

CJR'S ERROR AT WORD 18

It took just 18 words into a 23,000-word series complaining about journalistic mistakes in the coverage of the investigation into Trump's ties with Russia before Jeff Gerth made his first error.

And I'm spotting him the use of "collusion" at word 12.

Columbia Journalism Review published the series, in four parts, last week.

Gerth claimed that, "The end of the long inquiry into whether Donald Trump was colluding with Russia came in July 2019," when Mueller testified to Congress.

There are multiple ways you might measure the end of the inquiry – on March 22, 2019 when Mueller delivered his report to Bill Barr; on May 29, 2019 when Mueller closed up shop the moment his team secured Andrew Miller's grand jury testimony; on November 15, 2019, when a jury convicted Roger Stone; or the still undisclosed date when an ongoing investigation into whether Stone conspired to hack with Russia ended (a September 2018 warrant to Twitter seeking evidence of conspiracy, hacking, and Foreign Agent crimes, which was originally sealed in its entirety to hide from Stone the full scope of the investigation into him, was still largely sealed in April 2020).

None of those events happened in July 2019.

Gerth appears not to know about the ongoing investigation into Stone. He doesn't mention it. He barely mentions Stone at all, just 205 words out of 23,000, or less than 1% of the entire series.

Trump also commuted the sentence of Roger Stone, a Trump associate, who was convicted on false-statement and obstruction charges related to his

efforts in 2016 to serve as an intermediary between the campaign and WikiLeaks. Mueller “failed to resolve” the question of whether Stone had “directly communicated” with Julian Assange, the site’s founder, before the election, according to the *Times*.

In 2020, the 966-page report by the Senate intelligence panel went a little further. It said that WikiLeaks “very likely knew it was assisting a Russian intelligence influence effort” when it acquired and made public in 2016 emails from the DNC. A few months after the report was released, new information surfaced showing why the special counsel, with greater investigative powers than the Senate panel, couldn’t bring a case. The newly unredacted documents were obtained by *BuzzFeed*, via a Freedom of Information Act request. The Mueller team, the documents show, determined that while Russian hacking efforts were underway at the time of the releases by WikiLeaks in July 2016, “the Office did not develop sufficient admissible evidence that WikiLeaks knew of—or even was willfully blind to—that fact.” The Senate report also suggests Stone had greater involvement with the dissemination of hacked material released by WikiLeaks.

And those 205 words *include* mention of the WikiLeaks disclosure that came out in the same FOIA release that disclosed the referral of a conspiracy investigation involving Stone, so unlike other journalists who don’t know about the once-ongoing investigation into Stone (which is virtually all of them), Gerth *should* know about the Stone detail. He explicitly cites the FOIA release that first confirmed it.

On the one hand, this is an obscure detail, one few besides me have reported. On the other hand, the fact that DOJ was continuing to investigate

Roger Stone for conspiring with Russia at such time as Barr was loudly and inaccurately making claims about the Mueller investigation is not only a critical detail for someone assessing the press coverage of the investigation, but it also undermines the entire premise of Gerth's series.

Gerth seems to think that the fact that Mueller didn't charge conspiracy has some bearing on the merit of *reporting on* Trump's ties to Russia. Mueller did prove, via three guilty pleas, a judge's order, and a jury verdict, that Trump's foreign policy advisor, his National Security Adviser, his personal lawyer, his campaign manager, and his rat-fucker were lying to hide their ties to the Russian operation, which Gerth only mentions serially over the course of the piece. But because Mueller developed evidence of, but did not charge, a conspiracy, Gerth treats the abundant inappropriate ties between Trump's team and the Russian operation as a conspiracy theory invented by Hillary Clinton.

And for that reason, along with the suffocating number of other errors and misrepresentations, this series is more a symptom of what Gerth claims to combat, the degree to which coverage of the Russian investigation has been swamped by tribalist takes that only serve to increase polarization, rather than the cure he fancifully imagines he is offering. Indeed, I made the effort to wade through Gerth's interminable series in significant part because it is such a delightful exemplar of everything "Russiagate," that frenzy of screen-cap driven claims about a complex investigation chased by self-imagined contrarians who weren't actually engaged in journalism. It replicates so many of the claims, and in some cases, the legal and factual errors that "Russiagate" propagandists have, that my list of questions for CJR might serve as a source document for others to understand what's in the actual record.

