

THE IG REPORT (AND PUBLIC EVIDENCE) SHOWS THAT PETER STRZOK LOST THE ARGUMENT TO INVESTIGATE AGGRESSIVELY

Trump thinks Peter Strzok's texts are evidence of a conspiracy against him. Instead, they're proof that Strzok lost the battles to investigate the suspected Russian assets on his campaign more aggressively.

AFTER JUDGE KIMBA WOOD RULES ANY PRIVILEGE FIGHT WOULD HAVE TO BE PUBLIC, COHEN OR TRUMP WITHDRAW THREE CLAIMS OF PRIVILEGE

After Judge Kimba Wood ruled that any fights over privilege determinations for the materials seized from Michael Cohen would have to be public, Cohen or Trump withdrew three privilege claims.

MANAFORT AND HIS CO-CONSPIRATORS ADOPT THE COMMUNICATIONS HABITS OF DAVID PETRAEUS AND PAULA BROADWELL

Paul Manafort and his co-conspirators, after having been caught using PRISM servers in November, have moved onto “foldering,” the use of draft emails in shared email accounts, to communicate.

PAULIE GOES TO PRISON*

Judge Amy Berman Jackson just sent Paul Manafort to jail to await trial because he violated his release conditions.

The judge said sending Manafort to a cell was “an extraordinarily difficult decision,” but added his conduct left her little choice, because he had allegedly contacted witnesses in the case in an effort to get them to lie to investigators.

“This is not middle school. I can’t take away his cell phone,” she said. “If I tell him not to call 56 witnesses, will he call the 57th?” She said she should not have to draft a court order spelling out the entire criminal code for him to

avoid violations.

"This hearing is not about politics. It is not about the conduct of the office of special counsel. It is about the defendant's conduct," Jackson said. "I'm concerned you seem to treat these proceedings as another marketing exercise."

I'm interested in where that leaves him (besides, probably, the jail in Alexandria).

Manafort has a bunch of pending motions in EDVA: one challenging Mueller's authority that Judge TS Ellis should be set to rule on, as well as a bunch trying to suppress evidence and one asking for a hearing on leaks. But things keep getting delayed in EDVA, which is supposed be a rocket docket but isn't working out that way for Manafort. For both family reasons and because he had to preside over a spy trial, Ellis moved the hearing for the latter issues to June 29 and moved the trial itself (for which Mueller just got 75 sets of subpoenas) to July 24.

In DC, ABJ laid out this schedule back in March (which I'll return to). Basically, she envisions two rounds of motions leading towards a trial in September.

Meanwhile, earlier this week, Mueller filed this curious motion in EDVA, asking Ellis to impose this discovery order. The problem Mueller's team is having is that Manafort won't respond to any of the requests Mueller's team has made about a discovery order, going back to February and still, as recently as last week. And while they've turned over a ton of stuff, they suggest there's "additional materials to be produced in this case" that they don't want to turn over until Manafort is obligated by a discovery order.

Prior to the arraignment, on February 27, 2018, the government proposed the attached discovery order to defense counsel. The proposed order tracks the

schedule and deadlines in this district's standard discovery order. As the Court is aware, in addition to a schedule for Rule 16 discovery, the standard discovery order also sets forth deadlines for 404(b), Brady, Giglio, and Jencks material as well as notices for experts, alibis, and stipulations.

The defendant has already received robust discovery in this case and in the parallel District of Columbia prosecution. Indeed, the government has cumulatively made 19 separate productions – each containing a detailed index – in both cases. However, since February 2018 and as recently as last week, the government has been unable to obtain Manafort's position on the attached proposed discovery order. Accordingly, in order to adequately prepare for trial, reduce discovery litigation, and protect additional materials to be produced in this case, the government respectfully asks this Court to enter the attached proposed discovery order.

Now, most of the obligations in the discovery order are on the prosecution, and given the delay in scheduling they're not immediately pending in any case. The defense is supposed to tell the government about experts (which might be pertinent in this case since it's a tax case), but that still wouldn't be due until mid-July. The most immediate deadline would be if Manafort wanted to offer an alibi, which the standard protection order for EDVA would require by the first week of July; but I can't imagine any alibi Manafort could offer on the EDVA case.

Now back to the DC case. There's actually something due there, today (which given past practice will come out late in the day as everyone's trying to get on with their weekend). Today's the day the government has to submit their 404(b) notice to Manafort –

basically advance warning of any other crimes they want to introduce during trial.

The government's notice of its intention to introduce evidence under Fed. R. Evid. 404(b) must be filed by June 15, 2018; the opposition will be due on June 29; and the reply will be due on July 9. A hearing on the motion, if necessary, will be held on July 24, 2018 at 9:30 a.m.

