

# CNN WORRIES ABOUT MUELLER'S AGGRESSIVE TACTICS, BUT REAL CONCERN MAY BE SENATE INTELLIGENCE COMMITTEE

CNN has a cryptic story – pitched as evidence that the committees conducting the Russian investigation may be clashing with the Mueller investigation – suggesting two kinds of “aggressive tactics” on the part of Robert Mueller’s team.

The less cryptic of the two tactics is that the FBI seized attorney-client privileged documents in the morning raid of Manafort’s house.

Mueller issued subpoenas to Manafort’s former lawyer and current spokesman and authorized a pre-dawn raid of his Virginia home in late July.

During that raid, Mueller’s investigators took documents considered to be covered by attorney-client privilege, sources told CNN.

Lawyers from the WilmerHale law firm, representing Manafort at the time, warned Mueller’s office that their search warrant didn’t allow access to attorney materials. The documents in question have now been returned, the sources say.

The episode raised questions about whether investigators have seen materials they weren’t entitled to obtain.

“You can’t unsee something,” one source said.

It's not an uncommon problem in FBI investigations. US attorneys typically have separate document-review teams to prevent investigators from handling materials they aren't allowed to have. It's not clear what procedures Mueller's office uses.

We first heard of this claim not from Manafort, but from Trump's lawyer, John Dowd, via an email sent to WSJ but instead reported by Fox.

Dowd also said agents seized "privileged and confidential materials prepared for Mr. Manafort by his counsel to aid him in his cooperation with the Congressional committees,"

The claim that this privileged information pertained to Manafort's cooperation with the Congressional committees may help to elucidate the second claim: that Mueller's lawyers made an agreement with Manafort's lawyers about what they could obtain from the Senate Intelligence Committee, then overstepped it in trying to get an actual transcript of the interview. CNN rather unhelpfully doesn't tell us when Mueller made the agreement with Manafort's lawyers about his appearance before the Senate Intelligence Committee, before or after the interview and the raid.

After Manafort privately interviewed with Senate intelligence committee staff in late July to discuss the June 2016 meeting between Trump Jr. and Russian operatives, Mueller's lawyers have struggled to get a copy of the interview transcript.

Manafort's attorneys, in talks with the special counsel's office, agreed to allow Mueller's team only to get the documents Manafort had turned over to the committee, not the interview transcript, according to the sources.

Yet an attorney with the Mueller team later told the committee that they were authorized by Manafort's representatives to have the Manafort interview transcript, sources familiar with the discussions told CNN. Committee lawyers later learned from Manafort's attorneys that they had not provided that consent, the sources say.

As a result of the dispute, the committee hasn't turned over any documents and the matter is still under discussion, sources say.

That's critically important given the concern (which is real), that Mueller's team "can't unsee something." That is, they may have seen something in the privileged communications about Manafort's interview strategy that made them interested in the transcript, and only then asked for the transcript. Alternately, Manafort (and/or Dowd!) may just be bullshitting here, in a way to get SSCI to withhold something that became far more damning after the raid on his home.

Dowd's other complaints – that Mueller didn't need to raid Manafort's home because he could get everything via other means, as witnessed by Manafort's cooperation with SSCI – suggest the latter may be the case.

Dowd, in his note, questioned the validity of the search warrant itself, calling it an "extraordinary invasion of privacy." Dowd said Manafort already was looking to cooperate with congressional committees and said the special counsel never requested the materials from Manafort.

"These failures by Special Counsel to exhaust less intrusive methods is a fatal flaw in the warrant process and would call for a Motion to Suppress the fruits of the search," Dowd wrote,

arguing the required “necessity” of the warrant was “misrepresented to the Court which raises a host of issues involving the accuracy of the warrant application and the supporting FBI affidavit.”

But there’s something else important here. As I laid out here, the Mueller raid happened in the wake of two developments in the Senate Judiciary Committee. On Monday, July 24 (“last night” in a July 25 release), Grassley and Feinstein issued a subpoena for Manafort, in particular complaining that Manafort wanted to appear before just one committee, SSCI.

