

# ROGER STONE ONCE AGAIN LIMITS HIS DENIALS

In addition to the government showing that Roger Stone is a *disorganized* crime figure the other day, Roger Stone submitted a curious filing of his own, in yet another apparent attempt to feed denialist propaganda.

A week earlier, the government made a detailed argument that Stone, in his sustained bid to make his trial an attempt to challenge the government evidence that Russia hacked the DNC, misunderstood what the case was about. All that matters, the government argues, is whether Stone's lies materially affected the House Intelligence investigation into the Russian tampering.

Stone's false statements also had a natural tendency to (and in fact did) affect HPSCI's investigative steps, priorities, and direction—regardless of Russia's 2016 activities. See *United States v. Safavian*, 649 F.3d 688, 691-92 (D.C. Cir. 2011) (statements material if they “were capable of influencing the course of the FBI's investigation”). For example, HPSCI did not subpoena the written communications that Stone claimed not to exist, and HPSCI did not investigate the other intermediary (Person 1) when Stone claimed that Person 2 was his sole intermediary. Moreover, Organization 1's activities and coordination with Stone were relevant to evaluating the Intelligence Community's work, to assessing any risks that Organization 1 may pose, and to considering any future actions that should be taken to deter coordination with state and non-state actors seeking to influence American elections. None of these understandings of materiality

depends in any way on whether Russia in fact participated in the hacks or transmitted the hacked materials to Organization 1, and therefore Stone's evidence on that subject is not relevant to the materiality inquiry.<sup>4</sup>

As part of that discussion, in a footnote, they engage in some counterfactuals to show how, even if some alternative scenarios, including the main one suggested by Stone, were true, his lies would still be material.

<sup>4</sup> Even under Stone's crabbed view of materiality and HPSCI's investigation, Stone's statements were still material, regardless of Russia's exact role. Stone now primarily focuses only on evidence about whether Russia transferred the stolen files. But even if Organization 1 received the files elsewhere, it does not follow that Organization 1 has no connection to Russia's election interference. For example, Organization 1 could theoretically have received the files from someone who received them from Russia; Russia could theoretically have coordinated its other election interference activities with Organization 1's posting of stolen documents even if Russia was not Organization 1's source; and individuals associated with the Trump Campaign could theoretically have played a role coordinating the two. Under any view, Stone's communications with and about Organization 1 were material, regardless of Russia's exact role.

As you read this "theoretical" scenario, remember that the campaign considered reaching out to WikiLeaks after the John Podesta files got released. And Roger Stone was – at least in 2018 – among those Trump flunkies who were trying to get Julian Assange a pardon.

The government presents this as theoretical, but it demonstrates, correctly, that WikiLeaks' role in the operation matters whether or not the person who dealt them one or another set of files was a Russian intelligence officer.

Stone spends much of his response claiming (nonsensically) that because the government wants to introduce a Julian Assange video to establish dates for the public record surrounding certain details (in that case, when it was publicly knowable that WikiLeaks would release more files), it makes the issue of how Russia got the files to WikiLeaks central. In the hands of better lawyers – or at least, lawyers who weren't playing for a pardon – this argument might have merit. In Stone's case it doesn't, in part because he failed to describe what evidence he wanted to introduce, and in part because he doesn't understand what files Bill Binney, one of his intended witnesses, is talking about (they're not the John Podesta emails, and so are irrelevant to Stone's lies).

The government objects to Roger Stone presenting two witnesses who will testify, and demonstrate, that WikiLeaks did not receive the relevant DNC and DCCC data from the Russian state. That evidence will establish that the relevant data was "leaked" to WikiLeaks, not transferred to WikiLeaks by the Russian State. The government claims such evidence will be irrelevant, unfairly prejudicial, and cause delay and would turn the subject matter into a "mini-trial." The government states: "If a person chooses to make false statements to the government, he or she takes the risk that the false statement is material." (Motion at 14). But, the government takes the same risk: that the alleged false statements might be deemed immaterial by the jury. 1

Stone should be permitted to present evidence that his answers did not

materially affect the congressional investigation because the Indictment makes clear that the investigation was of a “Russian state hack.”

But along the way, Stone includes his own footnote where he (perhaps in an effort to present a quote that denialists like Aaron Maté can quote without context, as Maté has done repeatedly as the useful idiot of both Stone and Concord Management) misrepresents the government’s theoretical as instead genuine curiosity.

1 The government wonders if the Russian state hacked and stole the relevant data and then someone else coordinated the delivery of the data to WikiLeaks. See Dkt. #172 n. 4. The government, nor the Mueller report proved or disproved this scenario. But if WikiLeaks did not receive the data from the Russian state then Stone’s communications with WikiLeaks were immaterial.

Stone is absolutely right that the government doesn’t prove or disprove this scenario. The Mueller Report notes explicitly that,

The Office cannot rule out that stolen documents were transferred to WikiLeaks through intermediaries who visited during the summer of 2016. For example, public reporting identified Andrew Müller-Maguhn as a WikiLeaks associate who may have assisted with the transfer of these stolen documents to WikiLeaks.

The prosecutors in his case aren’t tasked with answering that question. Indeed, if pressed, they could argue that Stone’s lies might well have served to hide firsthand knowledge of how the Podesta emails *did* get to WikiLeaks, which would make them even more material.

From a legal standpoint, Stone’s argument is

unlikely to work, even if it were argued with more legal rigor.

What I'm interested in, however, is how Stone homes in on just one part of the scenario, the hand-off of files to WikiLeaks. The government actually laid out three parts to its theoretical: WikiLeaks got the files stolen by Russia from a cut-out, but also coordinated with Russia on "other election interference activities," and individuals associated with the Trump campaign played a role coordinating the handoff of the files and WikiLeaks' other coordination with Russia.

- Organization 1 could theoretically have received the files from someone who received them from Russia;
- Russia could theoretically have coordinated its other election interference activities with Organization 1's posting of stolen documents even if Russia was not Organization 1's source;
- Individuals associated with the Trump Campaign could theoretically have played a role coordinating the two.

It's a series of tantalizing hypotheticals! And while the first two (the second of which is pretty oblique) could independently be true, the last one implies the two would not be independent, but that, instead, someone "associated" with the Trump campaign coordinated the first two steps.

But of course, the government presents all this as a theoretical possibility, not (as Stone falsely claims) as a question they're seeking, here, to answer.

Stone, however, only deals with the first part of that scenario: “the Russian state hacked and stole the relevant data and then someone else coordinated the delivery of the data to WikiLeaks.” He doesn’t address the possibility that WikiLeaks had some other kind of role. And he *definitely* doesn’t address the possibility that someone “associated” with the Trump campaign had a role in coordinating the two. In a gesture towards addressing a government hypothetical (in part) that some individual associated with the Trump campaign might have coordinated other election year activities, Stone suggests that the only way the communications of a Trump associate with WikiLeaks would be material would be if the communications involved actual transfer of emails.

This is something Stone has long been doing – making narrowly tailored denials that don’t address some tantalizing possibilities: in this case, that Stone had a role arranging something else with WikiLeaks.

And all the while, Stone drops a suggestion that overstates the uncertainty of what the government knows.