

MUELLER'S 302S: THE APPARENT REFERRAL OF RICK GERSON'S 302S MAY BE AS INTERESTING AS KUSHNER'S

Last week, CNN explained why, even though DOJ had promised to release a certain set of FBI interview reports (302s) in the CNN/BuzzFeed FOIA for the underlying materials from the Mueller Report, Jared Kushner's April 2018 interview report has not yet been released: An intelligence agency is reviewing the memo.

The Justice Department did not hand over the FBI's summary of Jared Kushner's interviews with special counsel Robert Mueller last week – despite a judge's order to do so – because “a member of the intelligence community” needs to ensure the material has been properly redacted, a department attorney said Wednesday.

DOJ lawyer Courtney Enlow informed CNN as part of an ongoing lawsuit that Kushner's memo, also known as a “302, will be released with the appropriate redactions” after the intelligence agency has finished its review.

Earlier this month, DOJ gave the plaintiffs in this FOIA suit a table that may provide useful background to it. Vast swaths of virtually all of these 302s have been withheld under a b5 exemption, which is broadly known as the deliberative privilege exemption. This table (“b5 table”) purports to explain which 302s have been withheld under which form of b5 exemption:

- AWP: Attorney Work Product, basically a specious claim

that because attorneys were present at an interview, the report produced by non-attorney FBI agents gets covered as a result

- DPP: Deliberative Process Privilege, which is supposed to mean that the redacted material involves government officials trying to decide what to do about a policy or, in this case, prosecutorial decisions
- PCP: Presidential Communications Privilege, meaning the redacted material includes discussions directly involving the President

The litigation over these b5 Exemptions was always going to be heated, given that DOJ is using them to hide details of what the President and his flunkies did in 2016. All the more so now that DOJ has adopted a broader invocation of b5 exemptions than they did earlier in this lawsuit, when they were limited to just discussions of law and charging decisions.

Exemption (b)(5)	Information withheld pursuant to the deliberative process privilege
(b)(5)-1	<i>Deliberations about application of law to specific factual scenarios</i>
(b)(5)-2	<i>Deliberations about charging decisions not to prosecute</i>

Still, the b5 table is useful in other ways.

Mary McCord interview purportedly includes Presidential

Communications

For example, it shows that the government redacted parts of Acting NSD Director Mary McCord's interview report, which focused closely on her interactions with the White House Counsel about Mike Flynn's lies to the FBI, as a Presidential Communication.

This claim is probably fairly sketchy. She is not known, herself, to have spoken directly to Trump. And while much of her interview was withheld under b1 and b3 (at least partly on classification grounds pertaining to the FISA on which Flynn was captured, but also grand jury information with respect to the investigation into Mike Flynn) and b7E (law enforcement methods), the parts that were withheld under b5 appear to be her speaking to Don McGahn, including bringing information *to him*, rather than the reverse.

(U//FOUO) McGahn asked if Flynn had been interviewed by the FBI and Yates told him that he had been interviewed. [redacted] b5 Per DOJ

[redacted] McGahn asked "how'd he do?" and

Yates declined to answer. [redacted]

[redacted]

[redacted] b5 Per DOJ

Crazier still, we've all been pretending that Flynn lied about his calls with Sergey Kislyak of his own accord; the Mueller Report remained pointedly non-committal on whether Flynn undercut Obama's sanctions on Trump's orders or not. Protecting these conversations as a Presidential Communication seems tacit admission that Don McGahn's interactions with McCord were significantly about Trump, not Flynn.

Chris Ruddy's interview unsurprisingly includes

Presidential Communications

It is thoroughly unsurprising that DOJ is withholding parts of Chris Ruddy's interview as Presidential Communications. After all, during the period about which the unredacted parts of the interview show he was interviewed (summer 2017), Ruddy served as Trump's rational brain, so it would be unsurprising if Ruddy told Mueller's team certain things he said to Trump.

Though even there, there are passages that seem like may be an improper assertion of Presidential Communications, such as what appears to be a meeting at the White House with Reince Priebus and Steve Bannon – neither of whom is the President – asking for his help to go make a public statement mind-melding him into not firing Mueller.

