

A COMPARISON OF RICK GATES AND PAUL MANAFORT'S PLEA DEALS

Because I wanted to get a sense of what Gates won by pleading guilty and cooperating with Mueller's team earlier, I decided to compare the two plea deals. (Gates, Manafort)

Manafort's a bigger criminal than Gates

Obviously, the biggest difference comes in recommended sentence. While the government got Gates for a lie to prosecutors and got Manafort for witness tampering, the rest of the conduct was largely the same. Nevertheless, for a variety of reasons (Manafort was the lead and Gates benefitted from being called a minor player, Manafort's obstruction gets added on top whereas Gates' lie does not, Manafort got way more money out of the deal) the sentence ranges end up dramatically different.

Manafort's advisory sentencing range works out to 210-262 months, whereas Gates' range is 57-71 months.

The government is intent on taking all of Manafort's stuff

The Manafort plea includes over three pages laying out how the government is going to take his ill-gotten gains. Given my newfound obsession with Paul Manafort's forfeitures, I'll write that up separately (or better yet make bmaz, who actually knows something about how this works, do so). The short version, though, is the government is intent on making sure

they'll get it all.

The EDVA charges

While this plea only deals with the charges in DC, the plea is meant to work with the EDVA charges. So for example, Manafort's plea required him to admit he was guilty of the 10 hung charges in EDVA and prohibits him to appeal that case in any way (and includes the one bank account he had saved from forfeiture in the EDVA trial in the forfeiture in this plea). Manafort's plea notes that if he is sentenced in EDVA before DC, he will have a criminal history for the purposes of sentencing. The plea promises to recommend that both his EDVA and DC sentences run concurrently (which probably would have happened anyway), but notes that neither judge, Amy Berman Jackson nor TS Ellis, is bound by the plea.

Gates was gagged

Perhaps most interesting pertains to Section 8, the description of cooperation each man has to offer. This is mostly boilerplate, and for both includes a few things in boilerplate bullet points – most notably the requirement to participate in undercover activities – that won't apply to either men (though Gates likely did still have documents to turn over whereas Manafort likely doesn't).

But Gates' plea has a bullet point Manafort's doesn't.

The defendant agrees not to reveal his cooperation, or any information derived therefrom, to any third party without prior consent of the Office.

In other words, the prosecutors anticipated sharing secrets with Gates that might blow up their case. They appear to have no such concerns with Manafort. Possibly, he has already seen such details in the 302s he got from Gates; he

would be bound to secrecy about those under the DC protective order.

Still, there would almost certainly be things that Manafort would be discussing going forward, and he doesn't appear to be bound to keep that secret.

Update: Andrew Prokop notes one thing I missed: the language introducing what kind of cooperation will be required in Gates says he'll be working with "this Office," whereas Manafort's says he'll be cooperating with "the Government." I agree with him that suggests Manafort may still be cooperating after the Mueller office has shifted all its prosecutions elsewhere and will be cooperating in other jurisdictions (for example, against Tony Podesta, Vin Weber, and Greg Craig in SDNY). Anybody who has ever broken the law with Manafort should be securing legal representation if they haven't already.

A slightly larger obligation to Gates

There's one sentence at the end of the Government's Obligation section in the Gates plea. After it says he can argue for any sentence below the advisory guidelines, it says,

Depending on the precise nature of the defendant's substantial assistance, the Office may not oppose defendant's application.

I'm not sure what to make of the difference – perhaps it suggests the government expected Gates might have that kind of argument to make?

Note, too, that the 5K language in the Manafort plea is actually plural, meaning if he cooperates a lot he'll be able to ask for a lesser sentence in EDVA too.

Pardon-proofing the statute of limitations

The statute of limitations paragraph, which allows the government to prosecute the underlying crimes and any other crimes not prosecuted if “any plea or conviction [is...] set aside or dismissed for any reason,” even after the statute of limitations toll includes this language in the Manafort plea that is not present in the Gates plea:

The Office and any other party will be free to use against your client, directly and indirectly, in any criminal or civil proceeding, all statements made by your client, including the Statement of the Offense, and any of the information or materials provided by your client, including such statements, information, and materials provided pursuant to this Agreement or during the course of debriefings conducted in anticipation of, or after entry of, this Agreement, whether or not the debriefings were previously a part of proffer-protected debriefings, and your client’s statements made during proceedings before the Court pursuant to Rule 11 of the Federal Rules of Criminal Procedure.

It also repeats that this language applies to the conduct described in the Statement of the Offense “or any other crimes that the Government has agreed not to prosecute.”

Some lawyers believe this language generally and the addition specifically provides further insurance against pardon. If Trump pardons Manafort for the crimes he has just pled guilty to, the government will then be able to go after him for the other crimes he just told the grand jury about, crimes which are probably worse and for which the President is a co-conspirator.

Gates can't even write a story about Paul Manafort's sleazy influence peddling

There are two slight differences under the section enumerating trial rights. Both are prohibited from profiting off their stories. But those prohibitions are described differently. Gates may not make money on stories about his:

work for Paul Manafort, the transactions alleged in the Indictment, or the investigation by the Office or prosecution of any criminal or civil cases against him.

Whereas Manafort may not make money on stories about,

the conduct encompassed by the Statement of the Offense, or the investigation by the Office or prosecution of any criminal or civil cases against him.

There's also a really subtle difference about how proffer statements might be used. Gates waived the right to object "to the Government's use" of his proffer statements (which started on January 29, almost a month before he pled). Manafort waived the right to object to "the use" of his proffer statements, suggesting Mueller's team might know of other venues (or branches of government) besides the Federal government where those statements might be used.

Gates preserves two potential collateral attacks on his sentence

Gates preserved two additional rights in the collateral attacks section. First, if the

sentencing range for his crimes gets lowered in the future, he can challenge that under 18 USC §3582(c)(2). Additionally, he could also challenge the sentence if newly discovered evidence comes available. Manafort has neither of these protections.

The government can declare Manafort in breach of agreement based on good faith

With Gates, the standard the government has to prove to argue he has breached his agreement is preponderance of the evidence or, in case of committing a crime, probable cause. With Manafort, the government only has to prove “good faith.”

Jeannie Rhee gets involved

This may be a minor (or huge) issue. But there’s one difference to the prosecutors who signed these pleas. Andrew Weissman, Greg Andres, and Kyle Freeny are on both. But whereas Brian Richardson signed Gates’ plea, Jeannie Rhee signed Manafort’s. That’s interesting because she has been heavily involved in the Roger Stone investigation, but she was also involved in the two Russian indictments.