

ON THE ROGER STONE INVESTIGATION: TALKING TO GUCCIFER 2.0 OR WIKILEAKS IS NOT A CRIME

Before I get further in my series on the known universe of hacked and leaked emails from 2016, I want to explain something about Roger Stone, especially given this WaPo story that provides interesting details but claims Mueller is pursuing them in hopes of answering this question:

Did longtime Trump adviser Roger Stone – or any other associate of the president – have advance knowledge of WikiLeaks’ plans to release hacked Democratic emails in 2016?

While I don’t claim to understand much more than the rest of the world about what the Mueller probe is doing, I say with a fair degree of certainty that Mueller has not had three prosecutors chasing leads on Roger Stone since February because he wants to know if Stone had advance knowledge of WikiLeaks’ plans on releasing emails. Knowing *that* WikiLeaks planned on releasing emails is not a crime.

Indeed, Assange at times (most notably on June 12) telegraphed what he was up to. There were WikiLeaks volunteers and some journalists who knew what WikiLeaks was up to. None of that, by itself, is a crime.

With that in mind, consider the following:

It matters *what* emails

Stone claimed to know would be released

At the risk of spoiling my series, let me explain the significance of it. While knowing *that* WikiLeaks would release emails is not by itself a crime, advance knowledge becomes more interesting based on what Stone might have done with that knowledge. Here's why:

- **DNC emails:** Mueller has presumably tracked whether and to whom George Papadopoulos shared advance knowledge of the tip he got on April 26 that the Russians would release emails to help Trump. That's important because if he can show meeting participants knew those emails had been offered, then June 9 meeting becomes an overt act in a conspiracy. While there's no public allegation Stone knew that WikiLeaks would be releasing Hillary emails before Julian Assange stated that publicly on June 12 (after the Trump Tower meeting and therefore at most a response to the meeting), if Stone knew that WikiLeaks would be part of the delivery method it adds to evidence of a conspiracy.
- **Podesta emails:** The Democrats' focus on Stone

has always been on his seeming advance knowledge that WikiLeaks would release the Podesta emails, though the *public* case that he did is in no way definitive. Even assuming he did learn in advance, there are multiple channels via which Stone might have learned the Podesta emails were coming (just as an example, Democrats have necessarily always been obfuscating about how much they knew). But any presumed advance knowledge is still only a crime if Stone in some way coordinated with it or encouraged ongoing hacking.

- Deleted Hillary emails: While the evidence that Roger Stone knew that WikiLeaks would release Podesta's emails is inconclusive, the evidence that he "knew" WikiLeaks had Hillary's deleted emails is not. Stone made that claim over and over. It's actually not public whether and when WikiLeaks obtained files purporting to be Hillary's deleted emails, though we should assume they got at least some sets of purported emails via the Peter Smith

effort. If Stone had involvement in that effort, it might be criminal (because operatives were soliciting stolen emails from criminal hackers, not just making use of what got released), though Stone says he was unaware of it.

- DCCC emails: The DCCC files, which offered more operational data about downstream campaigns, might raise other problems under criminal law. That's because the data offered was generally more operational than the DNC and Podesta emails offered, meaning operatives could use the stolen data to tweak their campaign efforts. And Guccifer 2.0 was sharing that data specifically with operatives, providing something of value to campaigns. Guccifer 2.0 tried to do the same with Stone. The text messages between Stone and Guccifer 2.0 show the persona trying to get Stone interested in some of the DCCC files pertaining to FL. But at least on those DMs, Stone demurred. That said, if Stone received and

operationalized DCCC data in some of his rat-fucking, then it might raise criminal issues.

It matters *from whom* Stone learned (if he did) of WikiLeaks' plans

A big part of Mueller's focus seems to be on testing Stone's public claims that his go-between with WikiLeaks was Randy Credico, who had ties to Assange but was not conspiring to help Trump win via those channels.