The day of the PBS interview, Ruddy had a meeting scheduled at the White House with Bannon [redacted] b5 Per [redacted] Ruddy, Bannon, [redacted] met, [redacted] Priebus [redacted] joined at some point [redacted]

In the meeting, Priebus and Bannon told Ruddy that Trump was strongly considering firing Mueller [redacted] b5 Per [redacted]

As the Mueller Report passages sourced to this interview make clear, this is a PR request, not a presidential communication.

On Monday, June 12, 2017, Christopher Ruddy, the chief executive of Newsmax Media and a longtime friend of the President's, met at the White House with Priebus and Bannon.⁵⁴⁷ Ruddy recalled that they told him the President was strongly considering firing the Special Counsel and that he would do so precipitously, without vetting the decision through Administration officials.⁵⁴⁸ Ruddy asked Priebus if Ruddy could talk publicly about the discussion they had about the Special

Counsel, and Priebus said he could.⁵⁴⁹ Priebus told Ruddy he hoped another blow up like the one that followed the termination of Comey did not happen.⁵⁵⁰ Later that day, Ruddy stated in a televised interview that the President was “considering perhaps terminating the Special Counsel” based on purported conflicts of interest.⁵⁵¹ Ruddy later told another news outlet that “Trump is definitely considering” terminating the Special Counsel and “it’s not something that’s being dismissed.”⁵⁵² Ruddy’s comments led to extensive coverage in the media that the President was considering firing the Special Counsel.⁵⁵³

White House officials were unhappy with that press coverage and Ruddy heard from friends that the President was upset with him.⁵⁵⁴

Still, the fact that DOJ maintains that some of this interview involves Presidential Communications is interesting because of the point I made in this post: Passages currently redacted for an ongoing criminal proceeding suggest Ruddy’s other communications, possibly with Manafort or his lawyer, are part of an ongoing criminal proceeding.

I’m interested in Ruddy’s 302 because four paragraphs that show a b7ABC redaction, which mostly has been used to hide stuff pertaining to Roger Stone.

[Redacted]

Continuation of FD-302 of [Redacted] Interview of Chris Ruddy, On 06/06/2018, Page 3 of 8

[Redacted] b5 Per DOJ/OI
b6
b7A
b7B per DOJ/OI
b7C

[Redacted] b5 Per DOJ/OI
b6
b7A
b7B per DOJ/OI
b7C

I doubt this redaction pertains to

Stone, though, at least not exclusively.

As I noted last June when Amy Berman Jackson liberated the Sean Hannity texts with Manafort, she withheld another set of communications (probably showing Kevin Downing reached out to the media, as he had done with Hannity, which is why they were submitted as part of Manafort's sentencing). She withheld the other texts because of an ongoing proceeding.

At the time, I suggested that the other proceeding might pertain to Chris Ruddy because:

- *Ruddy was a key source for a key Howard Fineman story in the same time frame as Kevin Downing had reached out to Hannity*
- *Prosecutors probably obtained all of Manafort's WhatsApp texts after learning he had been witness tampering using that account*
- *Ruddy testified to Mueller the day after they had extracted the Manafort-Hannity texts, suggesting he was a likely candidate to be the other person whose texts showed ongoing communication with the media*

DOJ may be withholding discrete paragraphs in Ruddy's interview *both* because they are a Presidential Communication *and* because they are part of an ongoing investigation. Which seems like something CNN and BuzzFeed might want to clarify.

Hiding the most damning Sater and Bannon and (possibly) KT McFarland interviews?

Then there are three interviews DOJ claims to have turned over for which the interviewee's name has been withheld.

One of those, for an interview on August 15, 2017, happened on a day when Mueller's team conducted five interviews (or, given the 1-page length of three of them, more likely phone calls setting up interviews). One of those is of Andrej Krickovic, a Carter Page associate who is not listed on the master list of interviews but whose name was identified in his 302. But the interview in question is being withheld under a Presidential Communications exemption, so surely is not Krickovic. There's a 6-page interview from that date reflected in the DOJ list of all interviews ("Mueller interview list") that is likely the one in question. And given that the earliest released interview of KT McFarland, dated September 14, 2017, describes her being "acquainted with the interviewing agents from a previous interview," given reports that her first most egregious lies about Flynn's calls to Kislyak came during the summer (before it was clear that Mueller's team was going to obtain a warrant to get Transition emails from GSA), and given the September 302 reflects her attempt to clear up several existing untruths, I'm guessing that's hers.