Back in January, Mueller had requested delaying this notice until 8 weeks before trial (which would have been early August had ABJ not set the earlier deadline of today). My guess, then, was that they wanted to hold off letting Manafort know about what evidence they had on the case in chief, but that they wanted to introduce at trial.

The government just submitted a request to modify the deadline Judge Amy Berman Jackson set to give Paul Manafort and Rick Gates notice of other crimes or bad acts it will introduce at trial, what is called a Rule 404(b) notice. Currently, they have to provide that notice on April 6, but the judge is now considering a September rather than a May trial date, so prosecutors want to bump the 404 notice back accordingly.

Mueller's prosecutors don't want to give Manafort and Gates more than a couple months notice of the other crimes they're going to unload during the trial. They also note that if they give notice in April, they may have to provide multiple notices as they learn of other bad acts.

Premature disclosure raises issues as well. For example, in declining to require disclosure that is too early, courts have recognized that "the evidence

the government wishes to offer
may well change as the proof and
possible defenses crystallize."

[snip]

For similar reasons, early
disclosure can result in
multiple Rule 404(b) notices and
multiply the rulings that a
court needs to make, thus
undermining the efficient use of
judicial and party resources.

The government wants to wait until 8
weeks before the trial before giving
notice.

At least two things appear to be going
on here. First, Mueller doesn't want to
tip his hand to the many crimes it has
found Manafort implicated in. Perhaps,
he also wants to avoid making other
obvious allegations about Manafort and
Gates to preserve their credibility when
they flip on the President and his
family. But it also seems to suggest
Mueller expects he'll be finding other
crimes Manafort and Gates committed for
the next 8 months.

This conversation with Matt Tait makes me wonder
whether they're trying to keep 404(b) evidence
that they might file in NY State under wraps for
now, in case Trump pardons Manafort (as he
suggests, Manafort's remaining money laundering
properties involve Trump Organization).

So maybe that's what Mueller's trying to get
Manafort to agree to. The EDVA standard order
he's trying to get him to use would require
404(b) notice by July 17, but permits the
government to request avoiding such pretrial
notice.

It is further ORDERED that, no later
than seven calendar days before trial,

the government shall provide notice to the defendant, in accordance with FED. R. EVID. 404(b), of the general nature of any evidence of other crimes, wrongs, or acts of defendant which it intends to introduce at trial, except that, upon motion of the government and for good cause shown, the court may excuse such pretrial notice.

It's unclear what is operative in the DC case, but clearly the government can continue to file, as noted in January.

Anyway, that's all just a guess, and we should see what they file for the 404(b) notice in DC this evening. Meanwhile, Paulie will be making himself comfortable in his new cell.

Update: Here's the 404(b) motion. Mueller wants to introduce three things:

- Evidence that one reason that Manafort and others arranged for [Skadden Arps] to be retained for the de minimis sum of approximately \$12,000—even though they knew at the time that Law Firm A proposed a budget of at least \$4 million—was to avoid certain limitations imposed by Ukrainian public procurement law.
- Evidence that Manafort was treating a NYC apartment as a business property with the IRS but as a personal dwelling with a lender.
- Evidence that Manafort structured intra-Cypriot funds to hide income.

The first of those two, of course, involve crimes in NY state.

*Technically, Manafort is being sent to jail, not prison. But that doesn't alliterate so forgive me the error this once, okay?

SHORTER YEVGENIY PRIGOZHIN: DON'T SEND THE PII WE ALREADY STOLE — JUST SEND THE INTELLIGENCE

In response to Mueller's attempt to keep intelligence out of the hands of Yevgeniy Prigozhin, Concord Management is demanding that Mueller only send the intelligence but not the Personally Identifiable Information Russia already stole.

TY COBB'S CLAIM ABOUT WHITE HOUSE COUNSEL RECUSAL CAN ONLY BE NARROWLY TRUE

Ty Cobb is publicly claiming that Don McGahn recused the entire White House Counsel's Office from the Russia investigation. But that probably happened later than Cobb is suggesting.

THE DECLINE AND RECENT FALL OF MANAFORT'S HAPSBURG EMPIRE

Manafort would have been fucked even if he had used sound operational security, because the guy he tried to get to lie for him took screen caps of his WhatsApp texts in real time.

MUELLER TO YEVGENIY PRIGOZHIN: SURE YOU CAN HAVE DISCOVERY ... IF YOU COME TO THE UNITED STATES TO GET IT

Mueller has sent a key message to Yevgeniy Prigozhin. He'll only share discovery with him if he shows up to the US to be arrested before he receives it.

THE CRIMES WITH WHICH NSD ENVISIONS

CHARGING THOSE ATTACKING ELECTIONS

The comparison of what NSD DAAD Adam Hickey thinks might be used to punish those who tampered with a hypothetical election and what Ryan Goodman and Ken Wainstein may hint at what Hickey knows from the Mueller investigation.

