

DRAGONS CAUGHT IN THE CROSSFIRE: ON THE GENEALOGY OF THE CURRENT AND FUTURE MUELLER INVESTIGATION

As I laid out last week, I provided information to the FBI on issues related to the Mueller investigation, so I'm going to include disclosure statements on Mueller investigation posts from here on out. I will include the disclosure whether or not the stuff I shared with the FBI pertains to the subject of the post.

Lawfare has one of the best summaries of the Russian hack indictment on Friday. It does an excellent job of laying out what the indictment shows technically and legally. But I really wish it didn't start with this passage.

This was the investigation over which the president of the United States fired James Comey as FBI director.

This is the investigation Comey confirmed on March 20, 2017, when he told Congress, "I have been authorized by the Department of Justice to confirm that the FBI, as part of our counterintelligence mission, is investigating the Russian government's efforts to interfere in the 2016 presidential election."

This was also the investigation that multiple congressional committees have spent more than a year seeking to discredit—most recently Thursday, when two House panels hauled the former deputy assistant director of the FBI's Counterintelligence Department, Peter

Strzok, a career FBI agent who worked on the Russia probe, up to Capitol Hill for 10 hours of public, televised, abusive conspiracy theorizing. When the president of the United States derides the Mueller investigation as a “witch hunt,” and when congressional Republicans scream at FBI agents, this is the investigation they are trying to harass out of existence.

I get the sentiment. I get criticizing Republicans for attacking the “Mueller probe” (or whatever you want to call it). I’ve criticized the Republicans for doing that myself. But it is assuredly not the case that Friday’s indictment is the “investigation over which the president of the United States fired James Comey as FBI director” or the investigation Comey confirmed in March of 2017.

The investigation that resulted in Friday’s indictment is, rather, the result of investigations conducted primarily in San Francisco and Pittsburgh. At the time Comey confirmed the counterintelligence investigation into Trump’s camp and at the time Comey got fired for not shutting the Trump counterintelligence investigation down, those San Francisco and Pittsburgh investigations were totally separate. Those two investigations almost certainly had little if any involvement from Peter Strzok (indeed, they involved a bunch of FBI cyber agents, a division of FBI that Strzok never tired of mocking in his texts to Lisa Page). The DOJ press release from Friday states that explicitly.

This case was investigated with the help of the FBI’s cyber teams in Pittsburgh, Philadelphia and San Francisco and the National Security Division.

Those two investigations (plus the separate one noted in Philadelphia that started later, as I understand it from what a lawyer who represented

a witness in that investigation described to me) got moved under the Mueller umbrella sometime in or just before November, and now the GRU officer part of the investigation will be moved back to Pittsburgh where it started, to languish forever like some other nation-state hacker indictments investigated by Western District of Pennsylvania.

There are several reasons, besides exactitude, I'm harping on this point.

First, House Republicans, working in tandem with the President, have made the CI investigation Comey confirmed the end-all and be-all of the investigation, a way of simplifying it so as to villainize and discredit it. An entire stable of right wing journalists and members of Congress are trying to discredit something in the early stages of the investigation – whether it's the inclusion of the Steele dossier among other evidence to obtain a FISA order on long-time suspected Russian asset Carter Page, the use of a lifelong Republican operative to conduct interviews in the least intrusive way, or the fact that even as he was losing the fight to investigate aggressively, Peter Strzok shared a widespread belief that Trump was not fit to be President. They believe that if they can do so, they can claim everything downstream of those actions is tainted. They're doing so even while launching conspiracies off of stories that clearly show the existence of four counterintelligence investigations focused on the Russian operation, just one of which is known to have targeted Trump's people.

"Crossfire Hurricane" was one of the code names for four separate investigations the FBI conducted related to Russia matters in the 2016 election.

"At a minimum, that keeps the hurry the F up pressure on him," Strzok emailed Page on Oct. 14, 2016, less than four weeks before Election Day.

Four days later the same team was

emailing about rushing to get approval for another FISA warrant for another Russia-related investigation code-named "Dragon."

The GOP is literally bitching that the FBI was expediting FISA applications targeted at likely Russian targets during an ongoing Russian attack.

It is important to show how each of these attacks on the CI investigation into Trump is bullshit.

- It is common to use information from consultants like Steele or paid informants in FISA applications. Their credibility is measured, in significant part, based on past credibility. And whatever you think about the impropriety of using oppo research (as DOJ also did with Clinton Cash) and whatever the likelihood that *in this case* Steele's intelligence network got fed disinformation, it is the case that in 2016, Steele's track record with the DOJ was far more reliable than a host of other consultants that presumably get included in FISA applications.
- The FBI is permitted to use human informants at the assessment level (and when Stefan Halper interviewed

Papadopoulos, it appears to have been a full investigation), and using a Republican operative like Halper to question George Papadopoulos was both less likely to affect the election in any way, and legally less dangerous for Papadopoulos than an undercover FBI officer would have been.

- Strzok definitely believed Trump was unfit to be President, but (as I noted), he fought to use more aggressive investigative methods with both Hillary and Trump, and he lost that fight both times.

