

ANDY MCCARTHY'S MISCONCEPTION

I was struck, in reading Andy McCarthy's review of the Michael Cohen and Paul Manafort guilty outcomes last week (in which he measures Trump via a vastly different standard than he once measured Bill Clinton), by this erroneous claim:

The Trump camp continues to stress that Manafort's case had nothing to do with the original rationale for Mueller's investigation, "collusion with Russia." But as we've pointed out any number of times, Mueller took over a counterintelligence investigation of *Russia's interference in the 2016 election*. Possible Trump-campaign collusion with Russia was just one thread in the larger probe.

The claim that the Trump-campaign "collusion" was just one thread of what Mueller originally took over is false, but utterly critical for McCarthy's sustained belief that Mueller has not found evidence of a conspiracy between Trump and Russia. While it is true that when Comey confirmed the investigation, he did not specify the structure of the investigation,

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 and that includes investigating

the nature of any links between individuals associated with the Trump campaign and the Russian government and whether there was any coordination between the campaign and Russia's efforts. As with any counterintelligence investigation, this will also include an assessment of whether any crimes were committed.

When Rod Rosenstein appointed Mueller, he described Mueller's scope to include,

- any links and/or coordination between the Russian government and individuals associated with the campaign of President Donald Trump; and
- any matters that arose or may arise directly from the investigation; and
- any other matters within the scope of 28 C.F.R. § 600.4(a)

Why McCarthy made this error is clear: he uses the existence of and Mueller's indictments in a broader counterintelligence investigation to sustain his belief that Mueller doesn't have a "collusion" case against Trump or his associates.

At this point, it does not appear that Mueller has a collusion case against Trump associates. His indictments

involving Russian hacking and troll farms do not suggest complicity by the Trump campaign. I also find it hard to believe Mueller sees Manafort as the key to making a case on Trump when Mueller has had Gates – Manafort's partner – as a cooperator for six months. You have to figure Gates knows whatever Manafort knows about collusion. Yet, since Gates began cooperating with the special counsel, Mueller has filed the charges against Russians that do not implicate Trump, and has transferred those cases to other Justice Department components.

When it comes to the president, I believe the special counsel's focus is obstruction, not collusion. When it comes to Manafort, I believe the special counsel's focus is Russia – specifically, Manafort's longtime connections to Kremlin-connected operatives. Mueller may well be interested in what Manafort can add to his inquiry into the June 2016 Trump Tower meeting (arranged by Donald Trump Jr. in futile hopes of obtaining campaign dirt from Russia on Hillary Clinton). That, however, is not the more serious "collusion" allegation that triggered the Trump thread of the investigation – cyberespionage conspiracy (i.e., Russian hacking of Democratic party emails).

That is, because Mueller indicted trolls and GRU hackers and then spun those prosecutions off to other teams (in the GRU case, back to one of the teams that originally investigated it), it is proof, in McCarthy's mind, that Mueller isn't targeting Trump and his associates for conspiring with Russia.

The actual background of the Mueller investigation suggests precisely the opposite. As I noted when Lawfare made precisely the same error in a post on the GRU indictment,

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.

Given that both public reporting (starting in February 2017 and extending into November 2017) and Mueller team changes (not to mention my own reporting about the Philadelphia grand jury's activity in the second half of May 2017 and my own knowledge about where I interviewed and

where my interview materials subsequently got moved to) support this narrative, McCarthy (and the Lawfare crowd) might ask why Mueller decided to integrate the cybersecurity parts of the investigation, only to spin the Russian defendants back to other teams once they were indicted?

We can begin to get an answer from the two indictments that – Andy wants to believe – are themselves evidence that Mueller *doesn't* have evidence on Trump's associates but actually are. The Internet Research Agency indictment actually describes three Florida-based Trump campaign officials inconclusively, as if they were either still under investigation or at some legal risk.

On approximately the same day, Defendants and their co-conspirators used the email address of a false U.S. persona, joshmilton024@gmail.com, to send an email to Campaign Official 1 at that donaldtrump.com email account, which read in part:

Hello [Campaign Official 1],
[w]e are organizing a state-wide event in Florida on August, 20 to support Mr. Trump. Let us introduce ourselves first.
"Being Patriotic" is a grassroots conservative online movement trying to unite people offline. . . . [W]e gained a huge lot of followers and decided to somehow help Mr. Trump get elected. You know, simple yelling on the Internet is not enough. There should be real action. We organized rallies in New York before. Now we're focusing on purple states such as Florida.

The email also identified thirteen "confirmed locations" in Florida for the rallies and requested the campaign

provide "assistance in each location."

[snip]

Defendants and their co-conspirators used the false U.S. persona joshmilton024@gmail.com account to send an email to Campaign Official 2 at that donaldtrump.com email account.

[snip]

On or about August 20, 2016, Defendants and their co-conspirators used the "Matt Skiber" Facebook account to contact Campaign Official 3.

And while the GRU indictment (on top of key clauses being misread by virtually everyone who has read it) doesn't use the same convention to describe Roger Stone's communications with Guccifer 2.0...

On or about August 15, 2016, the Conspirators, posing as Guccifer 2.0, wrote to a person who was in regular contact with senior members of the presidential campaign of Donald J. Trump, "thank u for writing back . . . do u find anyt[h]ing interesting in the docs i posted?" On or about August 17, 2016, the Conspirators added, "please tell me if i can help u anyhow . . . it would be a great pleasure to me." On or about September 9, 2016, the Conspirators, again posing as Guccifer 2.0, referred to a stolen DCCC document posted online and asked the person, "what do u think of the info on the turnout model for the democrats entire presidential campaign." The person responded, "[p]retty standard."

It pointed to Russia's response to Donald Trump's request that they hack Hillary without referring to him one way or another.

For example, on or about July 27, 2016, the Conspirators attempted after hours to spearfish for the first time email accounts at a domain hosted by a thirdparty provider and used by Clinton's personal office. At or around the same time, they also targeted seventy-six email addresses at the domain for the Clinton Campaign.

What Mueller has done with *both* of the counterintelligence indictments that McCarthy takes solace in is lay out the Russian side of a conspiracy (and both are charged as *conspiracies*) with very clear spots into which American co-conspirators may be dropped when Mueller is prepared to do so. (I laid this out at more length in this post.)

Importantly, the fact that some of this investigation started out in other parts of DOJ but then got moved under Mueller make it clear that something came up in the investigation that Mueller and Rosenstein believed required they be moved under Special Counsel when they weren't there, originally.

Let's put it this way: Mueller didn't subsume investigations located elsewhere at DOJ because the Special Counsel needed to be the one to indict a bunch of Russians. He did it to set up the conspiracies that would – that will – later be occupied by Russians and Americans.

As I disclosed in July, 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.