

In Durham filing, Scott exaggerates proof of Clinton campaign spying on Trump

Jon Greenberg and Bill McCarthy

February 21, 2022

Former President Donald Trump regularly claimed that the Obama administration spied on him during the 2016 presidential election. Now, Republicans and conservative media are saying that it was Hillary Clinton's campaign that did the spying.

Their evidence? A new filing in an ongoing federal probe by special counsel John Durham.

For Florida Republican Sen. Rick Scott, the Durham material is a smoking gun.

"The latest with the Durham report is that the Clinton campaign, the same group that fear-mongered this Russian collusion, actually spied on the president of the United States," Scott said Feb. 15.

Many commentators have embellished what's in this latest information, and Scott's statement also treats some fuzzy elements as if they were solid proof.

Durham's filing doesn't say the Clinton campaign spied on Trump, nor does it say that the data referenced in the filing came from the time when he was president.

We'll unpack the details.

What's in Durham's filings

In October 2020, Trump's attorney general, William Barr, appointed Durham to investigate how and why during the 2016 election the Justice Department decided to probe possible links between Trump and Russia. One of two people indicted as part of Durham's probe is Michael Sussmann, an attorney for a law firm that represented Clinton's 2016 presidential campaign.

In 2015, Sussmann was separately retained by another client, a technology executive, according to Sussmann's September 2021 indictment. News reporting later revealed that executive to be Rodney Joffe.

Joffe worked with a team of cybersecurity researchers who had access to internet traffic data under a pending contract with the federal government to monitor for security threats and breaches. They thought that some data they were analyzing may have amounted to potential evidence of a communications channel between the Trump Organization and a Russian bank.

The data they were parsing was domain name system, or DNS, data, which essentially tracks every time a computer or smartphone connected with a web server on the internet. It does not reveal the content of a person's screen or messages.

The indictment Durham secured against Sussmann charged him with making a false statement when he brought this information to the FBI during a 2016 meeting. Durham alleges that Sussmann told the FBI he was not there "for any client" when, the indictment says, he was actually acting on behalf of both Joffe and the Clinton campaign.

Sussmann has pleaded not guilty and denied wrongdoing. Joffe has not been charged with any criminal activity in the matter. Neither have Clinton or other campaign officials.

Durham's Feb. 11 filing at the center of the most recent coverage built out the case against Sussmann, adding some details about a second meeting Sussmann had with the CIA in February 2017. The meeting had been referenced in the original indictment and was the subject of previous reporting.

At that meeting, Sussmann relayed that Joffe and researchers had developed other suspicions while sifting through the internet traffic data. Their concern was that the data showed Russian-made phones were being used from networks serving Trump Tower and the White House, among other locations. Joffe's firm at the time had legal access to the data because it was providing services for the White House.

What's clear and unclear in Durham's filing

There is no question that Sussmann worked for Clinton's 2016 campaign for president. But he says that when he met with the FBI, the information he passed along was not on behalf of the campaign. He also said he didn't make any false statements about whom he represented. Durham's filing says he billed the campaign, but Sussman's lawyers say that he couldn't have represented the Clinton campaign because by the time of Sussman's February meeting with the CIA, the campaign no longer existed.

Sussmann presented information to government officials based on internet traffic data that came from the White House executive offices, Trump Tower and other places.

But several points remain murky.

Durham's filing does not say that the DNS data was captured after Trump took office. The filing says that on Feb. 9, 2017, Sussmann "provided an updated set of allegations" to the CIA, and the indictment says the DNS data he shared ranged "from 2016 through early 2017."

The filing doesn't make clear whether any of that data came after Trump was sworn in on Jan. 20, 2017.

Sussman's lawyers have argued that it did not. His attorneys and those representing one of the researchers who worked with Joffe have said that none of their information was gathered after Trump took office.

Sussmann told congressional investigators, under oath, that the second meeting took place in February because it was delayed, not because he had collected new data. He said he first reached out to the CIA in December 2016, while Barack Obama was still president, but that "it took a while to have a meeting, and so it ended up being after the change in administration."

Durham's filing also doesn't say that the DNS data was collected illegally. He writes that the technology company had access to data from the Executive Office of the President and "exploited this arrangement by mining the EOP's DNS traffic and other data for the purpose of gathering derogatory information about Donald Trump."

Scott's office cited this line, among others from the Feb. 11 filing, in response to PolitiFact's inquiry.

Ric Simmons, a law professor at the Ohio State University, said that's not the same as saying anyone broke privacy laws.

"The tech company had legal access to these servers and there is no indication that they were not allowed to share the information," Simmons said.

A spokesperson for Joffe's company said in a statement to ABC News that Trump wasn't the reason they were scanning DNS data.

"As a result of the hacks of the Executive Office of the President and the Democratic National Committee servers in 2015 and 2016, respectively, there were serious and legitimate national security concerns about Russian attempts to infiltrate the 2016 election," the statement said. "Upon identifying DNS queries from Russian-made Yota phones in proximity to the Trump campaign and the EOP, respected cybersecurity researchers were deeply concerned about the anomalies they found in the data and prepared a report of their findings, which was subsequently shared with the CIA."

The legal process might produce more details, but at this point, Durham has not said using the data was a crime. By itself, this undercuts the notion that anyone spied on Trump. And if the target was Russian meddling, as Joffe's statement said, and not Trump, there's even less basis to cast this as spying.

Finally, Durham's filing didn't say that campaign officials directed this activity. Sussmann worked both for a law firm that represented the campaign, and for Joffe, who had lawful access to the data. Simmons said Scott's statement "implies that the decision-makers of the Clinton campaign knew about this or directed these actions, and the filings make no mention of such a link."

"There's no evidence suggesting any of this was elaborately masterminded by Hillary Clinton," said Julian Sanchez, a senior fellow at the Libertarian Cato Institute, in a [Twitter thread](#). "The rather tenuous Clinton link is that Joffe passed the researchers' findings on to FBI & CIA via Sussman, a prominent cybersecurity lawyer who'd also done work for the Clinton campaign."

Simmons also noted that nothing has been proven.

"Nobody 'hacked' or 'intercepted' anything," Sanchez said.

Our ruling

Scott said "the latest with the Durham report is that the Clinton campaign ... actually spied on the president of the United States."

The filing from Durham is more tentative than Scott presents.

It states that an attorney for an internet company that was collecting data related to White House communications from 2016 to early 2017 also served as an attorney for the Clinton campaign. It does not say that the Clinton campaign directed these activities. And it does not assert that the data was gathered illegally or that it was collected while Trump was president.

We rate this claim False.