

ON THE APPARENT COMPLEXITIES OF CHARGING ROGER STONE

As I disclosed last month, I provided information to the FBI on issues related to the Mueller investigation, so I'm going to include disclosure statements on Mueller investigation posts from here on out. I will include the disclosure whether or not the stuff I shared with the FBI pertains to the subject of the post.

Last night, Sam Nunberg reportedly told Ari Melber he thought Roger Stone would be indicted on "broad charges of conspiring against America ... backed up by some financial charges." That has led to some Tweet lawyering suggesting that such ConFraudUS charges would arise naturally from Stone's known interactions with WikiLeaks and Guccifer 2.0.

I'm certain things are not as simple as that. If they were, Mueller would not have spent much of the last five months focusing on testimony relating to Stone, including (this list doesn't include at least one other person whose Stone-related testimony is not public):

- February 22: Sam Nunberg questioned by Mueller's team
- March 9: Mueller obtains a warrant for 5 AT&T phones (and probably a similar number of Verizon ones)
- March 9: Sam Nunberg appears before grand jury
- March 27: Ted Malloch stopped at Logan airport, questioned about Stone and

Wikileaks, devices seized, subpoenaed to appear before grand jury on April 13 (the grand jury appearance was rescheduled or canceled)

- May 2: Michael Caputo interviewed by Mueller team; among the topics discussed was outreach by “Henry Greenberg” to deal dirt on Hillary Clinton to Stone
- May 10: Mueller subpoenas Andrew Miller for documents and testimony, Miller agrees to meet voluntarily with Mueller’s team
- May 11: Alicia Dearn contacts Mueller and says Miller is no longer willing to appear
- May 14: Mueller’s team contacts Dearn to inquire about her representation of Miller; she does not return the call
- May 18: John Kakanis reportedly subpoenaed after having been interviewed by Mueller’s team
- May 18: Miller blows off a May 18 appearance before the grand jury; Dearn’s employee says Dearn will contact Mueller’s team on May 21
- May 21: Dearn blows off promised call to Mueller’s

team

- May 23: Mueller's team emails Dearn a second set of subpoenas, to appear on June 1
- May 25: Stone says 8 associates have been asked for testimony
- May 25: Mueller's team follows up on subpoenas; Dearn asks for more time to comply "given the volume of responsive documents;" Mueller agrees to adjourn document production to June 5 and appearance to Jun 8
- May 31: Mueller contacts Dearn to confirm appearance; Dearn complains about "patently irrelevant" responsive materials; Mueller agrees to exclude those materials
- June 1: Jason Sullivan appears before grand jury
- June 5: Mueller emails new subpoenas reflecting the June 5 production date and June 8 appearance
- June 6: Mueller emails Dearn to confirm appearance and arrange for travel
- June 8: Miller blows off grand jury appearance
- June 11, 8:50AM and 2:15PM: Mueller emails Dearn and asks for immediate contact,

warning that Special Counsel would move towards contempt

- June 12, 9:07AM and 2:15PM: Dearn twice says she'll provide correspondence within an hour but does not
- June 13: Mueller moves to compel
- June 14: Miller filed opposition purporting to be a motion to quash
- June 18: At hearing on motion to quash, court orders Miller to appear on June 28
- June 28: Miller retains Paul Kamenar, paid by the National Legal and Policy Center, who challenges subpoenas as challenge to Appointments Clause, borrowing argument from Concord Management motion
- June 29: At status hearing in Miller challenge, Kamenar adds another challenge, that Mueller was appointed by "Head of Department"
- July 18: Hearing on Miller challenge, attended by 5 Mueller lawyers, with follow-up briefing
- July 31: Chief Judge Beryl Howell rules that Miller must testify ASAP
- August 1: Kristin Davis

- interviewed by Mueller team;
investigators express an
interest in having her
appear before grand jury
- August 3: Dabney Friedrich entertains ignoring DC Circuit and SCOTUS precedent to rule for Concord Management's challenge of Mueller's authority, with Kamenar watching; Concord lawyer Eric Dubelier suggests conspiracy in the timing of Howell's ruling
 - August 10: Kristin Davis appearance before grand jury

While some of these witnesses were clearly asked about Wikileaks, others were reportedly asked about meetings involving Rick Gates, Stone's finances, and even whether he fathered Davis' two year old child. And while Stone's buddies claim Mueller is generally investigating his finances, Mueller's focus seems to be on the recipients of expenditures from Stone's SuperPAC.

Clearly, whatever question Mueller is investigating (and whatever potential crimes he showed probable cause of, if he indeed seized the contents of Stone's phone back in March) is more complex than just chatting up Assange or Guccifer 2.0. Indeed, even the discussions we know of show Stone involved in – or at least entertaining – more than that. That said, Mueller will need to prove that whatever Stone did involved the understanding that he was accepting things of value (or even, soliciting the active help) from foreigners or other illegal actions.

That's one reason why the circumstances of Stone's flip-flop in early August 2016, in which

Stone went from admitting that the DNC hack was done by Russia to claiming it was not seemly in one day in which he was in Southern California is so important: because he established a contemporaneous claim he has relied on to excuse any coordination with Guccifer 2.0 and WikiLeaks. Given the import of Stone's flip-flop, I find it interesting that so much of the funding for his SuperPAC came from Southern California, especially from John Powers Middleton. Did he meet with his donors when he orchestrated the flip-flop that makes it harder to argue his discussions and foreknowledge of Guccifer 2.0 and WikiLeaks events count as entering into a conspiracy to break one or several laws?

Whatever the circumstances of that flip-flop, from that point forward, Stone pushed several lines – notably the Seth Rich conspiracy – that would be key to Russian disinformation. A big chunk of his SuperPAC funds also spent on “Stop the Steal,” which may also tie to Russian disinformation to discredit the election.

One of the complexities Mueller may have spent months digging through may be whether and how to hold Stone accountable for willfully participation in disinformation supporting Russia's larger efforts to swing the election to Donald Trump.

In March, when this focused pursuit started, Mueller wanted to know what the President knew about communication between Stone, his associates, Julian Assange, and Wikileaks. Since then, it appears the question has gotten more complex.

And along the way, a key Roger Stone aide has managed to stall three months on providing testimony.

Update: Fixed spelling of Miller's attorney's last name to Dearn.