

IN A SHODDY ATTEMPT TO INFLATE THE SINGLE SERVER FALLACY, ROGER STONE SUGGESTS COMMUNICATING WITH GUCCIFER 2.0 WOULD BE CRIMINAL

In a frivolous pair of motions, Roger Stone is going after CrowdStrike's analysis of the Russian hack. In the first, he demands full unredacted copies of CrowdStrike's reports on the hacks. He bases that demand on a claim the CrowdStrike reports are material to a motion to suppress the warrants against him because – he claims, falsely – the government relied exclusively on the CrowdStrike reports to decide Russia had hacked Democratic targets, so if the reports are faulty, then so are the warrants.

The entire stunt is based off what appears to be an inaccurate claim – that this government response to some other frivolous motions claimed they didn't have to prove that Russia hacked Democratic targets.

The Government stated in its Opposition to Stone's Motion to Dismiss (Dkt # 99) that it will not be required to prove that the Russians hacked either the Democratic National Committee ("DNC") or Democratic Congressional Campaign Committee ("DCCC") from outside their physical premises or that the Russians were responsible for delivering the data to WikiLeaks.

Maybe he's thinking of another government response to his motions that notes they don't

have to prove an underlying crime to prove obstruction, but the one he cites (without paragraph citation) doesn't make that claim. I mean, it is true that the government doesn't have to prove the underlying crime, but that's still another issue than having to prove what physical premises the Russians hacked the DNC from.

In his demand for the CrowdStrike servers, Stone at least claims he's making the demand to distinguish his case from all the other Trump flunkies prosecuted for lying to Congress and mount a materiality challenge to his false statements prosecution.

As to selective prosecution, if the Russian state did not hack the DNC, DCCC, or Podesta's servers, then Roger Stone was prosecuted for obstructing a congressional investigation into an unproven Russian state hacking conspiracy, while others similarly situated were not. Lastly, if the Russian state did not hack the servers or did not transfer the data to WikiLeaks, the exculpatory evidence regarding materiality, a factual issue for the jury, is amplified.

But in his Fourth Amendment challenge, Stone suggested that if Russia didn't hack the Democrats and hand the documents to WikiLeaks, then speaking to WikiLeaks and Guccifer 2.0 would not be a crime.

If these premises are not the foundation for probable cause, Roger Stone communicating with a Twitter user named "Guccifer 2.0" or speaking with WikiLeaks, would not constitute criminal activity.

Hmm.

Speaking to WikiLeaks and Guccifer 2.0 would only be a crime if Stone engaged in a conspiracy

with them, and a good bit of the redacted language on prosecutorial decisions in the Mueller Report probably says the First Amendment otherwise protects such speech. That said, the claim that talking to them would be a crime is interesting given some of the crimes for which the government showed probable cause in his warrant affidavits.

The search warrant applications however, allege that the FBI was investigating various crimes at different times, such as Stone for accessory after the fact, misprision of a felony, conspiracy, false statements, unauthorized access of a protected computer, obstruction of justice, witness tampering, wire fraud, attempt and conspiracy to commit wire fraud, and foreign contributions ban. The uncharged conduct particularly relied upon the assumptions the Russian state is responsible for hacking the DNC, DCCC,¹ and even (although not as clear) Hillary Clinton campaign manager, John Podesta.

Stone is not, here, claiming that the government didn't show a lot of evidence he engaged in these crimes (and remember, the government has told Andrew Miller that they're likely to supersede Stone's current indictment after they get Miller's grand jury testimony, the content of which they know from an FBI interview last year). Rather, he's claiming that these hacking-related crimes would only be illegal if the Russians did the hacking. (I really look forward to the government response to this, because some of these crimes would be crimes based on Julian Assange's foreign status, not GRU's, and wire fraud is a crime all by itself.)

Perhaps most interesting is the way Stone's lawyers dismiss the Mueller Report (and the GRU indictment's) focus on DCCC and Podesta documents. A footnote even suggests falsely that the Mueller Report said the DCCC documents did not get released.

WikiLeaks never released the DCCC documents. The Mueller report suggests the hack of the DCCC only provided additional keys to access the DNC servers.

At one point – perhaps a critical one – Stone uses the fact that the GRU hacked the DNC’s AWS server after Stone dismissed the value of the DCCC oppo research Guccifer 2.0 discussed with Stone in early September 2016 to suggest CrowdStrike was not competent.

CrowdStrike’s three draft reports are dated [sic] August 8 and August 24, 2016. The Mueller Report states Unit 26165 officers also hacked into a DNC account hosted on a cloud-computing service on September 20, 2016, thereby illustrating the government’s reliance on CrowdStrike even though the DNC suffered another attack under CrowdStrike’s watch.

Of course, CrowdStrike had little ability to protect AWS’ servers.

Ultimately, this is an attempt to misrepresent the Mueller Report and GRU indictment to shift the focus away from the Podesta and DCCC documents – where Stone’s greater criminal exposure might lie – and onto the Single Server Fallacy about the DNC server, which is irrelevant to those other documents.

And along the way, Stone lays out a good number of impressive crimes he was and may still be at risk for, and admits the government believed his actions are closely enough tied to the hacks to get redacted copies of the CrowdStrike reports in discovery. He also concedes (incorrectly) that simply speaking to WikiLeaks and Guccifer 2.0 may be a crime.

As I disclosed last 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.