

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

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROGER J. STONE, JR.,¹

Defendant.

**ROGER STONE’S OBJECTIONS TO THE NOTICE OF RELATED CASE AND
MEMORANDUM OF LAW IN SUPPORT OF HIS OBJECTIONS**

Defendant, Roger J. Stone, Jr., objects under Local Criminal Rule 57.12 to assignment of this case as being related to *United States of America v. Netyksho, et al.* (1:18-cr-00215-ABJ), and respectfully requests that the Court find that this case is not related to *Netyksho*, and Order that this case be randomly reassigned consistent with Local Criminal Rule 57.10.

INTRODUCTION

Random assignment of criminal cases is required in this District pursuant to Local Criminal Rule 57.10. Random assignment supports fairness and an appearance of fairness by avoiding the perception that the government is shopping for a preferred district judge. The local rule supports an essential element of due process to which every defendant is entitled – a fair trial by a randomly selected and impartial judge.

The government has designated Roger Stone’s case as related to *United States v. Netyksho et. al.* No. 18-cr-215 (ABJ). The representation of the government in regards to the relationship of Stone’s case to the *Netyksho* case, made under Local Criminal Rule 57.12 is: 1)

¹ Roger Stone’s middle name is Joseph, not Jason.

there is a common search warrant; and, 2) there are activities which are a part of the same alleged criminal event or transaction. (*See* Exhibit 1 – "Notice of Related Case").

At first blush and without the benefit of discovery, there is nothing about these cases that suggests they are suitably related, other than they are both brought by the Office of Special Counsel. The notice served on defense counsel requires an objection to the designation be filed within ten days of the arraignment. As a result of this constraint of a timely objection, the government should be required to disclose all evidence and reasoning used to support its requested designation since the goal of the local rule is to safeguard the honor of the district court and protect the rights of defendants like Roger Stone. An analysis of the allegedly "related" indictments clearly demonstrates there is no nexus of any kind between the two cases. Consequently, Defendant Stone objects to the designation and requests that he be accorded the same constitutionally guaranteed due process rights and protections afforded to all criminal defendants, and that he be randomly assigned a district judge as dictated under the local rules.

FACTUAL ANALYSIS

On July 13, 2018, the Office of Special Counsel filed an indictment against a dozen Russian nationals alleging conspiracy to commit an offense against the United States. As the Court's docket in that case reflects, no proceedings have taken place subsequent to the filing of the indictment. All of the defendants are alleged to be, or have been, employed by the Main Intelligence Directorate of the General Staff ("GRU") of the Russian Federation who conspired to "hack"[] into the computers of U.S. persons and entities involved in the 2016 U.S. presidential election." (*United States v. Netyksho, et al.* (1:18-cr-00215-ABJ) (ECF No. 1, Indictment, ¶ 2.)). The *Netyksho* indictment outlines how such hacking took place, alleging that

the defendants collectively used, “[t]he online persona Guccifer 2.0” (*Id.* ¶ 42) and that they “launched the public website dcleaks.com.” (*Id.* ¶ 35).

The Office of Special Counsel further alleged that “on or about August 15, 2016, the [Russian defendants] posing as Guccifer 2.0, wrote to a person who was in regular contact with senior members of the presidential campaign of Donald J. Trump, ‘thank u for writing back...do u find anyt[h]ing interesting the docs I posted? ... The person responded, ‘[p]retty standard’.” (*Id.* ¶ 44). Later, it was also alleged that some 20,000 stolen emails were transmitted by Guccifer 2.0 to “Organization 1.”

It is not alleged that the named Russians had any interest or involvement with the “Person 1” or the “Person 2” identified in Stone’s indictment. None of the defendants in *Netyksho* are on the government’s sealed witness list in the case against Roger Stone, nor have there been any allegations indicating a conspiracy between the *Netyksho* defendants and Defendant Stone. Furthermore, there are no accusations of similar criminal conduct, there are activities which are a part of the same alleged criminal event or transaction, or that the two cases have a “common search warrant.” *See* Exhibit – 1.

