

DOJ TREATED JEROME CORSI AS NEWS MEDIA BUT NOT ROGER STONE OR RANDY CREDICO (OR JULIAN ASSANGE)

Yesterday, DOJ released both an updated list of times when its media guidelines came into play (here are the 2016, 2017, and 2018 reports), as well as a summary of DOJ's attempts to get records related to CNN, NYT, and WaPo reporting.

The former has raised some questions about how Mueller's investigation applied these rules (as a reminder, my interview with the FBI was not with Mueller, though based on a month-long approval process I know to have occurred, I believe there is an entry in the 2017 report that pertains to me).

They're easier to understand if you work through the second one, for legal process in 2019, first.

In the prosecution of an individual charged with obstructing the investigation into Russian interference in the 2016 presidential election, a United States Attorney authorized the issuance of a subpoena to a member of the news media for testimony. The member of the news media expressly agreed to testify pursuant to the subpoena. Because the member of the news media expressly agreed to testify, Attorney General authorization was not required. See 28 C.F.R. § 50.10(c)(3)(i)(A). The prosecution team did not call the member of the news media at trial.

There was just one trial of anyone for obstructing the investigation into Russian

interference in 2016. George Papadopoulos, Mike Flynn, Michael Cohen, and Richard Pinedo never went to trial (nor did Alex Van der Zwaan, though his obstruction covered earlier events). Paul Manafort *did* go to trial for his tax cheating, but not for interfering with the Russian investigation (his plea breach hearing, which did pertain to lies he told to cover up his role in the Russian interference, was not a trial).

That means this has to be a reference to Roger Stone's trial.

Two witnesses are known to have been subpoenaed, but not called to testify: Andrew Miller and Jerome Corsi. Randy Credico, a radio personality, testified at great length, including about how he booked Julian Assange and Roger Stone to appear on his radio show.

That's not enough to prove that the reference is to Corsi (in part because there could have been other witnesses who were subpoenaed but not called to testify that we don't know about). But now consider the second reference to the Mueller investigation, for something that happened in 2018.

In connection with an investigation into an alleged conspiracy involving persons or entities associated with a foreign government hacking the computers of a United States political party's central organization, the Deputy Attorney General, acting as Attorney General, authorized the issuance of a grand jury subpoena *duces tecum* for the production of toll records from a cellular service provider for a telephone used by a member of the news media suspected of participating the conspiracy, as well as an application for a search warrant to search the member of the news media's internet cloud and email accounts. Following the initial authorization, the Deputy Attorney General, acting as Attorney General, later authorized a

voluntary interview of, and the issuance of a testimonial grand jury subpoena to, the member of the news media. All of this information was necessary to further the investigation of whether the member of the news media was involved in the conspiracy to unlawfully obtain and utilize the information from the hacked political party or other victims.

This is a description of someone investigated as a *suspect*.

While Mueller reviewed whether Don Jr violated the CFAA for accessing a non-public website he got sent a password to, the investigation into whether someone was *part* of the hack-and-leak conspiracy focused on Roger Stone (and Julian Assange, who does not obviously show up anywhere in this report, even though Mueller obtained a warrant targeting him as well). Two people were known to have been investigated as fellow suspects of Stone: Corsi and Ted Malloch. Mueller's team obtained warrants and subpoenas targeting both. In Malloch's case, however, the government is only known to have obtained his phone and his Gmail.

In Corsi's case, however, Mueller targeted his Apple accounts, as well as email accounts held at CSC Holdings, and Windstream.

Mueller is not, however, known to have obtained a warrant targeting Credico.

If the government treated Corsi as a member of the news media in 2018, when they obtained warrants targeting him as a suspected co-conspirator of Roger Stone, then they likely treated him as a member of the news media in 2019, when they subpoenaed him – but did not call him – as a witness in Stone's trial. That is, the available evidence strongly suggests that Corsi is the person described in both Mueller entries.

Which, in turn, suggests that DOJ treated Corsi – but not Stone or Credico – as members of the

news media.

For what it's worth, I'm virtually certain that there's still a Mueller entry missing, pertaining to a member of the news media who asked for a subpoena before he would share materials relating to his work. That person has never been publicly referenced in Mueller-related investigative materials since released, but I believe 302s from the investigation reflect FBI having obtained the materials they were asking for from that member of the news media. But that incident would have fit under 28 CFR 50.10(c)(3)(i)(A), when a member of the news media agrees to provide information so long as he gets a subpoena, which under the media guidelines does not require Attorney General approval.

Update: There's an important point that has been forgotten by these debates but which is implied in Merrick Garland's statements about the media policy. There are other means to obtain records on people playing a journalistic function: under FISA, by providing probable cause that they are an agent of a foreign power.