

PAULIE GOES TO PRISON*

Judge Amy Berman Jackson just sent Paul Manafort to jail to await trial because he violated his release conditions.

The judge said sending Manafort to a cell was “an extraordinarily difficult decision,” but added his conduct left her little choice, because he had allegedly contacted witnesses in the case in an effort to get them to lie to investigators.

“This is not middle school. I can’t take away his cell phone,” she said. “If I tell him not to call 56 witnesses, will he call the 57th?” She said she should not have to draft a court order spelling out the entire criminal code for him to avoid violations.

“This hearing is not about politics. It is not about the conduct of the office of special counsel. It is about the defendant’s conduct,” Jackson said. “I’m concerned you seem to treat these proceedings as another marketing exercise.”

I’m interested in where that leaves him (besides, probably, the jail in Alexandria).

Manafort has a bunch of pending motions in EDVA: one challenging Mueller’s authority that Judge TS Ellis should be set to rule on, as well as a bunch trying to suppress evidence and one asking for a hearing on leaks. But things keep getting delayed in EDVA, which is supposed be a rocket docket but isn’t working out that way for Manafort. For both family reasons and because he had to preside over a spy trial, Ellis moved the hearing for the latter issues to June 29 and moved the trial itself (for which Mueller just got 75 sets of subpoenas) to July 24.

In DC, ABJ laid out this schedule back in March (which I'll return to). Basically, she envisions two rounds of motions leading towards a trial in September.

Meanwhile, earlier this week, Mueller filed this curious motion in EDVA, asking Ellis to impose this discovery order. The problem Mueller's team is having is that Manafort won't respond to any of the requests Mueller's team has made about a discovery order, going back to February and still, as recently as last week. And while they've turned over a ton of stuff, they suggest there's "additional materials to be produced in this case" that they don't want to turn over until Manafort is obligated by a discovery order.

Prior to the arraignment, on February 27, 2018, the government proposed the attached discovery order to defense counsel. The proposed order tracks the schedule and deadlines in this district's standard discovery order. As the Court is aware, in addition to a schedule for Rule 16 discovery, the standard discovery order also sets forth deadlines for 404(b), Brady, Giglio, and Jencks material as well as notices for experts, alibis, and stipulations.

The defendant has already received robust discovery in this case and in the parallel District of Columbia prosecution. Indeed, the government has cumulatively made 19 separate productions – each containing a detailed index – in both cases. However, since February 2018 and as recently as last week, the government has been unable to obtain Manafort's position on the attached proposed discovery order. Accordingly, in order to adequately prepare for trial, reduce discovery litigation, and protect additional materials to be produced in this case, the government respectfully asks this

Court to enter the attached proposed discovery order.

Now, most of the obligations in the discovery order are on the prosecution, and given the delay in scheduling they're not immediately pending in any case. The defense is supposed to tell the government about experts (which might be pertinent in this case since it's a tax case), but that still wouldn't be due until mid-July. The most immediate deadline would be if Manafort wanted to offer an alibi, which the standard protection order for EDVA would require by the first week of July; but I can't imagine any alibi Manafort could offer on the EDVA case.

Now back to the DC case. There's actually something due there, today (which given past practice will come out late in the day as everyone's trying to get on with their weekend). Today's the day the government has to submit their 404(b) notice to Manafort – basically advance warning of any other crimes they want to introduce during trial.

The government's notice of its intention to introduce evidence under Fed. R. Evid. 404(b) must be filed by June 15, 2018; the opposition will be due on June 29; and the reply will be due on July 9. A hearing on the motion, if necessary, will be held on July 24, 2018 at 9:30 a.m.

Back in January, Mueller had requested delaying this notice until 8 weeks before trial (which would have been early August had ABJ not set the earlier deadline of today). My guess, then, was that they wanted to hold off letting Manafort know about what evidence they had on the case in chief, but that they wanted to introduce at trial.

The government just submitted a request to modify the deadline Judge Amy Berman Jackson set to give Paul

Manafort and Rick Gates notice of other crimes or bad acts it will introduce at trial, what is called a Rule 404(b) notice. Currently, they have to provide that notice on April 6, but the judge is now considering a September rather than a May trial date, so prosecutors want to bump the 404 notice back accordingly.

Mueller's prosecutors don't want to give Manafort and Gates more than a couple months notice of the other crimes they're going to unload during the trial. They also note that if they give notice in April, they may have to provide multiple notices as they learn of other bad acts.

Premature disclosure raises issues as well. For example, in declining to require disclosure that is too early, courts have recognized that "the evidence the government wishes to offer may well change as the proof and possible defenses crystallize."

[snip]

For similar reasons, early disclosure can result in multiple Rule 404(b) notices and multiply the rulings that a court needs to make, thus undermining the efficient use of judicial and party resources.

The government wants to wait until 8 weeks before the trial before giving notice.

At least two things appear to be going on here. 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.

This conversation with Matt Tait makes me wonder whether they're trying to keep 404(b) evidence that they might file in NY State under wraps for now, in case Trump pardons Manafort (as he suggests, Manafort's remaining money laundering properties involve Trump Organization).

So maybe that's what Mueller's trying to get Manafort to agree to. The EDVA standard order he's trying to get him to use would require 404(b) notice by July 17, but permits the government to request avoiding such pretrial notice.

It is further ORDERED that, no later than seven calendar days before trial, the government shall provide notice to the defendant, in accordance with FED. R. EVID. 404(b), of the general nature of any evidence of other crimes, wrongs, or acts of defendant which it intends to introduce at trial, except that, upon motion of the government and for good cause shown, the court may excuse such pretrial notice.

It's unclear what is operative in the DC case, but clearly the government can continue to file, as noted in January.

Anyway, that's all just a guess, and we should see what they file for the 404(b) notice in DC this evening. Meanwhile, Paulie will be making himself comfortable in his new cell.

Update: Here's the 404(b) motion. Mueller wants to introduce three things:

- Evidence that one reason that Manafort and others

arranged for [Skadden Arps] to be retained for the de minimis sum of approximately \$12,000—even though they knew at the time that Law Firm A proposed a budget of at least \$4 million—was to avoid certain limitations imposed by Ukrainian public procurement law.

- Evidence that Manafort was treating a NYC apartment as a business property with the IRS but as a personal dwelling with a lender.
- Evidence that Manafort structured intra-Cypriot funds to hide income.

The first of those two, of course, involve crimes in NY state.

*Technically, Manafort is being sent to jail, not prison. But that doesn't alliterate so forgive me the error this once, okay?