Defendant Stone has been charged with lying to Congress and witness tampering under 18 U.S.C. §§ 1505, 1001, 1512(b)(1), 2. There is no mention of hacking, stealing, or involvement with Russia or the *Netyksho* defendants. In contrast, the *Netyksho* indictment reads as follows:

“Count One alleges a criminal conspiracy to commit an offense against the United States through cyber operations by the GRU that involved the staged release of stolen documents for the purpose of interfering with the 2016 president election;

Counts Two through Nine charge aggravated identity theft for using identification belonging to eight victims to further their computer fraud scheme;

Count Ten alleges a conspiracy to launder money in which the defendants laundered the equivalent of more than \$95,000 by transferring the money that they used to purchase servers and to fund other costs related to their hacking activities through cryptocurrencies such as bitcoin; and;

Count Eleven charges conspiracy to commit an offense against the United States by attempting to hack into the computers of state boards of elections, secretaries of state, and US companies that supplied software and other technology related to the administration of elections.”

United States v. Netyksho, et al. (1:18-cr-00215-ABJ) (ECF No. 1, Indictment).

Indeed, the Department of Justice stated in its press release regarding the Russian indictment: “There is no allegation in the indictment that any American was a knowing participant in the alleged unlawful activity or knew they were communicating with Russian intelligence officers. There is no allegation in the indictment that the charged conduct altered the vote count or changed the outcome of the 2016 election.” (Exhibit 2 - DOJ, Office of Public Affairs, *Grand Jury Indicts 12 Russian Intelligence Officers for Hacking Offenses Related to the 2016 Election*, July 13, 2018).

The indictment in the Stone case alleges that the servers of the Democratic National Committee were hacked by unspecified “Russian government actors” (ECF No. 1, *Stone* Indictment, ¶ 2). It also claims that Defendant Stone was a political consultant employed by the Trump campaign until August 2015 (*Id.* ¶ 4), and that “[d]uring the summer of 2016. . .[he] spoke to senior Trump Campaign officials about Organization 1 and information it might have had that would be damaging to the Clinton Campaign.” (*Id.* ¶5). The indictment further alleges that Defendant Stone was “claiming both publicly and privately to have communicated with

Organization 1" (*Id.* ¶ 6), and that "[a]fter the 2016 U.S. presidential election, the U.S. House of Representatives Permanent Select Committee Intelligence opened investigations into Russian interference in the 2016 U.S. presidential election." (*Id.* ¶ 7). A section entitled "Other Relevant Individuals" is set forth identifying "Person 1" and "Person 2" (*Id.* ¶¶ 8-9). A long "background" section is presented where Defendant Stone is alleged to have made many public and private communications about "Organization 1." The indictment then turns to the investigation of House and Senate committees, "[i]n or around 2017." (*Id.* ¶18).

Roger Stone's alleged conduct is not connected to any of the "Russian activities" outlined in the *Netyksho* indictment. Neither indictment alleges Stone had any communications or dealings with any of the defendants named in the *Netyksho* indictment. The conduct charged in the Stone indictment occurred more than a year *after* the acts charged in the *Netyksho* case. Finally, Stone is not alleged to have had actual knowledge, at the time, about the stolen emails, only that Stone was trying, unsuccessfully, to get such information from Person 1 and/or Person 2.

OBJECTIONS TO THE ASSIGNMENT

A. Violates the Local Rule

There is a dearth of case law on Local Rule 57.12. The case law regarding the local civil rule offers some guidance to the Court since there is a similarity between "grow out of the same event or transaction. . ." under Local Civil Rule 40.5(a)(3) and "activities which are part of the same alleged criminal event or transaction," under Local Criminal Rule 57.12(a)(1)(iii). "The general rule governing all new cases filed in this courthouse is that they are to be randomly assigned." *Tripp v. Exec. Office of President*, 196 F.R.D. 201, 202 (D.D.C.2000). The party

seeking to avoid the random assignment bears the burden of showing the cases are related under the appropriate rule. *See Dale v. Executive Office of the President*, 121 F. Supp.2d 35, 37 (D.D.C. 2000). In this case, it is the government that must overcome that presumption.