There's more evidence regarding the subjects of two other 302s from which the names have purportedly been withheld. The b5 table includes

a December 15, 2017 interview being withheld exclusively as Attorney Work Product. It seems likely that this is the December 15, 2017 Felix Sater interview reflected in the Mueller interview list. Immediately before the September 19, 2017 Sater interview are 7 pages that were entirely withheld (1394 through 1400) under b3 (grand jury or classification), b6 and b7C (collectively, privacy), b7E (law enforcement sources and methods), b7F (likely risk of death), and b5. Sater is one of – if not the only – person whose interviews have been protected under b7F (which makes sense, given that he was a high level informant for years). Plus, there's reason to believe that Sater's story evolved after he was interviewed by HPSCI on December 14, 2017, and DOJ seems especially interested in hiding how some of these stories changed over time. In other words, DOJ seems to be hiding the entirety of a Sater interview the existence of which they already acknowledged under a whole slew of exemptions, including Attorney Work Privilege. That would be particularly egregious, given that Mueller relied on that interview to support the following details about Trump Tower:

Given the size of the Trump Moscow project, Sater and Cohen believed the project required approval (whether express or implicit) from the Russian national government, including from the Presidential Administration of Russia.³³⁰ Sater stated that he therefore began to contact the Presidential Administration through another Russian business contact.³³¹

[snip]

The day after this exchange, Sater tied Cohen's travel to Russia to the St. Petersburg International Economic Forum ("Forum"), an annual event attended by prominent Russian politicians and businessmen. Sater told the Office that he was informed by a business associate

that Peskov wanted to invite Cohen to the Forum.³⁶⁷

In a follow-up, I'll explain why DOJ's attempt to withhold this interview by hiding the existence of it even though they've already acknowledged it is fairly damning.

In addition, the b5 table lists a January 18, 2019 interview withheld under Presidential Communication and Deliberative Process Privilege, but *not* Attorney Work Product (which might suggest it was an interview FBI agents conducted with no prosecutor present). While there was stuff pending in the Jerome Corsi investigation at the time (which might explain the lack of lawyers but probably not a Presidential Communication Privilege), the only interview on that date included in the Mueller interview list involves Steve Bannon. That's interesting because while his proffer agreement (signed by Andrew Goldstein, so seemingly reflecting Goldstein's presence at the interview of that date) shows in the batch of 302s in which this withheld one is supposed to have appeared, his interview of that date (which is 4 pages long) does not appear. There's not an obvious set of withheld pages that might be that interview (there are 6-page withholdings that might include it). But Bannon's January 18, 2019 was, given some comments at the Stone trial, particularly damning and conflicts with the one (of three) Bannon 302 that has been made public. Just one sentence of the Mueller Report – pertaining to the campaign's discussions about upcoming WikiLeaks releases but still redacted for Stone's trial – relies on this Bannon interview, but since it does, the interview itself should not be entirely redacted. (That said, the entirety of Bannon's 16-page October 26, 2018 302 has also been hidden in plain sight in these releases.)

There is, admittedly, varying degrees of certainty about these hypotheses. But if they are correct, it would suggest that DOJ is systematically withholding 302s that would show

significant changes in testimony among people who were not charged for lying in the earlier ones. Of particular note, they may be hiding one each that BuzzFeed (which had the lead in reporting the Felix Sater story) and CNN (which was one of the few outlets that reported how KT McFarland had to clean up her testimony) have an institutional stake in.

Rick Gerson disappeared into the same Agency review as Jared Kushner?

Finally, the b5 table reveals DOJ has “released” the two interviews from Rick Gerson, even though we’ve seen no hint of them.

