

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Case No.: 1:19-CR-00018-ABJ

UNITED STATES OF AMERICA,

v.

ROGER J. STONE, JR.,

Defendant.

**RESPONSE TO MINUTE ORDER ALLOWING RESPONSE TO
GOVERNMENT’S MOTION FOR AN ORDER TO SHOW CAUSE AND
FOR A HEARING (DKT. 136)**

Justice Breyer, concurring in part and dissenting in part in *Iancu v. Brunetti*, -- S.Ct. ---, 2019 WL 2570622 (June 24, 2019), wrote: “I would appeal more often and more directly to the values the First Amendment seeks to protect. As I have previously written, I would ask whether the regulation at issue ‘works speech-related harm that is out of proportion to its justifications.’ *United States v. Alvarez*, 567 U.S. 709, 730 (2012).” *See*, Opinion of Breyer, J., at *8. In *Alvarez*, Justice Breyer’s concurrence in the decision relating to the Stolen Valor Act concluded that “the statute as presently drafted works disproportionate constitutional harm.” *Alvarez*, 567, U.S. at 739 (Breyer, J. concurring).

The government’s June 20, 2019 Motion For An Order To Show Cause And For A Hearing (Dkt. 136), is a disproportionate response to Roger Stone’s exercise of his First Amendment rights within the confines of this Court’s Order. The government, presenting several Instagram posts, writes:

These posts are not the first statements that appear to have run afoul of the Court’s order. . . . The government is bringing this matter to the Court’s attention now because Stone’s most recent posts

represent a direct attempt to appeal to major media outlets to publish information that is not relevant to, but may prejudice, this case.

Dkt. 136, p. 4, n. 1.

The June 18-19, 2019 posts which the government fears “may prejudice this case,” asked “where is the @NYTimes? @washingtonpost? @WSJ? @CNN” and “No @nytimes or @washingtonpost coverage of this development,” pointing to the public filings in his case questioning the CrowdStrike Reports. Dkt. 136 at 4. The government, which believes that it is not even relevant whether CrowdStrike missed the mark as to how DNC information was obtained, is afraid of what: that the press might actually be interested in whether the DNC was hacked or was perpetrated by someone with access to the DNC server? Is it that fear which motivated the government to ask this Court to find that Stone’s June 18-19 posts constituted a violation of this Court’s Order and “may prejudice this case?”

Stone has, and will continue to, respect the Court’s Order. As we show below, the June 18-19, 2019 posts (and the earlier posts which the government tardily offers to taint Stone) are not “statements,” nor do they pose a danger to the fair trial concern which was (and is) the constitutional *raison d’etre* of the Order.

The government’s focus on three Stone posts exhibits a willful blindness to the tens of thousands of hostile-to-Stone articles which have been authored by others about the “investigation” and Stone’s “case;” articles, animated cartoons, comments, editorials, television and radio programs, panels, celebrity “dark comedy” readings of the Special Counsel Report, and even a comedic portrayal of Roger Stone by Steve Martin on Saturday Night Live which satirically portrayed Stone as a caricature of himself.¹ The “prejudice” to be concerned about is prejudice

¹ As of this filing that clip has been viewed online over 4.4 million times, see *Saturday Night Live: Tucker Carlson Cold Open* (NBC television broadcast Jan. 26, 2019), available at <https://www.youtube.com/watch?v=Sld27PfAF3M>. See also, *Late Night with Seth Myers: Steve*

against Stone; his lonely voice presents no threat to a fair trial under this Court’s supervision. Of more concern should be the Washington Post’s unrelenting coverage of Roger Stone.

The government’s disproportionate reaction is an effort to deprive Stone of the narrow latitude the Court left him; a latitude that was not violated by the posts, and a latitude which, if curtailed, based on the posts, would violate Stone’s First Amendment rights. The notion that “an appeal to major media outlets to publish information that is not relevant to, but may prejudice, this case” (Dkt. 136, p. 4, n.1), is oxymoronic, outré, and out of First Amendment bounds. The Court should deny the government’s motion.

A. The Order

[T]he defendant is prohibited from making statements to the media or in public settings about the Special Counsel’s investigation or this case. Order, February 21, 2019.

B. The June Posts

June 18, 2019 (Gov’t Ex. 1): “US Govt’s Entire Russia-DNC Hacking Narrative Based on Redacted Draft of CrowdStrike Report – True Pundit.” Dkt. 136-2.

