

MUELLER JUGGLES PLEA AGREEMENT HOUSEKEEPING

In the last two days, both Rick Gates' and Paul Manafort's plea deals have made news.

In Gates' case, his lawyers have filed an unopposed motion to liberate him from his GPS device and curfew, arguing that the leverage of the plea deal itself is enough to keep him on the straight and narrow.

The plea agreement contains very serious consequences for Mr. Gates should he violate any of its terms or conditions. The advantages that attach to strict compliance with that agreement, and the extraordinary disincentives to violating that agreement, alone guarantee Mr. Gates's appearance at any scheduled Court proceeding. Over a substantial period of time, now approaching one year, Mr. Gates has demonstrated his resolve to comply with all conditions of his release. Removing the GPS monitor and allowing Mr. Gates to travel within the Eastern District of Virginia and District of Columbia without restriction will surely not increase the risk of flight or make it less likely that Mr. Gates will appear in Court when required to do so.

The more interesting bit comes when, in a bid to talk up Gates' cooperation, his attorneys reveal he's been meeting with other prosecutors.

Both before the entry of the plea, and for many weeks thereafter, Mr. Gates, whenever requested, traveled to Washington, D.C., to appear at the Office of Special Counsel to be interviewed as part of his cooperation agreement. Those sessions have been

numerous and they continue to this day.

[snip]

These meetings with the Office of Special Counsel continued during the weeks preceding the trial of co-defendant Paul Manafort in the United States District Court for the Eastern District of Virginia.

[snip]

Following that trial, Mr. Gates has continued to cooperate with the Special Counsel *and with other federal investigators* by attending current meetings at which he provides additional information. [my emphasis]

Rick Gates met in March and he met in July and he met in September, Thomas Green says. It's the "other federal investigators" that's of interest, as it suggests his cooperation extends beyond Mueller's case in chief.

But that may not mean all that much. After all, Gates' cooperation would be useful for the three cases Mueller referred to SDNY (involving Tony Podesta, Vin Weber, and Greg Craig), as well as for Stephen Calk, the Chicago banker who gave Manafort a loan in hopes of getting an appointment with the Trump Administration. Gates would surely also have information that might corroborate Sam Patten's cooperation.

Still, it's possible those "other federal investigators" include some of the "garden variety" Trump corruption I keep suggesting might also get spun off, such as the non-Russian Inauguration pay-to-play.

Meanwhile, in EDVA, TS Ellis is being TS Ellis. Yesterday, he filed an order saying that the parties in Manafort's EDVA prosecution can't just defer resolution of the ten hung counts against him until after Mueller is done with his cooperation. He scheduled a hearing for a week from Friday, on October 19, so the process of

sentencing can begin. At that hearing, Ellis expects the parties to “address dismissal of the outstanding counts on which the jury deadlocked.”

Dismissing the charges may be no big deal. Manafort is on the hook for 210 – 262 months if he breaches his plea agreement in DC, before any state charges, and some of the charges that Ellis would dismiss could be charged in VA, aided by Manafort’s admission of guilt in them in the plea. As Popehat notes, cleaning up these charges is consistent with good docket management.

The push for the government to move forward on cooperation is more interesting as it may require the government to weigh in on the value of Manafort’s cooperation while he’s still discussing things with Mueller’s team. Of particular interest, any discussion on cooperation may reveal how much Manafort has cooperated against the President.

I’m also interested in timing. Manafort’s lawyers submitted their notice that they won’t challenge anything that happened in that trial right on schedule, on September 20. The government filed their response just under the week later that they had under Ellis’ schedule, on September 26. But Ellis took two weeks before he issued this hurry up and wait order, setting a hearing for October 19, at which any sentencing schedule is likely to be after Manafort’s next status hearing in DC.

In any case, it’s not clear that Ellis’ haste will help Manafort much. Even if Ellis is perturbed that Mueller used his courtroom to flip a witness against Trump, the PSR will show that Manafort is an admitted criminal in the DC charges, meaning his sentence should be harsher than it would with any kind of cooperation assistance. And prosecutors can just defer any 5K statement, and instead account for cooperation with a Rule 35 motion submitted after the fact. In any case, the plea envisions concurrent sentencing, and if Manafort does’t

cooperate willingly, he'll face 10 years in the DC plea, which is longer than Ellis is likely to have sentenced him on anyway.

So it seems like Mueller can still retain the breathtaking upper hand they have with Manafort, and defer any public statement on cooperation until later.