Ultimately, when you ask people wielding these complaints as if they're a big deal what investigative steps against Page (after he left the campaign) or Papadopoulos (when he remained on it) would have been acceptable, they start to scramble, because (and I say this as someone who exposed herself to significant FBI scrutiny by going to them as a witness) these were reasonable steps to take. And the other favorite suggestion – that Trump would have responded to a defensive briefing – ignores that Trump hired Mike Flynn as his National Security Advisor even after President Obama gave him far more explicit warnings about the counterintelligence concerns about Flynn at the time.

At some point, GOP hoaxsters have to commit to whether they think it is legitimate to investigate suspected Russian spies or not, and if so how.

It is equally important to note that – as is demonstrably the case both with the GRU indictment rolled out Friday and with the information I provided – there is a ton of really damning evidence that never touched Peter Strzok. As I explained the other day, you can put information I provided to a team that had nothing to do with the Mueller team at the time I spoke to them, together with several other pieces of information Mueller obtained via other means (some of it was public!), and get right to the question of Trump conspiring with Russians to win the election.

Treating a range of investigations as only one investigation plays into the Trump game of discrediting an overly simplistic caricature of the investigation.

The other reason those covering the Russian investigation should be far more careful with what the investigation consisted of over time is, without understanding where the investigation came from, you can't understand where the investigation is going. There have been a slew of reports reading dockets and citing anonymous DOJ and Trump sources. Some show an awareness of why prosecutors get added to dockets in particular cases. Others completely ignore things that are in the public record.

It is my well-educated opinion that we're seeing several things with recent developments. First, where possible, Mueller is handing off things (the Concord Management and GRU hack prosecutions) that don't need to be politically protected. He has also handed off issues (the Cohen search) that don't relate directly to conspiring with Russians, even while any prosecution there could result in cooperation on the conspiracy case; though note, Mueller's reported investigation of inauguration funding would also implicate Cohen. I suspect, eventually, he'll hand off things that amount to garden variety corruption, as distinct from graft tied directly to the election money

laundering.

But when reports say Mueller is preparing to wrap it up, I suspect the reality is Mueller is close to taking steps that will lay out a case for conspiracies with Russia involving people very close to Trump, which will make it much harder for Trump to refuse an interview without putting himself at risk to be indicted personally. Those steps will show what a farce six months of Trump-planted stories emphasizing a focus on obstruction have been. That prosecution Mueller's team will see through, I imagine, not least because that's precisely why he included four appellate specialists on his team, including Solicitor General star lawyer Michael Dreeben.

Update: Tweaked the San Francisco/Pittsburgh discussion because it was confusing several people.

Timeline

June 15, 2016: Likely start date for FBI investigation into hack of DNC/DCCC (the genesis for Friday's indictment)

July 31, 2016: Peter Strzok opens up Operation Crossfire

October 21, 2016: Carter Page FISA approved

January 12, 2017: Carter Page FISA reauthorized

February 18, 2017: Reuters describes a tripartite division of investigation, with DNC hack investigation in Pittsburgh, Guccifer 2.0 investigation in San Francisco, and Trump CI investigation in DC

Early April, 2017: Carter Page FISA reauthorized

May 2017: I learn of Philadelphia investigation targeted in some way at Guccifer 2.0

May 17, 2017: Rod Rosenstein appoints Robert Mueller to take over Operation Crossfire

June 29, 2017: Carter Page FISA reauthorized

August 2, 2017: Mueller investigation includes, at a minimum, George Papadopoulos obstruction, Paul Manafort graft, collusion (including June 9 meeting), and obstruction

October 5, 2017: Papadopoulos pleads guilty (waiving venue)

Mid-October, 2017: Technical witness preparing for interview with Mueller's team

October 30, 2017: Papadopoulos guilty plea unsealed

Early November, 2017: Mueller adds cyber prosecutor Ryan Dickey

November 2, 2017: WSJ reports DOJ will prosecute GRU hackers, reports that Pittsburgh, San Francisco, Philadelphia, along with DC remain in charge of investigation

December 1, 2017: Mike Flynn pleads guilty

February 12, 2018: Richard Pinedo pleads guilty, waives venue

February 16, 2018: Internet Research Agency (Concord Management) indictment

February 20, 2018: Alex van der Zwaan pleads guilty

February 22, 2018: Paul Manafort indicted in EDVA, refuses to waive venue

March 1, 2018: NBC reports that Mueller – not main DOJ – will prosecute GRU hackers

April 9, 2018: Michael Cohen searches executed by SDNY; SDNY investigation, covering taxi medallion fraud and hush money payments, is likely just part of his criminal exposure

May 3, 2018: Mueller adds Uzo Asonye to EDVA team prosecuting Paul Manafort at request of Judge TS Ellis

June 22, 2018: Mueller brings in DOJ team to prosecute Concord Management, freeing up tech-focused Mueller prosecutors

July 13, 2018: Mueller indicts GRU hackers,
sends prosecution back to Pittsburgh