

DOJ FLIPS THE LAWFARE ON ITS HEAD IN RUSSIAN TROLL CASE

In part because Judge Dabney Friedrich has only recently attempted to impose some control on the case, the prosecution against the Russian troll company Concord Management waddles slowly towards a scheduled trial date of April 6, 2020. As it has throughout this process, Concord continues to make trollish arguments to gum up the prosecution. Of particular note, it continues its efforts to use the prosecution to obtain as much information as it can, including information about intelligence the government has on Concord as well as on the victims.

Don't get me wrong. That is their right, and one of the dangers of indicting corporate entities for this kind of crime.

But the government just gave Concord a bit of its own medicine. On Tuesday, it moved to obtain an early trial subpoena to serve on Concord. It seeks information on Concord's communications with the Internet Research Agency, other shell companies, and a list of co-conspirators. Perhaps most concerning, for Concord's sometime owner Yevgeniy Prigozhin, it asks for his calendar from January 2014 through February 2018, a calendar that – if it's accurate – likely includes Vladimir Putin.

Calendar entries for Yevgeniy Prigozhin for the time period January 1, 2014 to February 1, 2018.

The motion uses precisely the legal fact that allowed Concord to respond to this indictment with no risk to any biological person against it, arguing that because it is a corporation it has no Fifth Amendment privilege.

Moreover, even though it is a defendant, Concord cannot avoid responding to a

trial subpoena requesting the production of records under the Fifth Amendment because corporations have no privilege against self-incrimination. *Braswell v. United States*, 487 U.S. 99, 102 (1988).

Understand, the government almost certainly has versions of all the things it asks for on the list. But assuming Friedrich approves the subpoena, Concord will be required to submit its own version of these documents, which the government might be able to prove to be false (adding to Concord's legal jeopardy and putting Concord's American lawyers on the hook). It's also likely the government is forcing Concord to do its own parallel construction.

It's a subtle move, but one that may shift how this proceeds going forward.