

LIKE THE JANUARY 6 INVESTIGATION, THE MUELLER INVESTIGATION WAS BOOSTED BY CONGRESSIONAL INVESTIGATIONS

Midway through an article on which Glenn Thrush – who as far as I recall never covered the Russian investigation and has not yet covered the January 6 investigation – has the lead byline, the NYT claims that it is unusual for a congressional committee to receive testimony before a grand jury investigation does.

The Justice Department has asked the House committee investigating the Jan. 6 attack for transcripts of interviews it is conducting behind closed doors, including some with associates of former President Donald J. Trump, according to people with knowledge of the situation.

The move is further evidence of the wide-ranging nature of the department's criminal inquiry into the events leading up to the assault on the Capitol and the role played by Mr. Trump and his allies as they sought to keep him in office after his defeat in the 2020 election.

[snip]

The Justice Department's request for transcripts underscores how much ground the House committee has covered, and the unusual nature of a situation where a well-staffed congressional investigation has obtained testimony from key witnesses before a grand jury investigation. [my emphasis]

That's simply false. This is precisely what happened with the Mueller investigation, and there's good reason to believe that DOJ made a decision to facilitate doing the same back in July, in part to avoid some evidentiary challenges that Mueller had difficulties with, most notably Executive Privilege challenges.

First, let's look at how Mueller used the two Congressional investigations.

At the start, he asked witnesses to provide him the same materials they were providing to Congress. I believe that in numerous cases, the process of complying with subpoenas led witnesses to believe such subpoenas were the *only* way Mueller was obtaining information. Trump Organization, especially, withheld a number of documents from Mueller and Congress, including direct contacts with Russian officials and a Steve Bannon email referencing Russian involvement in the election. By obtaining a warrant for Trump Transition materials held by GSA and the Trump Organization emails of Michael Cohen hosted by Microsoft, Mueller got records the subjects of the investigation were otherwise hiding. Steve Bannon, too, falsely told Mueller he didn't use his personal accounts for campaign business, only to discover Mueller had obtained those records by the time of his October 2018 interview. Surprising witnesses with documents they had been hiding appears to have been one of the ways Mueller slowly coaxed Bannon and Cohen closer to the truth.

We should assume for key figures in the vicinity of Ali Alexander and John Eastman, the same is happening with the January 6 investigation: the very people who've been squealing about complying with subpoenas or call records served on their providers are likely ones DOJ obtained covert warrants for.

Then there are the prosecutions that arose entirely out of Congressional interviews. There were three Mueller prosecutions that arose out of Committee investigations.

Perhaps the most interesting was that of Sam Patten – whose interview materials are here. He had an interview with SSCI on January 5, 2018, where he appears to have lied about using a straw donor to buy Inauguration tickets for Konstantin Kilimnik. By March 20, the FBI attempted their first interview of Patten, after which Patten deleted some emails about Cambridge Analytica. And when Mueller did interview Patten on May 22, they already had the makings of a cooperation deal. After getting Patten to admit to the straw purchase and also to violating FARA – the latter of which he would plead guilty months later, on August 31 – Patten then provided a ton of information about how Kilimnik worked and what he had shared with Patten about his role in the 2016 operation, much of which still remained sealed as part of an ongoing investigation in August 2021. Patten had two more interviews in May then appeared before the grand jury, at which he shared more information about how Kilimnik was trying to monitor the investigation. He had two more interviews before pleading guilty, then at least two more after that.

Not only did Patten share information that likely served as part of a baseline for an understanding about Russia's use of Ukraine to interfere in US politics and provided investigators with an understanding of what the mirror image to Paul Manafort looked like, but this remained secret from much of the public for three months.

It's less clear precisely when SSCI shared Cohen's lies with Mueller. But in the same period, both Mueller and SDNY were developing parallel investigations of him. But by the time Cohen pled guilty in SDNY (also in August 2018), Mueller had the evidence to spend almost three months obtaining information from Cohen as well before he entered into a separate plea agreement with Mueller in which he admitted to the secret communications with the Kremlin that he and Trump lied to hide.

Meanwhile, HPSCI's much more hapless investigation proved a way to get a limited hangout prosecution of Roger Stone. By May 2018, when Mueller developed evidence showing not just ways that Stone was obstructing his own investigation but also how Stone attempted to craft lies to tell to the Committee – coordinated with Jerome Corsi and reliant on threats to Randy Credico – it provided a way to prosecute Stone while protecting Mueller's ongoing investigation into whether Stone conspired with Russia.

And by all public appearances at the time, it appeared that Congress was acting while Mueller was not. But that was false (and is probably false now). The entire time during which SSCI and HPSCI were taking steps with Cohen and Stone that would later become really useful to the criminal investigation, Mueller was taking active, albeit covert, steps in his own investigations of the two men (whether he was investigating Patten personally or just Kilimnik is uncertain). Mueller obtained his first warrants against Cohen and Stone in July and August, respectively. But no one knew that until the following spring. That is, Cohen and Stone and everyone else focused on Congress while Mueller got to investigate covertly for another nine months.

We should assume the same kind of thing is happening here. All the more so given the really delicate privilege issues raised by this investigation, including Executive, Attorney-Client, and Speech and Debate. When all is said and done, I believe we will learn that Merrick Garland set things up in July such that the January 6 Committee could go pursue Trump documents at the Archives as a co-equal branch of government bolstered by Biden waivers that don't require any visibility into DOJ's investigation. Privilege reviews covering Rudy Giuliani, Sidney Powell, and John Eastman's communications are also being done. That is, this time around, DOJ seems to have solved a problem that Mueller struggled with. And they

did so with the unsolicited help of the January 6 Committee.

Even those of us who've been covering DOJ's January 6 prosecution day-to-day (unlike Thrush) have no way of saying what DOJ has been doing covertly in the last year – though it is public that they've been investigating Alex Jones, the purported new thrust of this investigation, since August.

What we know from recent history, however, is that DOJ's use of Congress' work in no way suggests DOJ hasn't been doing its own.