CJR, when asked about the error at word 18, claimed it is not one. "On what basis did you say the inquiry into Trump and Russia ended in

July 2019?" I asked.

CJR editor Kyle Pope responded with word games, then a claim that the piece had fairly represented Mueller's testimony.

The story did not say that. It reads, "The end of the long inquiry into whether Donald Trump was colluding with Russia came in July 2019, when Robert Mueller III, the special counsel, took seven, sometimes painful, hours to essentially say no."

It didn't say the inquiry into "Trump and Russia ended," it said the inquiry "into whether Donald Trump was colluding with Russia." It also said Mueller "essentially" said "no" to that line of inquiry. That's a fair characterization of his testimony.

Never mind that's not a "fair characterization of his testimony." Mueller did agree with Ken Buck that there was insufficient evidence to charge Trump with conspiracy.

BUCK: OK. You recommended declining prosecution of President Trump and anyone associated with his campaign because there was insufficient evidence to convict for a charge of conspiracy with Russian interference in the 2016 election. Is that fair?

MUELLER: That's fair.

He also stated that not charging a conspiracy doesn't mean the investigation didn't find evidence of one (elsewhere, Gerth conflates not charging someone, like Carter Page, with not "turn[ing] up evidence for any possible charges").

[Peter] WELCH: But making that decision does not mean your investigation failed to turn up evidence of conspiracy.

MUELLER: Absolutely correct.

But Mueller spent a great deal of time explaining that “collusion” is not a crime, that conspiracy and “collusion” weren’t even the same in a colloquial sense.

[Doug] COLLINS: In the colloquial context, known public context, collusion – collusion and conspiracy are essentially synonymous terms, correct?

MUELLER: No.

See? I was being generous for spotting Gerth with his error at word 12!

Mueller specifically stated Trump could be charged with obstruction after he left office.

BUCK: You believe that he committed – you could charge the president of the United States with obstruction of justice after he left office.

MUELLER: Yes.

BUCK: Ethically, under the ethical standards.

MUELLER: Well I am – I’m not certain because I haven’t looked at the ethical standards, but the OLC opinion says that the prosecutor while he cannot bring a charge against a sitting president, nonetheless continue the investigation to see if there are any other person to might be drawn into the conspiracy. [Note, other outlets transcribed this response differently, cleaning it up somewhat.]

Mueller likewise made clear that Christopher Steele was beyond his purview (unbeknownst to the public, Barr had already appointed John Durham to conduct the investigation that resulted in the embarrassing acquittal of Igor Danchenko forty months later).

MUELLER: Let me back up a second if I could and say as I've said earlier, with regard to Steele, that's beyond my purview.

In one of his few deviations from short answers, Mueller affirmatively *offered up* that the counterintelligence investigation necessitated by Mike Flynn's lies was continuing.

[Raja] KRISHNAMOORTHY: For example, you successfully charged former National Security Advisor Michael Flynn of lying to federal agents about this conversations with Russian officials, correct?

MUELLER: Correct.

KRISHNAMOORTHY: Since it was outside the purview of your investigation your report did not address how Flynn's false statements could pose a national security risk because the Russians knew the falsity of those statements, right?

MUELLER: I cannot get in to that, mainly because there are many elements of the FBI that are looking at different aspects of that issue.

KRISHNAMOORTHY: Currently?

MUELLER: Currently.

Mueller also agreed that his report did not address whether Trump's lies about the Trump Tower deal (something Gerth downplays in his own series) created a counterintelligence risk.

KRISHNAMOORTHY: Thank you. As you noted in Volume Two of your report, Donald Trump repeated five times in one press conference, Mr. Mueller in 2016 "I have nothing to do with Russia."

Of course Michael Cohen said Donald Trump was not being truthful, because at

this time Trump was attempting to build Trump Tower Moscow. Your report does not address whether Donald Trump was compromised in any way because of any potential false statements that he made about Trump Tower Moscow, correct?

