

THE GOVERNMENT MAY KEEP PAUL MANAFORT'S IPODS (IN PART) BECAUSE OF THE JUNE 9 EMAILS

As I laid out a few weeks ago, 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.

Judge Amy Berman Jackson has finally weighed in whether Paul Manafort gets the eight iPods the government seized from him back. Unsurprisingly, she has ruled that the July 2017 search of Manafort's Alexandria condo was properly authorized. Better still, she has ordered the parties carry out a discussion that may lead us to learn whether the seven or eight iPods I've been obsessing about contain any interesting evidence; she has ordered the government to return any devices that don't include evidence covered by the warrant by August 17.

ABJ's order is interesting for two reasons. First, because redacted sections of the order must refer to the June 9 meeting that is described in the warrant but for which the sections of the supporting affidavit are entirely redacted.

disclose his interest in those foreign accounts. Aff. ¶ 18. The affidavit also detailed alleged misrepresentations to secure bank loans and loan extensions. Aff. ¶¶ 24-46. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

One of those sections describes email the government had already obtained that it used to justify its request to obtain electronic

devices.

numerous email communications related to the offenses of interest, including exchanges with Gates concerning FARA reporting requirements, Aff. ¶ 19; emails related to the payment of vendors using funds from a Cypriot account, Aff. ¶ 14; and [REDACTED]. Thus, the affidavit presented grounds for the Magistrate Judge to conclude that there was probable cause to believe that Manafort regularly relied on electronic communications in the conduct of his affairs, that electronic devices used by defendant could be found in the Alexandria residence, and that they would contain evidence of the alleged crimes. See *Griffith*, 867 F.3d at

The redacted language almost certainly describes the emails about the June 9 meeting.

We know the government had already obtained emails pertaining to the June 9 meeting because Don Jr had already leaked them for all the world to see by the time of the search. But we also know that Don Jr, at least, was hiding Manafort's side of the communication (the campaign would have provided Manafort's side to Mueller's team when they provided it to Congress).

So while it's all redacted, one of the things ABJ uses to justify the search and seizure of Manafort's iPods are almost certainly emails relating to the June 9 meeting, including whatever details noted OpSec wizard Paul Manafort included but which Don Jr recognized retrospectively would be damning.

ABJ goes to the trouble of ruling proper the seizure of the iPods, which might include records pertaining to the crimes in question, specifically.

pictures, or photocopies)." Warrant at 3, Notice Att. at 15. While devices such as an iPod Touch are primarily used to play music or videos, see Def.'s Mot. at 7, they are also "storage media" that can be used to store files or photographs of important records. See, e.g., *United States v. Ballard*, 551 F. App'x. 33, 36 (3d Cir. 2014) (unpublished) (personal information relevant to identity-theft scheme found on iPod); *United States v. Okeayainneh*, No. 11-cr-87, 2011 WL 2457395, at *10 (D. Minn. May 13, 2011) (affidavit established probable cause to believe that an iPod was among the devices used to store and transmit information in a fraud and identity-theft scheme). Thus, agents did not exceed the scope of the warrant when they seized or copied iPods, cameras, or other electronic media that could be used to store materials related to the alleged offenses.

Deliciously, because Manafort has bitched so much about his iPods, ABJ ordered a status report describing whether any seized devices

(but not imaged) fall outside the scope of the warrant.

determined fall outside the warrant. Regarding electronic devices that were seized, in particular, devices such as iPods or cameras that are not used primarily to store records or to transmit communications, the Court will order the parties to confer and file a status report on whether there are any that can be returned that have not yet been delivered. As for imaged devices, they pose no constitutional problem. Courts have upheld the government's retention of images created during the execution of a search warrant given the need to authenticate exhibits at a later date. *See United*

So we're going to learn by August 17 (if things don't come to a head before then) whether Manafort has specific disputes about whether these iPods were used to commit any of the crimes he is suspected of, including conspiring with Russians to steal the election.