There are other possible go-betweens that would be of greater interest. For example, the public discussion of Stone's potential advance knowledge seems to have forgotten the suspected role of Nigel Farage, with whom Stone dined at the RNC and later met at Trump's inauguration. That would be of heightened interest, particularly given the way Stone suggested the vote had been rigged against Brexit and Trump when in reality Russians were rigging the vote for both.

It matters whether Stone lied about the whom or the what

Stone's testimony to the House, in which he offered explanations about any advance knowledge and his Podesta comment, was sworn. If Mueller can show he lied in his sworn testimony, that is certainly technically a crime (indeed, Sam Patten got referred to Mueller based on on his false statements to the Senate Intelligence Committee). But it's unlikely Mueller would charge, much less investigate, Stone for 8 months solely to prove whether he lied to

Congress.

But if Stone did lie – claiming he learned of WikiLeaks' plans from Credico when in fact he learned from someone also conspiring with the Russians – then those lies would lay out the import of Stone's role, in what he was hypothetically trying to cover up.

Stone's flip-flop on blaming the Russians at the moment he claimed to have knowledge of WikiLeaks' plans is of likely interest

There's a data point that seems very important in the Roger Stone story. On or around August 3, the very same day Stone told Sam Nunberg that he had dined with Julian Assange, Stone flip-flopped on his public statements about whether Russia had hacked Hillary or some 400 pound hacker in a basement had. During that period, he went from NY (where he met with Trump) to LA to coordinate with his dark money allies, then went home to Florida to write a column that became the first entry in Stone's effort to obfuscate the Russian role in the hack. That flip-flop occurred just before Stone started making public claims about what WikiLeaks had.

I suspect that flip-flop is a real point of interest, and as such may involve some other kind of coordination that the press has no public visibility on (particularly given that his claimed meeting with Assange happened while he was meeting with his dark money people).

Mueller may have had probable cause Roger

Stone broke the law by March

In the wake of Michael Caputo's testimony, Roger Stone briefly claimed that he must have been targeted under FISA, apparently based on the fact that Mueller had (possibly encrypted) texts he didn't provide himself showing that he and Caputo had had contact with a presumed Russian dangle they had hidden in prior sworn testimony. A more likely explanation is that Stone's was one of the at-least five phones Mueller got a warrant for on March 9, in the wake of Rick Gates' cooperation. But if that's the case, then it means that Mueller already had shown probable cause Stone had committed some crime by the time he got this phone.

Mueller is scrutinizing Stone for more than just knowledge of WikiLeaks

Even the public reporting on Mueller's investigative actions make it clear that he is scrutinizing Stone for more than just a hypothetical knowledge of, much less coordination with, WikiLeaks. He seems to have interest in the two incarnations of Stone's Stop the Steal dark money group, which worked to intimidate Cruz supporters around the RNC and worked to suppress Democratic voters in the fall. There's reason to suspect that the ways in which Stone and his people sloshed that money around did not follow campaign finance rules (in which case Don McGahn might have played a role). Certainly, Andrew Miller seems to worry that his own role in that sloshing might lead to criminal exposure. But Jerome Corsi has also suggested that Stone might have pitched some legally suspect actions to him, and those would constitute rat-fuckery, not campaign finance violations in the service of rat-fuckery.

Now, those other potential crimes might just be the gravy that Mueller has repeatedly used, charging people with unrelated crimes (like Mike Flynn's Turkish influence peddling or Michael Cohen's Stormy Daniel payoffs) to get their cooperation in the case in chief. Or they might be something that more closely ties to conspiracy with Russians.

The larger point, however, is that isolated details from Stone-friendly witnesses (and from Stone himself) may not be the most reliable way to understand where Mueller is going with his investigation of Stone. Certainly not witnesses who say Mueller has spent 8 months scrutinizing *whether* Stone lied about his foreknowledge of WikiLeaks' actions.

As I disclosed in July, 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.