

MUELLER TO YEVGENIY PRIGOZHIN: SURE YOU CAN HAVE DISCOVERY ... IF YOU COME TO THE UNITED STATES TO GET IT

This Concord Management filing, from Mueller's team, is attracting a lot of attention because Mueller predictably asked for a protective order and said Russians are still engaging in information operations (so are we!!). Since we covered the certainty that there'd be a protective order in this case over a month ago, I'm going to focus on some other interesting tidbits about this filing.

As a reminder, Concord Management is a company owned by close Putin ally Yevgeniy Prigozhin. Concord is accused in the Internet Research Agency indictment of funding the troll operation.

Defendants CONCORD MANAGEMENT AND CONSULTING LLC (Конкорд Менеджмент и Консалтинг) and CONCORD CATERING are related Russian entities with various Russian government contracts. CONCORD was the ORGANIZATION's primary source of funding for its interference operations. CONCORD controlled funding, recommended personnel, and oversaw ORGANIZATION activities through reporting and interaction with ORGANIZATION management.

[snip]

To conceal its involvement, CONCORD labeled the monies paid to the ORGANIZATION for Project Lakhta as payments related to software support and development. To further conceal the

source of funds, CONCORD distributed monies to the ORGANIZATION through approximately fourteen bank accounts held in the names of CONCORD affiliates, including Glavnaya Liniya LLC, Merkuriy LLC, Obshchepit LLC, Potentsial LLC, RSP LLC, ASP LLC, MTTs LLC, Kompleksservis LLC, SPb Kulinariya LLC, Almira LLC, Pishchevik LLC, Galant LLC, Rayteks LLC, and Standart LLC.

The indictment accuses Prigozhin of supervising the operation closely enough to have been saluted by troll operations in the US.

PRIGOZHIN approved and supported the ORGANIZATION's operations, and Defendants and their co-conspirators were aware of PRIGOZHIN's role.

For example, on or about May 29, 2016, Defendants and their co-conspirators, through an ORGANIZATION-controlled social media account, arranged for a real U.S. person to stand in front of the White House in the District of Columbia under false pretenses to hold a sign that read "Happy 55th Birthday Dear Boss." Defendants and their co-conspirators informed the real U.S. person that the sign was for someone who "is a leader here and our boss . . . our funder." PRIGOZHIN's Russian passport identifies his date of birth as June 1, 1961.

When Concord moved to defend itself, it presented the possibility that it *and Prigozhin* would obtain discovery, and via Prigozhin, everyone else in Russia who was part of this operation, up to and including Putin. Indeed, the Mueller filing makes it quite clear that is the intent of the defense attorneys. They explicitly asked to share information with co-defendants that serve as officers of Concord, which can only mean they want to share

information with Prigozhin.

In its initial proposed protective order, the government proposed a complete prohibition on sharing discovery with any co-defendant charged in this criminal case, whether individual or organizational. Defense counsel proposed that they be permitted to share discovery with a codefendant if that co-defendant is an officer or employee of Concord Management. To the government's knowledge, the only charged defendant in this category is Yevgeniy Viktorovich Prigozhin, who was charged individually for conspiring to defraud the United States, in violation of 18 U.S.C. § 371.

So this dispute over the protective order is an effort to continue with the prosecution, while ensuring that Russia doesn't obtain important information on the investigation into the operation by doing so.

Before I get into how Mueller's team proposes to resolve the dispute, it's worth reviewing the data in question, because that's actually one of the most interesting parts of this filings. Apparently, the government used no classified information in the investigation of social media trolling (or parallel constructed whatever they did use).

As described further in the government's ex parte affidavit, the discovery in this case contains unclassified but sensitive information that remains relevant to ongoing national security investigations and efforts to protect the integrity of future U.S. elections.
[my emphasis]

Later, the filing makes it clear that much of the evidence in the case came from US providers – surely Facebook and Twitter and others.

The evidence includes data related to hundreds of social media accounts, as well as evidence obtained from email providers, internet service providers, financial institutions, and other sources. Additionally, the need to produce much of the data in its original format (formats that include, for example, Excel and HTML files) makes it infeasible to make certain redactions without compromising expeditious review of the data.

These two details confirm a point I made in March: this indictment really doesn't rely on information as secret as many reporters claimed. It relies on stuff you get from social media providers.

