

MUELLER TOLD TRUMP HE WAS BEING INVESTIGATED FOR HACKING, WIRE FRAUD, AND MAIL FRAUD

Having followed Carol Leonnig's reporting since the Scooter Libby case, I'm thrilled she finally wrote – with Philip Rucker – a book, *A Very Stable Genius*. She is one of the reporters who mixes an ability to read public records with very good sourcing. And while attentive readers of this site will be familiar with much of the reporting in *Stable Genius*, there are tidbits that make the book well worth your time.

One example is a description of the discussions between Trump's lawyers and Mueller's team from summer 2018. In the middle of a description of talks between Jane Raskin and James Quarles, the book reveals that Quarles told Trump's team that the President was being investigated for hacking, wire fraud, and mail fraud.

In early September 2018, Trump's lawyers finally reached a conclusion with Mueller over his request for a presidential interview. Trump's lawyers had argued to prosecutors all summer why they didn't believe it was necessary to provide the president's responses to their questions and tried to appear open to a possible compromise for him to provide limited answers. The discussion took the form of a volley of emails and memos between Trump's lawyer Jane Raskin and her old law firm friend James Quarles.

Some of the correspondence was rudimentary. The Trump lawyers wanted to know what criminal statutes Mueller's team was investigating as possible

crimes and why this would require answers from the president. Raskin's shorthand version was something to the effect of "You have told us our client is the subject of the investigation and you won't even tell us what you are looking at." It took roughly three weeks to get an answer to that question.

Quarles responded that the statutes governed the criminal acts of hacking, under the Computer Fraud and Abuse Act, as well as the very general crimes of wire fraud and mail fraud. Trump's lawyers shrugged. That's it? That's useless, they said to each other. They were certain the president hadn't engaged in any of those crimes.

Mueller's team would be silent for long stretches, especially later in the summer. At one point, Quarles told the Trump lawyers that it was important to ask about the president's view of events surrounding his pursuit of the Trump Tower Moscow project, as well as his role in describing Donald Trump Jr.'s 2016 meeting with a Russian lawyer who was expected to provide damaging information on Clinton. Raskin and her colleagues had a shared reaction: "What conceivably is criminal about that? Why do you want to ask about that?" The president's team also argued that prosecutors were not entitled to question Trump on decisions he made as president because anything prosecutors needed to know from Trump's time in office could be obtained from the thousands of documents and dozens of witnesses the White House had helped provide. [my emphasis]

That's a fairly surprising detail!

There's a heavily redacted section of the Mueller Report that explains why they didn't charge someone under CFAA (PDF 187) that might

pertain to Don Jr's use of a password to access a WikiLeaks related website before it was public, or might pertain to some skiddies who tried to access Guccifer 2.0's social media accounts who were investigated in Philadelphia.

More interesting is the 3-page redaction, starting at PDF 186 in the FOIA version, that footnote 1278 makes clear pertains to the publishing of post-hacking emails. That may well related exclusively to WikiLeaks, but it was redacted under exemptions tied to Roger Stone's case.

And filings in the Roger Stone case – most explicitly, this opinion from Amy Berman Jackson – make it clear that Mueller's team had shown probable cause to obtain warrants against Stone including CFAA and wire fraud charges as late as August 28, 2018. (The numbering Stone's lawyers used does not match the timeline, so search warrant 18 is not the last; see footnote 2 of the opinion for the dates of the warrants, which I've tracked in the Mueller warrant docket.)

Fourteen of the eighteen warrant applications sought authorization to search for evidence of, among other crimes, the intentional unauthorized access of computers in violation of 18 U.S.C. § 1030. See SW1-SW13, SW18.

[snip]

The fourteen affidavits also sought to search for evidence of violations of other crimes, including 18 U.S.C. § 2 (aiding and abetting), 18 U.S.C. § 3 (accessory after the fact), 18 U.S.C. § 4 (misprison of a felony), 18 U.S.C. § 371 (conspiracy), 18 U.S.C. § 1001 (false statements), 18 U.S.C. § 1505 (obstruction of justice); 18 U.S.C. § 1512 (tampering with a witness), 18 U.S.C. § 1513 (retaliating against a witness), 18 U.S.C. § 1343 (wire fraud), 18 U.S.C. § 1349 (attempt and conspiracy to commit wire fraud), and 52 U.S.C. §

This accords with the timing laid out in Stable Genius: during the period when Quarles and Raskin discussed possible charges against Trump, Stone was still under investigation for hacking or abetting hacks after the fact. And we know from public records that Stone's efforts to optimize the WikiLeaks releases occurred in close coordination with Trump himself.

This detail may take on renewed import given Reggie Walton's decision to review the redaction decisions on the Mueller Report himself. DOJ institutionally redacted some details – and sustained those redactions even when Stone asked for an unredacted copy of the Mueller Report – to protect Trump's privacy.

I still maintain that Walton will release little more than what has already been released, if at all (pending the lifting of the Stone gag, at which point Walton will release everything currently redacted under it).

But if there's a passage that explains why Mueller considered charging Stone – and possibly even Trump! – with CFAA charges for so long, which would, in turn, explain why Trump worked so hard to obstruct the investigation, Walton might find a way to release it.