

THE PARTS OF THE MUELLER REPORT WITHHELD FROM ROGER STONE SHOW THE CENTRALITY OF HIS WIKILEAKS ACTIVITIES TO TRUMP'S OBSTRUCTION

Along with denying most of Roger Stone's frivolous challenges to his prosecution, Amy Berman Jackson also partly granted his motion to get some of the redacted Mueller Report. As she laid out, she permitted the government to withhold grand jury information, sources and methods, stuff that would harm the reputation of others, and prosecutorial deliberations.

But the Court was of the view that the Report of the Special Counsel should receive separate consideration since a great deal of deliberative material within the Report had already been released to the public.

[snip]

Having considered the defendant's motion, the government's response and supplemental submissions, and the Report itself, the Court has determined that the defense should have the limited access he requested to some, but not all, of the redacted material.³² Insofar as defendant's motion to compel seeks any material that was redacted from the public report on the basis that its release would infringe upon the personal privacy of third parties or cause them reputational harm; pursuant to Federal Rule of Criminal Procedure 6(e); or on

the basis of national security or law enforcement concerns, including information that if revealed, could potentially compromise sensitive information gathering sources, methods, or techniques or harm ongoing intelligence or law enforcement activities, the Court will deny the motion.³³ With respect to material that was withheld solely on the basis that its release could affect the ongoing prosecution of this case, the Court has concluded that the material to be specified in the order issued with this opinion should be provided to counsel for the defendant subject to the terms and conditions of the Protective Order in this case.

As she described, the government “submit[ed] unredacted portions of the Report that relate to defendant ‘and/or “the dissemination of hacked materials.”” Then she and the government conducted a sealed discussion about what could be released to Stone. In addition to her opinion, she submitted an order describing which specific pages must now be released to Stone.

We can compare what the government identified as fitting her order – this includes anything that fits the order, whether redacted or not – with what she has ordered released to Stone (note, the government either did not include Appendix D, showing referrals, or ABJ didn’t mention it, because in addition to an unredacted reference to Stone, there are referrals that the FOIA copies show to be related to Stone; nor did it include questions to Trump).

ABJ has *not* ordered the government to turn over anything pertaining to how GRU got stolen documents to WikiLeaks. This is precisely the kind of thing Stone is trying to get with his demands for CrowdStrike reports; after ABJ pointed out if they really wanted the reports, they would have tried subpoenaing CrowdStrike and they are now launching an attempt to do

that. That ABJ has not ordered the government to turn this material over does not bode well for Stone's plans to make this trial about the hack-and-leak rather than his lies. I would not be surprised if Stone made a second effort to get this information.

She has permitted the government to withhold all the prosecutorial decisions covered by her order except the one pertaining to Stone's own lies. In addition, she let the government withhold one line about how they hadn't determined whether or not Stone and Corsi had managed to optimize the release of the Podesta emails in October (though she did give Stone the more detailed discussion of that).

But ABJ has not included any of the references in the main part of Volume II in her order (presumably to protect Trump's reputation!). That Volume includes three references to Trump and the campaign's enthusiasm for or attempts to optimize the WikiLeaks releases through Stone, the reference to Richard Burr leaking news of the targets of the investigation (including Stone) to the White House before Jim Comey got fired, and three instances describing Trump floating pardons to Stone or otherwise encouraging him to remain silent.

It also includes the page on which this passage appears:

After Flynn was forced to resign, the press raised questions about why the President waited more than two weeks after the DOJ notification to remove Flynn and whether the President had known about Flynn's contacts with Kislyak before the DOJ notification.²⁴⁴ The press also continued to raise questions about connections between Russia and the President's campaign.²⁴⁵ On February 15, 2017, the President told reporters, "General Flynn is a wonderful man. I think he's been treated very, very unfairly by the media."²⁴⁶ On February 16, 2017, the President held a

press conference and said that he removed Flynn because Flynn “didn’t tell the Vice President of the United States the facts, and then he didn’t remember. And that just wasn’t acceptable to me.”²⁴⁷ The President said he did not direct Flynn to discuss sanctions with Kislyak, but “it certainly would have been okay with me if he did. I would have directed him to do it if I thought he wasn’t doing it. I didn’t direct him, but I would have directed him because that’s his job.”²⁴⁸ In listing the reasons for terminating Flynn, the President did not say that Flynn had lied to him.²⁴⁹ The President also denied having any connection to Russia, stating, “I have nothing to do with Russia. I told you, I have no deals there. I have no anything.”²⁵⁰ The President also said he “had nothing to do with” WikiLeaks’s publication of information hacked from the Clinton campaign.²⁵¹ [my emphasis]

Clearly, it was included for Trump’s public denials – at the moment he fired Flynn in an attempt to stop the Russian investigation – of having anything to do with WikiLeaks’ publication of materials stolen from Hillary’s campaign. It is, on its face, a reference to the publication of the stolen emails, and as such qualifies under ABJ’s order. At that level, it is unremarkable.

But the government is treating it not as Trump making empty denials, but instead to make a claim specifically disavowing any involvement in WikiLeaks’ publication of stolen emails. Mueller’s team put the claim right next to a claim we know to be false, a claim designed to hide his Trump Tower deals. And he put all that amid a discussion of why he first did not, and then did, fire Mike Flynn.

Now consider something else: While it doesn’t appear in the Mueller Report at all, one thing Flynn told prosecutors was that after WikiLeaks

started dumping John Podesta's emails, he took part in conversations during which the campaign discussed reaching out to WikiLeaks.

The defendant also provided useful information concerning discussions within the campaign about WikiLeaks' release of emails. WikiLeaks is an important subject of the SCO's investigation because a Russian intelligence service used WikiLeaks to release emails the intelligence service stole during the 2016 presidential campaign. On July 22, 2016, WikiLeaks released emails stolen from the Democratic National Committee. Beginning on October 7, 2016, WikiLeaks released emails stolen from John Podesta, the chairman of Hillary Clinton's 2016 presidential campaign. The defendant relayed to the government statements made in 2016 by senior campaign officials about WikiLeaks to which only a select few people were privy. For example, the defendant recalled conversations with senior campaign officials after the release of the Podesta emails, during which the prospect of reaching out to WikiLeaks was discussed.

There's nothing in the public record that suggests Flynn knew of Trump's efforts, during the campaign, to build a Trump Tower. But he did know about Trump's efforts to optimize WikiLeaks' releases of stolen emails. And Trump would have known that when he considered the impact of Flynn's ties to Russia being investigated by the FBI.

And the treatment of that references as a real denial – as Trump evincing guilt even as he fired Flynn – sure makes the Flynn firing more interesting.