And contrary to what NBC says about the heavy reliance, in the Internet Research Agency indictment, "on secret intelligence gathered by the CIA, the FBI, the National Security Agency (NSA) and the Department of Homeland Security (DHS)," it really wasn't all that sophisticated from a cybersecurity standpoint. Especially not once you consider the interesting forensics on it (aside from IDing the IRA's VPNs) would have come from Facebook and Twitter.

That detail – that much of this indictment comes from the social media providers that Russia exploited in 2016 – is important background to this passage (this is the one that has gotten all the press), which asserts that Russia continues to do what Prigozhin's trolls did in 2016.

Public or unauthorized disclosure of this case's discovery would result in the release of information that would assist foreign intelligence services, particularly those of the Russian Federation, and other foreign actors in

future operations against the United States. First, the substance of the government's evidence identifies uncharged individuals and entities that the government believes are continuing to engage in interference operations like those charged in the present indictment. Second, information within this case's discovery identifies sources, methods, and techniques used to identify the foreign actors behind these interference operations, and disclosure of such information will allow foreign actors to learn of these techniques and adjust their conduct, thus undermining ongoing and future national security investigations.

And that, in turn, explains much of the logic for the larger protective order request: the government is trying to prevent Prigozhin and through him Putin from learning what the US is doing to counter its information operations.

The government's description of what it considers "sensitive" information that it wants to require a special review before sharing with foreign nationals reveals it is also trying to prevent Prigozhin and others from learning about the status of the investigation and its targets.

- a. Witness statements provided pursuant to 18 U.S.C. § 3500;
- b. Information that could lead to the identification of potential witnesses, including civilian, foreign and domestic law enforcement witnesses and cooperating witnesses;
- c. Information related to ongoing investigations, including information that could identify the targets of such investigations; and
- d. Information related to sensitive law enforcement or intelligence collection techniques.

Finally, the government is trying to hide what it knows about relationships between parties involved in this operation and “other uncharged foreign entities and governments.”

At a high level, the sensitive-but-unclassified discovery in this case includes information describing the government’s investigative steps taken to identify foreign parties responsible for interfering in U.S. elections; the techniques used by foreign parties to mask their true identities while conducting operations online; the relationships of charged and uncharged parties to other uncharged foreign entities and governments; the government’s evidence-collection capabilities related to online conduct; and the identities of cooperating individuals and, or companies. Discovery in this case contains sensitive information about investigative techniques and cooperating witnesses that goes well beyond the information that will be disclosed at trial. [my emphasis]

So one thing the government wants to protect is what it knows about the relationship between Prigozhin and Putin, and the Russian government’s involvement in this trolling operation more generally.

And to do that, the government is demanding the ability to prohibit Concord’s lawyers from sharing information with Prigozhin (or any other defendant) without prior court review.

Notwithstanding the previous categories of authorized persons, no co-defendant charged in this criminal case, whether individual or organizational, shall be deemed an authorized person for purposes of discovery until the co-defendant appears before this Court. Defense counsel shall not disclose or discuss

the material or their contents to any co-defendant charged in this criminal case, whether individual or organizational, until the co-defendant appears before this Court unless otherwise directed by this Court. If defense counsel, after reviewing discovery in this matter, believes it necessary to seek to disclose or discuss any material with a co-defendant who has not appeared before this Court, counsel must first seek permission from this Court and a modification of this Order.

Perhaps more interesting, it is demanding that Concord's lawyers keep anything deemed sensitive in the US, firewalled from the Internet.

Neither defense counsel nor any person authorized by this Court is permitted at any time to inspect or review Sensitive materials outside of the U.S. offices of Reed Smith LLP, without prior permission from of this Court. Defense counsel or a designated and identified employee of Reed Smith LLP must accompany any person at all times while he or she is reviewing Sensitive materials at U.S. offices of Reed Smith LLP, unless otherwise authorized by this Court.

[snip]

Sensitive materials shall not be viewed or stored on any device that is connected to or accessible from the Internet.

Sensitive materials may under no circumstances be transported or transmitted outside the United States.

The logic here is nifty: even if they lose on the ability to protect all materials from Prigozhin, they've already succeeded in requiring that he come to the US if he wants to read it. At which point, he'd be met by

authorities at customs and promptly put in custody.

On one point I was mistaken. I thought there would be classified discovery of some sort, that would require the use of the Classified Intelligence Protection Act procedures. It will apparently never get to that. The government will either win on this protective order, which will largely moot much of the logic for Concord to contest the case, or it will lose, which will likely lead it to dismiss the indictment against Concord.

Update: Fixed protective for protection, h/t mw.