIG agent told an attorney working with Durham that the OIG had requested custody of a number of FBI cellphones and that a few days later Durham participated in a conference call “during which the cellphones likely were discussed.”

At no point, however—at least based on Friday's filing—did the OIG maintain that its possession of Baker's cellphone was discussed either with the assistant U.S. attorney or with, or in, Durham's presence, leaving one to wonder why the OIG would even bother to raise this with the special counsel's office. Clearly, the OIG was not happy with being called out publicly by Durham's team.

Not the First Time Durham Challenged the OIG

Of course, this was not the first time Durham has been publicly at odds with the OIG. In December 2019, after the OIG concluded the Crossfire Hurricane investigation was sufficiently predicated, Durham took the extraordinary step of issuing a public statement disagreeing with that assessment.

“I have the utmost respect for the mission of the Office of Inspector General and the comprehensive work that went into the report prepared by Mr. Horowitz and his staff,” Durham said in a statement. Unlike the OIG, which was limited to “developing information from within component parts of the Justice Department,” Durham noted that his team's “investigation has included developing information from other persons and entities, both in the U.S. and outside of the U.S.”

“Based on the evidence collected to date,” Durham explained, his team does “not agree with some of the report's conclusions as to predication and how the FBI case was opened.” Durham's statement further noted that he had told the OIG its preliminary conclusion prior to the release of the OIG's final report.

The OIG's Explanation Is Nuts

This history of friction between the OIG and the special counsel's office may explain why agents presented Durham records from a four-year-old case and an apparent request that Durham “correct” the record. But Friday's clarification actually cements the case that the OIG is acting at odds with the special counsel's office.

Here it is important to realize it is not merely that the OIG sat silent knowing Sussmann had been indicted for lying to Baker, but that the OIG kept silent about the two Baker cell phones in its

possession during a meeting between special counsel's prosecution team and IG and OIG personnel on October 7, 2021, called specifically "to discuss discoverable materials that may be in the OIG's possession."

The special counsel's team also later provided the OIG a formal written discovery request seeking relevant documents and records. Yet no one bothered to turn over, or even mention, Baker's two cellphones?

And what is the OIG's explanation? That nearly four years earlier, in another case, before Durham was even assigned to investigate the Crossfire Hurricane investigation, cellphones were likely discussed in a meeting Durham attended.

With Friends Like This, Who Needs Enemies

The OIG's counter doesn't make the office look better, it makes the OIG look worse. It makes the office look duplicitous.

Any office of the federal government genuinely cooperating with another would, when discussing potentially relevant documents and records, mention the existence of Baker's phones, even if they knew for a fact that four years prior Durham had been told the OIG was taking possession of one of Baker's phones. But, according to Friday's filing, the OIG didn't even know that the cellphones in general were definitely discussed in Durham's presences, much less that any mention was made of Baker's cell phone.

But in some ways, it is better for Durham's team to know now that the OIG isn't genuinely cooperating. The special counsel's office can now revisit the formal written discovery requests it has made, both in the Sussmann case and the pending Igor Danchenko case, as well as more broadly in its entire investigation of Crossfire Hurricane and Special Counsel Robert Mueller's investigation. What else has the OIG kept mum about?

Friday's filing suggests that is precisely what Durham is doing, with the supplemental filing closing with a note that after revisiting the 2018 criminal investigation in which the OIG claimed it likely discussed cell phones with Durham, the special counsel's office requested from the OIG access to additional cellphones it possesses.

OIG Made Another False Claim

An even more significant takeaway from the special counsel's Friday supplemental filing concerns not what the OIG said, but what it did not say: After reading the "discovery update" the special counsel's office filed, the OIG's only objection concerned the potential that it had previously mentioned possessing cellphones to Durham in another investigation.

The OIG apparently raised no concerns about the special counsel's office's representations to the

court concerning the “cyber-related matter” involving Joffe and Sussmann, including Durham’s statement that he learned from Sussmann—and not the OIG—that Sussmann had actually met with the IG, and not merely passed Joffe’s tip to an OIG agent.

From Friday’s filing, it also appears the OIG did not challenge Durham’s representation that when the OIG provided Durham’s team the “forensic report” about the Sussmann-Joffe tip, it falsely represented “that it had ‘no other file[] or other documentation’ relating to this cyber matter,” and that later, after Durham further questioned the OIG, additional documentation turned up.

If the OIG thinks it has cleared its name, it is sadly mistaken.

As for the special counsel’s request for more time to provide Sussmann discovery, the district court granted that motion on Friday. With the OIG playing hide-the-ball from Durham, the special counsel clearly needs that extra time. Apparently, the elite media also needs some additional time to realize there is a huge story being missed (ignored?) concerning a private individual potentially tracking government computers.

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