

# THE GATES FLIP AND THE 404(B) DELAY

CNN reported tonight that, after not getting funded by rich GOP donors (perhaps in part because Trump thinks his cooperation won't imperil him), Paul Manafort's deputy, Rick Gates, is about to flip.

Gates has already spoken to Mueller's team about his case and has been in plea negotiations for about a month. He's had what criminal lawyers call a "Queen for a Day" interview, in which a defendant answers any questions from the prosecutors' team, including about his own case and other potential criminal activity he witnessed.

[snip]

Once a plea deal is in place, Gates would become the third known cooperator in Mueller's sprawling probe into Russian interference in the 2016 presidential election. It would also increase the pressure to cooperate on Gates' co-defendant Paul Manafort, Trump's former campaign chairman, who has pleaded not guilty to Mueller's indictment and is preparing for a trial on alleged financial crimes unrelated to the campaign. Gates pleaded not guilty on October 30 alongside Manafort.

[snip]

Gates has told associates he had hoped for outside assistance from a legal defense fund, but deep-pocketed GOP donors have shown little interest in helping either Gates or Manafort cover their legal fees, two sources said.

The judge has already acknowledged that Gates could not show he had \$5 million in assets to secure his bail. His

financial situation is further hampered by assets he would have to forfeit to the government if found guilty of money laundering charges. A complex criminal case such as this could cost a defendant more than a million dollars in legal fees, especially if he were to go to trial, according to several people familiar with the legal industry.

Hopefully I'll have time tomorrow to lay out what Gates might have offered Mueller. But for now, I want to look at a detail from the Gates/Manafort docket.

On Wednesday, Judge Amy Berman Jackson held a status conference. With Manafort, she appears to have discussed his continued efforts to make bail (one thing that CNN reports pressured Gates financially enough that made him willing to flip).

With Gates, she appears to have discussed his confusing legal situation, where his existing lawyers are trying to ditch him so his new lawyer, Tom Green, can finalize this plea deal. The night before, Gates had filed a pro se motion asking Berman Jackson to hold off on deciding whether his current lawyers can ditch him until February 21.

In response, Berman Jackson granted Gates his week.

Defendant Manafort's (1) Sealed Motion 153 for Reconsideration of Conditions of Release remains under advisement. Defendant Manafort (1) must supplement the Motion. The 161 Motion to Withdraw as Counsel for Defendant Gates (2) remains under advisement. Defendant Gates is to advise the Court of his position on the Motion by 5:00 PM on Wednesday, 2/21/2018.

Just as interesting, Berman Jackson held off on resetting deadlines and on deciding whether or

not the government can delay providing 404(b) notice of the evidence of other crimes the government will submit at trial.

The Current Briefing and Hearing schedules that were established at the Status Conference held on 1/16/2018, and in the Minute Order issued on 1/17/2018 are suspended pending further Order of the Court. The government's 155 Motion to Modify the Court's Schedule for Rule 404(b) Notice and Briefing remains under advisement. SO ORDERED. By Judge Amy Berman Jackson on 2/14/2018. (jth) (Entered: 02/14/2018)

I noted, when the government submitted that request, that Mueller's team likely wanted to hide what other crimes Manafort and Gates had committed to save their value for when they testify against Trump and his family.

First, Mueller doesn't want to tip his hand to the many crimes it has found Manafort implicated in. Perhaps, he also wants to avoid making other obvious allegations about Manafort and Gates to preserve their credibility when they flip on the President and his family. But it also seems to suggest Mueller expects he'll be finding other crimes Manafort and Gates committed for the next 8 months.

Everything's on hold, now, until Gates can plead guilty to crimes that involve only indirect taint of conspiring with the Russians, so the government doesn't yet have to reveal how much it knows of that taint, at least not publicly.

I could be wrong, but this may answer something we've been trying to understand about George Papadopoulos and Mike Flynn – whether the government let them plead to far lesser crimes because that's all they've got or because Mueller is trying to keep his witnesses

relatively clean for when they testify against Trump.

I think Mueller's trying to keep them clean, and in the process trying to keep his poker hand still close to the chest for when he starts to use it against the big guns.

I'm also interested in the timing, which would put at least one more guilty plea into place before Rachel Brand leaves.