You might be forgiven for forgetting who Rick Gerson is – Steven Bannon even claimed to have in his first, least forthcoming interview. He’s a hedgeie who is close to Jared Kushner who actually had a key role in setting US-Russian policy from the start of the Trump Administration. George Nader introduced him to the CEO of the Russian Direct Investment Fund, Kirill Dmitriev, after which Gerson (who had no official role in the Transition or Administration so presumably had no security clearance) and Dmitriev put together a reconciliation plan between Russian and the US.

In addition, the UAE national security advisor introduced Dmitriev to a hedge fund manager and friend of Jared Kushner, Rick Gerson, in late November 2016. In December 2016 and January 2017, Dmitriev and Gerson worked on a proposal for reconciliation between the United States and Russia, which Dmitriev implied he cleared through Putin. Gerson provided that proposal to Kushner before the inauguration, and Kushner later gave copies to Bannon and Secretary of State Rex Tillerson.

Gerson's two interviews are cited 17 times in the Mueller Report and cover topics including:

- Gerson's ties to Jared and non-existent role on the campaign
- Gerson's role setting up meetings with Tony Blair and Mohammed bin Zayed
- How Nader introduced him to Dmitriev
- How Dmitriev pitched Gerson on a potential joint venture
- How Gerson, having been promised a business deal, then worked to figure out from Jared and Mike Flynn who was running "reconciliation" on the Transition
- What Dmitriev claimed his relationship to Putin was
- How Gerson, "on his own initiative and as a private citizen," worked with Dmitriev during December 2016 to craft this "reconciliation" plan
- How Gerson got that plan into Kushner's hands and it formed a key part of the discussion between Trump and Putin on their January 28, 2017 call
- How Dmitriev seemed to lose interest in doing business with Gerson once he had

finished using him

A key part of this discussion relies on both Gerson's interviews and the Kushner one that is being reviewed by an Agency.

On January 16, 2017, Dmitriev consolidated the ideas for U.S.-Russia reconciliation that he and Gerson had been discussing into a two-page document that listed five main points: (1) jointly fighting terrorism; (2) jointly engaging in anti-weapons of mass destruction efforts; (3) developing "win-win" economic and investment initiatives; (4) maintaining an honest, open, and continual dialogue regarding issues of disagreement; and (5) ensuring proper communication and trust by "key people" from each country. 1111 On January 18, 2017, Gerson gave a copy of the document to Kushner. 1112 Kushner had not heard of Dmitriev at that time. 1113 Gerson explained that Dmitriev was the head of RDIF, and Gerson may have alluded to Dmitriev's being well connected. 1114 Kushner placed the document in a file and said he would get it to the right people. 1115 Kushner ultimately gave one copy of the document to Bannon and another to Rex Tillerson; according to Kushner, neither of them followed up with Kushner about it. 1116 On January 19, 2017, Dmitriev sent Nader a copy of the two-page document, telling him that this was "a view from our side that I discussed in my meeting on the islands and with you and with our friends. Please share with them – we believe this is a good foundation to start from." 1117

1111 1/16/17 Text Messages; Dmitriev & Gerson.

1112 Gerson 6/5/18 302, at 3; Gerson 6/15/18 302, at 2.

1113 Gerson 6/5/18 302, at 3.

1114 Gerson 6/5/18 302, at 3; Gerson 6/15/18.302, at 1-2; Kushner 4/11/ 18 302, at 22.

1115 Gerson 6/5/18 302, at 3.

1116 Kushner 4/11/18 302, at 32.

1117 1/19/17 Text Message, Dmitriev to Nader (11: 11 :56 a.m.).

There are roughly 62 pages referred to another agency in the January 2 release (which is understood to include Kushner's April 11, 2018 interview) is an 11-page series (1216-1226), which might be Gerson's two interviews. That suggests we can't even get the 302s that show how Putin's selected envoy to the US managed to plan out the first phone call between Putin and Trump with a hedgeie who went to college with Kushner with not formal ties to the Transition or Administration and no security clearance because they're so sensitive – more sensitive than KT McFarland's discussion of Transition national security discussions, for example – that some Agency like the CIA has to give us permission first.