THE NEW CYBER SANCTIONS

Even as Trump was working hard to get Russia admitted back into the G-7, Treasury was preparing new cyber sanctions against a number of “Russian” entities. This appears to be an effort to apply sanctions for activities exploiting routers and other network infrastructure (activities that the US and its partners engage in too) that US-CERT released a warning about in April.

One of the designated entities in controlled by and has provided material and technological support to Russia’s Federal Security Service (FSB), while two others have provided the FSB with material and technological support. OFAC is also designating several entities and individuals for being owned or controlled by, or acting for or on behalf of, the three entities that have enabled the FSB.

[snip]

Examples of Russia’s malign and destabilizing cyber activities include the destructive NotPetya cyber-attack; cyber intrusions against the U.S. energy grid to potentially enable future

offensive operations; and global compromises of network infrastructure devices, including routers and switches, also to potentially enable disruptive cyber-attacks. Today's action also targets the Russian government's underwater capabilities. Russia has been active in tracking undersea communication cables, which carry the bulk of the world's telecommunications data.

I've included the entire list of sanction targets below.

On paper, at least, it looks like Treasury is sanctioning:

- An entity, Divetechnoservices, that helps Russia tap into submarine cables along with three of its employees (another thing our spooks do, but one the US and especially UK have been increasingly worried about from Russia); the Treasury release notes that Divetechnoservices got the contract for a FSB submersible craft way back in 2011
- An entity, Kvant Scientific Research Institute, that has been a research institute for FSB since August 2015 and, since April 2017, the prime contractor on an FSB project

- An entity, Digital Security, that as of 2015 worked on a project that would expand Russia's offensive cyber capabilities; the sanctions also include two companies the release claims are Digital Security subsidiaries, both which have US and Israeli locations

All of these were sanctioned under E.O. 13694, which, as amended, included attacks on election processes; given the dates, they might be implicated in the election year hacks, or might just be deemed a threat to national security. Just Kvant was *also* sanctioned under CAATSA, which is the more general sanctions program forced onto Trump by Congress. I've also put the language for the two of those below.

And, as Lorenzo F-B notes, the heads of two of the sanctioned alleged subsidiaries of Digital Security, ERPScan and Embedi, say they have nothing to do with the company.

But one of the security companies named in the new sanctions, ERPScan, denied having anything to do with the Russian government in an email to Motherboard.

"The only issue is that I and some of my peers were born in Russia, oh, cmon, I'm sorry but I can't change it," ERPScan's founder Alexander Polyakov told me. "We don't have any ties to Russian government."

ERPScan is mostly known for its product that hunts for vulnerabilities in companies' systems provided by SAP, a popular German enterprise software maker. Cyber Defense Magazine gave ERPScan an award this year for "best

product" in its artificial intelligence and machine learning category.

[snip]

Polyakov, however, claimed that as of 2014, ERPScan is a "private company registered in the Netherlands" and that it has no connections "with other companies listed in this document."

[snip]

"The news came to us as an unpleasant surprise. We never worked for Russian government, but indeed we have some former Russian researchers in our Research Team (some of them are former employees of Digital Security)," Alex Kruglov, Embedi's head of marketing, told Motherboard in an email. "It is the only reason we can figure out to be added to a sanctions list."

And they're both legit cybersecurity companies, which at the very least raises questions (as the Kaspersky targeting did) about whether this is just infosec protectionism. If these protestations are correct, however, it renews real questions about the accuracy of sanction claims made under Treasury Secretary Steve Mnuchin.

The first indication that Mnuchin's Treasury Department was offering bullshit to fulfill Congress' demand for sanctions came when Treasury released a list of Russian oligarchs in January that was basically just the Forbes list of richest Russians, including a number that oppose Putin.

President Trump's Treasury Department released a list of prominent Russian political figures and business leaders who have prospered while Vladimir Putin has led Russia.

The list features 210 people, including politicians such as Prime Minister

Medvedev and Minister of Defense Sergey Shoygu. Also on the list are 96 "oligarchs." Within hours of the list's posting, media organizations began pointing out the similarity between the 96 billionaires listed and the Russians that appear on *Forbes'* 2017 list of the World's Billionaires.

Forbes went through the lists and confirmed that indeed the Treasury Department's list is an exact replica of the Russians on the 2017 billionaires list.

For a bit, I thought the list released in March, which added a few new GRU officers, might have reflected new knowledge about GRU officers involved in the targeting of the DNC. Except it turned out those officers were just people readily identifiable off public GRU records. Treasury basically could have gotten them from a spook phone book.