The “fundamental rationale” for random assignment is “to ensure greater public confidence in the integrity of the judicial process” by “guarantee[ing] fair and equal distribution of cases to all judges, avoid[ing] public perception or appearance of favoritism in assignments, and reduc[ing] opportunities for judge-shopping.” *Tripp*, 196 F.R.D. at 202. A party’s suggestion of a designation of related case is the exception. *See United States v. Volvo Const. Equip. AB*, 922 F. Supp. 2d 67, 68 (D.D.C. 2013). The goal of joining two related cases by conserving judicial resources only occurs by having a district judge familiar with the facts and legal issues of the original case. *See United States v. Smith*, CRIM.A.90-023501RCL, 1990 WL 91611, at *2 (D.D.C. June 19, 1990) (unpublished). This is balanced against the reality or perception that a party is “judge shopping,” a practice which has been for the most part universally condemned. *See United States v. Haldeman*, 559 F.2d 31, 134 n. 297 (D.C. Cir. 1976).

This case is not related to *United States v. Netyksho* since no American actors are alleged in that case to have engaged in wrongdoing. Additionally, the activities in *Netyksho* ended a year before those allegedly undertaken by Mr. Stone even began. They do not relate to a superseding indictment, nor is there more than one indictment that has been filed or pending against the same defendant. The *Netyksho* case alleges a theft not involving Mr. Stone, who, instead is alleged to have lied about issues unrelated to the actions taken by the *Netyksho* defendants. These two cases are not likely to arise from a common wiretap, search warrant, or activities that are part of the same alleged criminal event or transaction. They do not even involve the same issues or facts.

See L.Crim.R. 57.12. Consequently, this Court has not accumulated “institutional” knowledge over another. There is not one single fact alleged in either indictment about the facts in the other indictment, other than that the Russians stole emails that Stone, a year later, allegedly lied to Congress about regarding his failed efforts to find out about them. Thus not a single one of the three criteria exists that is necessary for relatedness to be found.

In addition, even if this were not true, no other proceedings have been held in the allegedly-related case, and we aver there never will be; and thus, there is absolutely no judicial interest served by relating these two cases. Furthermore, failure to sustain Defendant Stone’s objection or grant his motion will result in a due process violation of his constitutionally protected rights.

B. Violates Due Process

Criminal defendants are constitutionally guaranteed the right to due process. *See* U.S. CONST. amends. IV, V, and VI. Judge shopping necessarily violates these rights. In the present instance, without following the court’s rules, Mr. Stone will be denied due process. In a case considering a rule of a different type, the Supreme Court has found that a party’s rights are violated when the other party is advantaged when a tribunal declines to follow its own rules. *Ballard v. Commissioner of Internal Revenue*, 544 U.S. 40, 59 (2005) (tax court case). There is a due process element preserved by Local Rules 57.12 as well as the presumption of random assignment. Since there is no ostensible reason under the law to relate these two cases and recognizing that there has been no exchange of discovery yet, the government should be required to explain how it is not otherwise engaging in judge shopping. Judge shopping is completely contrary to the protects afforded to criminal defendants, and even worse creates an appearance of

impropriety and violates a defendant's due process rights without regard to the impartiality of the judge selected by a party. *See Haldeman*, 559 F.2d at 134 n. 297.

CONCLUSION

For all of the foregoing reasons Defendant Stone's objection should be sustained, and this case should be sent to the Calendar and Case Management Committee for random assignment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 8, 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.

BUSCHEL GIBBONS, P.A.

_____/s/ Robert Buschel_____
Robert C. Buschel

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UNSEALED

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NOTICE OF DESIGNATION OF PENDING* RELATED CRIMINAL
CASE PURSUANT TO LOCAL

Case: 1:19-cr-00018
Assigned To : Judge Amy B Jackson
Assign. Date : 01/24/2019
Description: INDICTMENT (B)
Related Case: 18cr215 (ABJ)

NOTICE TO PROSECUTOR

Pursuant to LCrR 57.12(a)(1) of this Court's Rules, you should prepare this form and submit it to the Clerk's Office along with the indictments in any related cases. One copy is needed for the Clerk's records, one for the Judge to whom the case is assigned, and one additional copy for each defendant. Therefore, in a one defendant case you should submit 3 copies, for a two defendant case you should submit 4 copies, etc. The Clerk will mail copies of this form to all defense counsel along with the arraignment notice.