Stone: “But where is the @NYTimes? @washingtonpost? @WSJ? @CNN?” (Roger Stone (@rogerstonejr) Instagram (last visited June 27, 2019, showing 729 “likes”).

Stone posted only the headline. He did not provide any link to the story.

Martin Has an Idea for a Roger Stone Joke for SNL, (NBC television broadcast Apr. 2, 2019), available at <https://www.youtube.com/watch?v=iABr16SOcM>; NY Times June 26, 2019 “Celebrities Read the Muller Report and It’s A Dark Comedy,” available at: <https://www.nytimes.com/2019/06/25/arts/television/mueller-report-live-reading.html>; *Family Guy: Trump Guy* (Fox television broadcast Jan. 13, 2019, full episode viewed by over 4 million people), available at <https://www.youtube.com/watch?v=6AVyqPW7jgg&app=desktop>; Sonia Sariya, *How Michael Sheen’s Roland Blum Became The Good Fight’s Wild Id*, Vanity Fair (June 10, 2019), <https://www.vanityfair.com/hollywood/2019/06/michael-sheen-the-good-fight-interview-roland-blum-emmys>.

A compilation of over 9,000 news articles about the “investigations” and the “case,” from January 26, 2019 through June 27, 2019, is available through LexisNexis Advance Research, via its “News” category, using the search terms: Mueller *and* “Roger Stone.”

Analysis: The statement about the Special Counsel’s investigation was made by True Pundit, not Stone. Stone’s “But where[s]” were not “statements ... about the Special Counsel’s investigation.” They were an inquiry relating to the absence of interest in the True Pundit story.

2. **June 18, 2019 (Gov’t Ex. 2):** “FBI Never Saw CrowdStrike Unredacted Final Report on Alleged Russian Hacking Because None was Produced. – Consortiumnews.com.” Dkt. 136-3.

Stone: “Help me in this vital fight by going to StoneDefenseFund.com”. Roger Stone (@rogerstonejr), Instagram (last visited June 27, 2019) (showing 571 “likes”).

Stone posted only the headline. He did not provide any link to the story.

Analysis: The headline about the FBI was made by consortiumnews.com, not Stone. Stone’s showing of the headline and invitation to contribute to his defense fund was used for that fundraising purpose. Even if viewed as an endorsement of the headline, it is literally not a “statement . . . about the Special Counsel’s investigation” by Stone. Stone created no new content. The Court has allowed Stone to fundraise for his defense.

3. **June 18, 2019 (Gov’t Ex. 3):** American Thinker:
Stone defense team exposes the ‘intelligence community’s’ betrayal of their responsibilities.

By Thomas Lifson

As the Russia Hoax is being unwound, we are learning some deeply disturbing lessons about the level of corruption at the top levels of the agencies charged with protecting us from external threats. One jaw-dropping example has just been exposed by the legal team defending Roger Stone. Dkt. 136-4.

Stone: “Funny, No @nytimes or @washingtonpost coverage of this development” Roger Stone (@rogerstonejr), Instagram (last visited June 27, 2019) (showing only 517 “likes”).

Stone posted a headline and a fragment of the first paragraph of a story. There was no link to the story.

Analysis: Mr. Lifson comments on a filing by Stone's defense team. Stone offers no comment, only that the New York Times and Washington Post did not cover the filing. Stone's rhetorical "Funny" is a criticism of the media, and does not violate the Order.

4. June 19, 2019 (Gov't Ex. 4): FBI Never Saw CrowdStrike Unredacted or Final report on Alleged Russian Hacking Because None was Produced. Dkt. 136-5.

Stone: "The truth is slowly emerging. #NoCollusion" Roger Stone (@rogerstonejr), Instagram (last visited June 27, 2019) (showing only 585 "likes").

Stone posted only the headline. He did not provide any link to the story.

Analysis: This too is a comment on the June 17, 2019 Consortiumnews.com article. To the extent that "the truth" and "No Collusion" is being argued by the government to be a "statement ... about the Special Counsel's investigation," the government is seeking to turn an observation into a contemptuous act. It is not. The distortion is especially grievous because the Consortiumnews.com article is true: there was no unredacted or final CrowdStrike Reports, and the investigation did not make a finding of collusion. Indeed, the Special Counsel Report acknowledged the possibility that the DNC downloads were not sourced from outside the DNC.²

² See, Robert S. Mueller, *Report On The Investigation Into Russian Interference In The 2016 Presidential Election*, 47 (2019) *Report On The Investigation Into Russian Interference In The 2016 Presidential Election*:

The Office cannot rule out that stolen documents were transferred to Wikileaks through intermediaries who visited during the summer of 2016. (Page 47).