Treasury did better with non-cyber Ukraine-related sanctions in April. It actually named several figures – most obviously Oleg Deripaska and Alexander Torshin – suspected of having played key roles in the election interference. Since then, Deripaska and his aluminum company Rusal have pursued financial games to shield Rusal from sanctions. He's doing this with the help of Mercury Public Affairs – the Vin Weber lobbying group that shows up in a lot of Manafort's indictments – and former Trump aide Brian Lanza, who now works there. So it's not clear whether Deripaska will be significantly impacted.

With that history in mind, it's worth asking whether Treasury simply can't do cyber sanctions well, both because it's hard to distinguish infosec from hacking (it would be equally difficult to do so for any of a number of contractors with close ties to FBI, the analogue of the companies that got sanctioned yesterday), and perhaps because Treasury doesn't have good

intelligence on who is hacking for Russia. Or perhaps Mnuchin is just obstinate.

But thus far, the history of Treasury's selections on Russian related cyber sanctions leaves quite a bit to be desired.

Today's action includes the designation of five Russian entities and three Russian individuals pursuant to E.O. 13694, as amended, as well as a concurrent designation pursuant to Section 224 of CAATSA.

Digital Security was designated pursuant to E.O. 13694, as amended, for providing material and technological support to the FSB. As of 2015, Digital Security worked on a project that would increase Russia's offensive cyber capabilities for the Russian Intelligence Services, to include the FSB.

ERPScan was designated pursuant to E.O. 13694, as amended, for being owned or controlled by Digital Security. As of August 2016, ERPScan was a subsidiary of Digital Security.

Embedi was designated pursuant to E.O. 13694, as amended. As of May 2017, Embedi was owned or controlled by Digital Security.

Kvant Scientific Research Institute (Kvant) was designated pursuant to E.O. 13694, as amended, and Section 224 of CAATSA for being owned or controlled by the FSB. In August 2010, the Russian government issued a decree that identified Kvant as a federal state unitary enterprise that would be supervised by the FSB.

Kvant was also designated pursuant to E.O. 13694, as amended, for providing material and technological support to the FSB. As of August 2015, Kvant was a research institute with extensive ties to the FSB. Furthermore, as of April 2017, Kvant was the prime contractor on a project for which the FSB was the end user.

Divetechnoservices was designated pursuant to E.O. 13694, as amended, for providing material

and technological support to the FSB. Since 2007, Divetechnoservices has procured a variety of underwater equipment and diving systems for Russian government agencies, to include the FSB. Further, in 2011, Divetechnoservices was awarded a contract to procure a submersible craft valued at \$1.5 million for the FSB.

Aleksandr Lvovich Tribun (Tribun) was designated pursuant to E.O. 13694, as amended, for acting for or on behalf of Divetechnoservices. As of December 2017, Tribun was Divetechnoservices' General Director.

Oleg Sergeyevich Chirikov (Chirikov) was designated pursuant to E.O. 13694, as amended, for acting for or on behalf of Divetechnoservices. As of March 2018, Chirikov was Divetechnoservices' Program Manager.

Vladimir Yakovlevich Kaganskiy (Kaganskiy) was designated pursuant to E.O. 13694, as amended, for acting for or on behalf of Divetechnoservices. As of December 2017, Kaganskiy was Divetechnoservices' owner. Previously, Kaganskiy also served as Divetechnoservices' General Director.

E0 13694 as amended

E.O. 13694 authorized the imposition of sanctions on individuals and entities determined to be responsible for or complicit in malicious cyber-enabled activities that result in enumerated harms that are reasonably likely to result in, or have materially contributed to, a significant threat to the national security, foreign policy, or economic health or financial stability of the United States. The authority has been amended to also allow for the imposition of sanctions on individuals and entities determined to be responsible for tampering, altering, or causing the misappropriation of information with the purpose or effect of interfering with or undermining

election processes or institutions.

CAATSA Section 224

IN GENERAL.—On and after the date that is 60 days after the date of the enactment of this Act, the President shall— (1) impose the sanctions described in subsection (b) with respect to any person that the President determines— (A) knowingly engages in significant activities undermining cybersecurity against any person, including a democratic institution, or government on behalf of the Government of the Russian Federation; or (B) is owned or controlled by, or acts or purports to act for or on behalf of, directly or indirectly, a person described in subparagraph (A);

[snip]

SIGNIFICANT ACTIVITIES UNDERMINING CYBERSECURITY DEFINED.—In this section, the term “significant activities undermining cybersecurity” includes— (1) significant efforts— (A) to deny access to or degrade, disrupt, or destroy an information and communications technology system or network; or (B) to exfiltrate, degrade, corrupt, destroy, or release information from such a system or network without authorization for purposes of— (i) conducting influence operations; or (ii) causing a significant misappropriation of funds, economic resources, trade secrets, personal identifications, or financial information for commercial or competitive advantage or private financial gain; (2) significant destructive malware attacks; and (3) significant denial of service activities.