NOTICE TO DEFENDANT

LCrR 57.12(b)(1) of this Court's Rules requires that any objection by the defendant to the related case designation shall be served on the U.S. Attorney and filed with the Clerk within 10 days after arraignment.

NOTICE TO ALL COUNSEL

LCrR 57.12(b)(3) requires, in part, that as soon as an attorney for a party becomes aware of the existence of a related case or cases, such attorney shall immediately notify in writing, the Judges on whose calendars the cases appear and shall serve such notice on counsel for all other parties.

The prosecutor will please complete the following:

1. Name of defendant: Roger Jason Stone, Jr.
2. Number of related case: 18-cr-215 (ABJ)
3. Name of Judge assigned to related case: Hon. Amy Berman Jackson
4. Name of United States Court in which the related case is pending (if other than this Court)

5. Relationship of new case to related case:

[Check appropriate box(es)]

- a. New case is a superceding indictment
- b. More than one indictment is filed or pending against defendant
- c. Prosecution against different defendant(s) arise from:
 - a common wiretap
 - a common search warrant
 - activities which are a part of the same alleged criminal event or transaction

(*) A case is considered pending until a defendant has been sentenced. LCrR 57.12(a)(1)

The government has designated this case as related to United States v. Viktor Netyksho et al., No. 18-cr-215 (ABJ), pursuant to LCrR 57.12(a)(1)(iii) as a prosecution against a different defendant that "arises from a common . . . search warrant" or from "activities which are a part of the same alleged criminal event or transaction." In particular, certain evidence that is relevant to this case was derived from search warrants executed in Netyksho et al., and the alleged obstructive conduct in this case arises from claimed and then disputed advance knowledge about the dissemination of stolen documents during the 2016 presidential campaign that forms, in part, the basis for the criminal charges against Netyksho et al.

JUSTICE NEWS

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Friday, July 13, 2018

Grand Jury Indicts 12 Russian Intelligence Officers for Hacking Offenses Related to the 2016 Election

The Department of Justice today announced that a grand jury in the District of Columbia returned an indictment presented by the Special Counsel's Office. The indictment charges twelve Russian nationals for committing federal crimes that were intended to interfere with the 2016 U.S. presidential election. All twelve defendants are members of the GRU, a Russian Federation intelligence agency within the Main Intelligence Directorate of the Russian military. These GRU officers, in their official capacities, engaged in a sustained effort to hack into the computer networks of the Democratic Congressional Campaign Committee, the Democratic National Committee, and the presidential campaign of Hillary Clinton, and released that information on the internet under the names "DCLeaks" and "Guccifer 2.0" and through another entity.

"The Internet allows foreign adversaries to attack America in new and unexpected ways," said Deputy Attorney General Rod J. Rosenstein. "Together with our law enforcement partners, the Department of Justice is resolute in its commitment to locate, identify and seek to bring to justice anyone who interferes with American elections. Free and fair elections are hard-fought and contentious, and there will always be adversaries who work to exacerbate domestic differences and try to confuse, divide, and conquer us. So long as we are united in our commitment to the shared values enshrined in the Constitution, they will not succeed."

According to the allegations in the indictment, Viktor Borisovich Netyksho, Boris Alekseyevich Antonov, Dmitriy Sergeyevich Badin, Ivan Sergeyevich Yermakov, Aleksey Viktorovich Lukashov, Sergey Aleksandrovich Morgachev, Nikolay Yuryevich Kozachek, Pavel Vyacheslavovich Yershov, Artem Andreyevich Malyshev, Aleksandr Vladimirovich Osadchuk, Aleksey Aleksandrovich Potemkin, and Anatoliy Sergeyevich Kovalev were officials in Unit 26165 and Unit 74455 of the Russian government's Main Intelligence Directorate.