Both the GRU and WikiLeaks sought to hide their communications, which has limited the Office's ability to collect all of the communications between them. Thus, although it is clear that the stolen DNC and Podesta documents were transferred from the GRU to WikiLeaks, REDACTED. (Page 45).

(footnote continued on next page)

C. **The Pre-June Posts**

5. **April 4, 2019** CNN:
(Gov't Ex. 5): FBI Refuses Records Requests for Emails To CNN On Day Of Roger Stone Raid

The FBI rejected an open records request for any emails sent to or from CNN just prior to a pre-dawn FBI raid on the Florida home of Roger Stone. Dkt. 136-6.

Stone: “How curious? What could they possibly be hiding? #cnnlies #cnnfakenews #cnnsucks #maga #trump.” Roger Stone (@rogerstonejr), Instagram (last visited June 27, 2019) (post has since been deleted) (showing only 2,340 “likes” prior to deletion).

Stone posted only the headline. He did not provide any link to the story.

Analysis: This April 4, 2019 posting is not a statement. It is a rhetorical question.

It is not about the “investigation;” it is not about the “case.” This post was concerning a FOIA request made by a web magazine, *The Federalist*. The CNN news report was true – the FBI rejected *The Federalist’s* requests for emails.

If the government is asking the Court to now view Stone’s April question as a violation of the minute Order, this “piling on Stone” is a continuation of its pre-dawn January morning intimidation tactics. Why then? Why now? Fair questions.

(footnote continued from previous page)

After the U.S. intelligence community publicly announced its assessment that Russia was behind the hacking operation, Assange continued to deny that the Clinton materials released by WikiLeaks had come from Russian hacking. According to media reports, Assange told a U.S. congressman that the DNC hack was an 'inside job,' and purported to have 'physical proof' that Russians did not give materials to Assange. (Page 49).

6. **May 8, 2019 (Gov't Ex. 6):** "Judge demands unredacted Mueller report in Roger Stone case" Dkt. 136-7.

Stone: "The Judge has ruled but @Politico gets most of the story wrong because they are biased elitist snot-nosed fake news shitheads who's [*sic*] specialty is distortion by omitting key facts to create a false narrative." Roger Stone (@rogerstonejr), Instagram (last visited June 27, 2019) (post has since been deleted) (showing only 326 "likes" prior to deletion).

Stone posted only the headline. He did not provide any link to the story.

Analysis: Stone's comment is criticism of Politico. The government's offer of this posting reveals the government's desire to tarnish Stone, not to try him here on the facts. Stone's language may be indecorous at times, but that does not obscure the content's non-culpability under the Order. Criticism of the media is not a violation of the Order.

7. **May 12, 2019 (Gov't Ex. 7):** "Roger Stone Swings For The Fences; Court Filing Challenges Russiagate's Original Premise" Dkt. 136-8.

Stone: "My attorneys challenged the entire 'Russians hacked the DNC/CrowdStrike' claim by the Special Counsel in public Court filings. Help us in this vital fight at StoneDefenseFund.com" Roger Stone (@rogerstonejr), Instagram (last visited June 27, 2019) (post has since been deleted) (showing only 379 "likes" prior to deletion).

Stone posted only the headline. He did not provide any link to the story.

Analysis: The headline makes a statement and a characterization of a public filing. Stone refers to the public filing by his counsel and asks for contributions. The government saw no problem with this when it was published, nor should it be viewed as problematic now. If stating what a public filing said is violative of the Order, then the Order would be overbroad. Again, the government's take on the comment, and its request for financial help, reveals a cramped view of the First Amendment inconsistent with the Order and the constitutional rationale which forms the

basis for the Order.

- 8. June 2, 2019 (Gov't Ex. 8):** “This psycho must be charged, tried, convicted [John Brennan] and hung for treason.” Dkt. 136-9.

Stone: No comment was made by Stone about the “case” or about the “investigation.”