MUELLER: I think that's right – I think that's right.

Not only was Gerth's claim about "collusion" a totally inaccurate representation of Mueller's testimony, but the date of the testimony did not mark, in any way, one of several known milestones of the legal investigation. Mueller's testimony only marks the end if you're treating a legal investigation, with those obvious legal milestones, as instead some kind of figure of speech. A narrative.

When I pointed all this out, Pope still stood by his word games about the claim.

I'll let my earlier note stand.

This is more than just a quibble about word choice. Gerth and Pope have adopted a key rhetorical move of the "Russiagate" project they claim to be assessing.

In an editor's note explaining CJR's unapologetic adoption of the term, "Russiagate," Kyle Pope described it as if it is a specific, well-recognized narrative.

No **narrative** did more to shape Trump's relations with the press than Russiagate. The story, which included the Steele dossier and the Mueller report among other totemic moments, resulted in Pulitzer Prizes as well as embarrassing retractions and damaged careers. [my emphasis]

Somehow, a great number of "totemic moments," such as the Seth Rich fiasco or the VIPs claims about the exfiltration of DNC documents, never

get included in the “Russiagate” project. And that’s important, because by defining “Russiagate” as a narrative, Gerth and Pope walk into the project assuming not that reporting arose from actual facts, but instead was manufactured. In fact, Gerth even blames Hillary for unrelated reporting about things Donald Trump did. This is an attempt to prove Hillary wrong, not an attempt to assess the reporting on a serious criminal investigation.

Perhaps because of that, Gerth suggests – like many “Russiagate” proponents – that the press may only assert a role in political accountability with regards to Trump’s actions on Russia if the inquiry in question *first* meets a narrow legal measure, the charging of one crime, conspiracy.

That totally upends the way accountability must work in a democracy, in which a lot of behavior must be subject to critique by the media but may not be a prosecutable crime.

This series made me think seriously about a more generalized collapse, as the pace of politicized criminal investigations has accelerated since the days Gerth was hyping Whitewater, of those distinctions: an awareness on the part of the press which stories were about political accountability and which were legally accurate journalism covering a criminal investigation. The coverage of the three separate investigations of classified documents at Trump, Biden, and Mike Pence’s homes are being covered by journalists from different beats, which drives at least some of the uneven and at times inaccurate coverage.

But the linguistic games adopted by “Russiagate” advocates – and by Trump, as a defense plan – which treated “collusion” as “conspiracy” and dismissed everything Trump did that was not charged as conspiracy, disserved the public. Those word games conflate political accountability with legal accountability. Indeed, it flipped those things, suggesting that short of a crime, the public and the press had

no business to demand political accountability for really scandalous behavior from Trump.

These word games are a perfectly fine hobby for angry men posting screen caps on Twitter and they worked spectacularly well to distract from Trump's own actions. But they deliberately serve to obfuscate, an approach that should have no place in journalism and media criticism. As we'll see, that sloppiness carried over, on Gerth's part, to virtually all aspects of his project.

That's why I've spent far too long unpacking it: the failures of his project show the failures of "Russiagate" – the blind spots it adopts, the ethical lapses, and even the factual mistakes. In addition to a post on each of these topics, I've included three related documents as well:

- My own disclosure statement, which explains my own fraught role in the Russian investigation but also demonstrates that one can engage in the critique Gerth claims was missing from the Russian investigation, without adopting the "Russiagate" excesses
- An attempted reconstruction of the articles Gerth includes in his inquiry, which helps to show the articles he chose to ignore (fixed this link)
- A list of the questions I sent to CJR

Links

The Blind Spots of CJR's "Russiagate" [sic]
Narrative

Jeff Gerth's Undisclosed Dissemination of
Russian Intelligence Product

Jeff Gerth Declares No There, Where He Never
Checked

"Wink:" Where Jeff Gerth's "No There, There" in
the Russian Investigation Went

My own disclosure statement

An attempted reconstruction of the articles
Gerth includes in his inquiry

A list of the questions I sent to CJR