In 2016, officials in Unit 26165 began spearphishing volunteers and employees of the presidential campaign of Hillary Clinton, including the campaign's chairman. Through that process, officials in this unit were able to steal the usernames and passwords for numerous individuals and use those credentials to steal email content and hack into other computers. They also were able to hack into the computer networks of the Democratic Congressional Campaign Committee (DCCC) and the Democratic National Committee (DNC) through these spearphishing techniques to steal emails and documents, covertly monitor the computer activity of dozens of employees, and implant hundreds of files of malicious computer code to steal passwords and maintain access to these networks.

The officials in Unit 26165 coordinated with officials in Unit 74455 to plan the release of the stolen documents for the purpose of interfering with the 2016 presidential election. Defendants registered the domain DCLeaks.com and later staged the release of thousands of stolen emails and documents through that website. On the website, defendants claimed to be "American hacktivists" and used Facebook accounts with fictitious names and Twitter accounts to promote the website. After public accusations that the Russian government was behind the hacking of DNC and DCCC computers, defendants created the fictitious persona Guccifer 2.0. On the evening of June 15, 2016 between 4:19PM and 4:56PM, defendants used their Moscow-based server to search for a series of English words and phrases that later appeared in Guccifer 2.0's first blog post falsely claiming to be a lone Romanian hacker responsible for the hacks in the hopes of undermining the allegations of Russian involvement.

Members of Unit 74455 also conspired to hack into the computers of state boards of elections, secretaries of state, and US companies that supplied software and other technology related to the administration of elections to steal voter data stored on those computers.

To avoid detection, defendants used false identities while using a network of computers located around the world, including the United States, paid for with cryptocurrency through mining bitcoin and other means intended to obscure the origin of the funds. This funding structure supported their efforts to buy key accounts, servers, and domains. For example, the same bitcoin mining operation that funded the registration payment for DCLeaks.com also funded the servers and domains used in the spearphishing campaign.

The indictment includes 11 criminal counts:

- Count One alleges a criminal conspiracy to commit an offense against the United States through cyber operations by the GRU that involved the staged release of stolen documents for the purpose of interfering with the 2016 president election;
- Counts Two through Nine charge aggravated identity theft for using identification belonging to eight victims to further their computer fraud scheme;
- Count Ten alleges a conspiracy to launder money in which the defendants laundered the equivalent of more than \$95,000 by transferring the money that they used to purchase servers and to fund other costs related to their hacking activities through cryptocurrencies such as bitcoin; and
- Count Eleven charges conspiracy to commit an offense against the United States by attempting to hack into the computers of state boards of elections, secretaries of state, and US companies that supplied software and other technology related to the administration of elections.

There is no allegation in the indictment that any American was a knowing participant in the alleged unlawful activity or knew they were communicating with Russian intelligence officers. There is no allegation in the indictment that the charged conduct altered the vote count or changed the outcome of the 2016 election.

Everyone charged with a crime is presumed innocent unless proven guilty in court. At trial, prosecutors must introduce credible evidence that is sufficient to prove each defendant guilty beyond a reasonable doubt, to the unanimous satisfaction of a jury of twelve citizens.

This case was investigated with the help of the FBI's cyber teams in Pittsburgh, Philadelphia and San Francisco and the National Security Division. The Special Counsel's investigation is ongoing. There will be no comments from the Special Counsel at this time.

Topic(s):

National Security

Component(s):

Office of the Deputy Attorney General

Press Release Number:

18 - 923

Updated July 13, 2018

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

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROGER J. STONE, JR.,

Defendant.

ORDER

It is ordered that Defendant ROGER J. STONE, JR.'S objection to the Notice of Designation of Related Criminal Case under L.Cr.R. 57.12 is GRANTED. This case shall be sent to the Clerk and randomly reassigned under L.Cr.R. 57.10.

Dated: ____

The Hon. Amy Berman Jackson
United States District Court Judge