While we were willing to accommodate Mr. Manafort’s request to cooperate with the committee’s investigation without appearing at Wednesday’s hearing, we were unable to reach an agreement for a voluntary transcribed interview with the Judiciary Committee. Mr. Manafort, through his attorney, said that he would be willing to provide only a single transcribed interview to Congress, which would not be available to the Judiciary Committee members or staff. While the Judiciary Committee was willing to cooperate on equal terms with any other committee to accommodate Mr. Manafort’s request, ultimately that was not possible. Therefore, yesterday evening, a subpoena was issued to compel Mr. Manafort’s participation in Wednesday’s hearing. As with other witnesses, we may be willing to excuse him from Wednesday’s hearing if he would be willing to agree to production of documents and a transcribed interview, with the understanding that the interview would not constitute a waiver of his rights or prejudice the committee’s right to compel his testimony in the future.

That is, Manafort was digging his heels in on a

strategy that would have him cooperate exclusively with SSCI, not with SJC. And, as with Mueller, Manafort was refusing to turn over that transcript to SJC.

Faced with the threat of the subpoena, however, Manafort agreed to turn over documents and suggested he might be willing to do a separate transcribed interview.

Faced with issuance of a subpoena, we are happy that Mr. Manafort has started producing documents to the Committee and we have agreed to continue negotiating over a transcribed interview. It's important that he and other witnesses continue to work with this committee as it fulfills its oversight responsibility. Our investigation is still in its early stages, and we will continue to seek information from witnesses as necessary. As we've said before, we intend to get the answers that we need, one way or the other. Cooperation from witnesses is always the preferred route, but this agreement does not prejudice the committee's right to compel his testimony in the future.

This is the reluctant, last minute "cooperation" that Dowd pointed to as basis for his claim that Mueller could have gotten Manafort's cooperation via other means, and part of that cooperation had Manafort undergoing a transcribed interview solely with SSCI.

Hours after Manafort made this agreement with SJC, Mueller's team raided Manafort.

Two more details are worth recalling. We now know that on the day the WaPo broke the story of Mueller's raid of Manafort, Donald Trump bitched out Mitch McConnell on the phone about not protecting him in the Russia probe. NYT described Trump as being even angrier about that than McConnell's failure to pass TrumpCare.

During the call, which Mr. Trump initiated on Aug. 9 from his New Jersey golf club, the president accused Mr. McConnell of bungling the health care issue. He was even more animated about what he intimated was the Senate leader's refusal to protect him from investigations of Russian interference in the 2016 election, according to Republicans briefed on the conversation.

That's when Dowd started emailing reporters at Murdoch publications, complaining that the Manafort raid endangered Trump.

Now consider that the other thing CNN includes among Mueller's aggressive tactics – his subpoena of Manafort's former lawyer Melissa Laurenza – is effectively a subpoena of a former McConnell staffer.

The subpoenas seeking documents and testimony were sent to Melissa Laurenza, an attorney with the Akin Gump law firm who until recently represented Manafort, and to Jason Maloni, who is Manafort's spokesman, according to people familiar with the matter.

So it may be that Trump believed Manafort had certain understandings with McConnell that the raid – executed hours after Manafort's SSCI interview – disrupted.

All that being said, once you consider that *both* Mueller's team and Grassley's committee are facing similar difficulties with Manafort, it suggests the focus here should not be on Mueller, but instead on what kind of special deals SSCI (Chaired by former Trump advisor Richard Burr) is offering up.

Sure, we have yet to have committees granting immunity to protect the president and his lackeys – which is what thwarted the Iran-Contra investigation. But given that SSCI seems to have offered to serve as a black hole for Manafort's

sworn claims, I think it time to stop assuming,  
as many in DC are doing, that that's where the  
grown-ups live.