Analysis: As background, Mr. Brennan, in a July 16, 2018 Tweet (about which 133,000 people were “talking”) wrote: “Donald Trump’s press conference performance in Helsinki rises to and exceeds the threshold of ‘high crimes and misdemeanors. It was nothing short of treasonous’.” The First Amendment protected Brennan’s remarks. Likewise, Stone’s remarks are also protected. This posting has nothing whatsoever to do with Stone’s case and therefore posed no fair trial threat, nor did it violate the Order.

D. Where Are We?

The Court issued an Order in February prohibiting statements that “pose a substantial likelihood of material prejudice to this case.” Dkt. 36 at 3 (emphasis supplied). The Order was later amended, as we have set forth above, to preclude statements about the “Special Counsel’s investigation” and “this case.”

Nothing offered by the government in its Motion supports a conclusion that Stone’s postings threaten to undermine “a criminal trial . . . decided by impartial jurors, who know as little as possible of the case.” *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1070 (1966). And if the government thinks that Stone’s postings are similar to the *Sheppard v. Maxwell*, 384 U.S. 333, 350 (1966) concerns for a “carnival atmosphere at trial,” it is far off the mark. Indeed, the government, i.e., the Justice Department, Mr. Mueller’s press conference of May 29, 2019, Mr. Mueller’s (and his colleagues) forthcoming July 17, 2019 appearance before Congress, Attorney General Barr’s testimony to Congress (April 9, 2019), and his March 24, 2019 Memorandum summarizing the

Special Counsel Report, and even the instant Motion by the government, have magnified the spectacle, in which Mr. Stone is the most minor of participants. The 2,402 “likes” of the June 18-19 Stone postings are but a speck compared to the torrent of publicity, commentary and commotion generated by persons, publications and politicians over which, and over whom, Stone has no control. Even witnesses who will be called to testify in this case are contributing to the cacophony.³

The government suggests that the notion that the media might question whether “the FBI and intelligence community were negligent in investigating Russian interference in the 2016 presidential election, that the government improperly ‘targeted’ Stone and others, and that the entire investigation was somehow invalid risk[s] tainting the jury pool. . . .” Dkt. 136 at 6. The government intends to head off that potential by filing “a motion in limine,” apparently to preclude any mention during the trial of evidence or questions relating to whether, indeed, the investigation was flawed. *Id.* at n. 3.

If the government is right – that flaws in the investigation are not relevant to Roger Stone’s

³ Randy Credico, who publicly disclosed he was subpoenaed by the United States Attorney’s office to appear as a witness for the government against Mr. Stone, will be headlining a panel discussion on June 30, 2019, topics including “an inside peek at the Trump-chomping gears of the Mueller grand jury machinery.” See, <https://www.leftforum.org/events/mueller-and-me-and-bianca-make-three>.

Government witness, Jerome Corsi, has a consistent media presence. See, i.e., “Jerome Corsi says Robert Muller failed to produce evidence of a crime,” available at <https://www.youtube.com/watch?v=nUXQXgZ61XA>; “Survivor of the Mueller Witch Hunt – An Interview with Dr. Jerome Corsi,” available at <https://www.youtube.com/watch?v=OjMLzL1EicU>; “Jerome Corsi Explains that There was no Crime in the Mueller Report,” available at https://www.youtube.com/watch?v=-oBvi_RG7uY.

Beyond that, former members of the Special Counsel Team are promoting their connection to the “investigation” and the Stone “case” now that they have left office. See, Andrew Weissmann, Top Mueller Prosecutor, Has a Book Deal, available at: <https://www.nytimes.com/2019/06/21/us/politics/andrew-weissmann-book-deal.html>; and see also, Jeannie Rhee, “Mueller team member to speak” on July 9, 2019, about “the recent work of Special Counsel Robert Muller’s team,” available at: <https://www.mdislander.com/maine-news/mueller-team-member-to-speak>.

guilt or innocence – such a motion in limine is the way to address that concern for an unbiased jury pool. Seeking to hold Roger Stone in contempt when he has sought to (and has) complied with the Court’s Order, is not appropriate. The Order, and the First Amendment/fair trial interests which it seeks to balance, were not compromised by the June 2019 postings (and/or the earlier postings) on Instagram, or any postings on any other social media outlet. Roger Stone did not violate the Court’s Order, an Order which he has sought to respect.

The Court should deny the government’s motion.

Respectfully submitted,

By: /s/_____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 27, 2019, I electronically filed the foregoing with the Clerk of Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record or pro se parties, via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Chandler Routman
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