

TWO TRAJECTORIES: SLEAZY INFLUENCE PEDDLER PAUL MANAFORT AND FOREIGN AGENT PROSECUTOR BRANDON VAN GRACK

Like many, while I expected TS Ellis to give Paul Manafort a light sentence, I'm shocked by just how light it was.

Ellis gave Manafort 47 months of prison time for crimes that the sentencing guidelines say should start at a 19 year sentence. Even if Amy Berman Jackson gives Manafort the stiffest sentence she can give him – 10 years – and makes it consecutive, he'll still be facing less than the what sentencing guidelines recommend. Ellis even declined to fine Manafort beyond the \$24 million he'll have to pay in restitution (Zoe Tillman lays out the money issues here).

There are a number of reasons to be outraged by this.

Ellis explicitly suggested that Manafort's crimes were less serious than similar organized crime that people of color would commit. In the wake of this sentence, any number of people (especially defense attorneys) have pointed to non-violent criminals facing more prison time than Manafort. That said, I agree with those who suggest we should aim to bring those other sentences down in line with what the civilized world imposes, and not instead bump white collar criminals up to the barbaric levels that come out of the drug war.

Ellis gave this sentence even though Manafort expressed no remorse. Ellis commented that "I was surprised that I did not hear you express

regret for engaging in wrongful conduct. In other words, you didn't say, 'I really, really regret not doing what the law requires,' but nevertheless sentenced him as if he had.

Perhaps most infuriating were the backflips Ellis did to spin Paul Manafort as a good man. He emphasized that Manafort was "not before the court for any allegation that he or anybody at his direction colluded with the Russian government to influence the 2016 presidential election," which is true; but Ellis received the breach determination materials showing that at a time when Manafort was purportedly cooperating, he instead lied about sharing polling data with a suspected Russian asset while discussing a Ukrainian peace deal that he knew amounted to sanctions relief, a quid pro quo. Because those materials go to the issue of whether Manafort took responsibility and was a risk for recidivism, they were fair game for consideration, but Ellis didn't consider them.

Indeed, because of time served, Ellis effectively sentenced Manafort to an equivalent sentence that Michael Cohen faces having committed an order of magnitude less financial fraud, pled guilty, and provided limited cooperation to the government. Effectively, then, Ellis has sanctioned Manafort's successful effort to avoid cooperating in the case in chief, on how he and Trump conspired with Russia to exploit our democratic process.

Instead of referring to the materials on Manafort's refusal to cooperate, Ellis instead just regurgitated defense materials and claimed that aside from stealing millions of dollars from taxpayers and whatever else went on before Amy Berman Jackson, Manafort had "lived an otherwise blameless life."

And that's where I step away from a generalized discussion of the barbaric nature of our criminal justice system to look specifically at the barbaric nature of what Paul Manafort has done with his life. I feel much the way Franklin Foer does.

In an otherwise blameless life, Paul Manafort lobbied on behalf of the tobacco industry and wangled millions in tax breaks for corporations.

In an otherwise blameless life, he helped Philippine President Ferdinand Marcos bolster his image in Washington after he assassinated his primary political opponent.

In an otherwise blameless life, he worked to keep arms flowing to the Angolan generalissimo Jonas Savimbi, a monstrous leader bankrolled by the apartheid government in South Africa. While Manafort helped portray his client as an anti-communist "freedom fighter," Savimbi's army planted millions of land mines in peasant fields, resulting in 15,000 amputees.

[snip]

In an otherwise blameless life, he spent a decade as the chief political adviser to a clique of former gangsters in Ukraine. This clique hoped to capture control of the state so that it could enrich itself with government contracts and privatization agreements. This was a group closely allied with the Kremlin, and Manafort masterminded its rise to power—thereby enabling Ukraine's slide into Vladimir Putin's orbit.

[snip]

In an otherwise blameless life, he produced a public-relations campaign to convince Washington that Ukrainian President Viktor Yanukovich was acting within his democratic rights and duties when he imprisoned his most compelling rival for power.

In an otherwise blameless life, he stood mute as Yanukovich's police killed 130 protesters in the Maidan.

Paul Manafort invented the profession of sleazy influence peddler. His own daughter once acknowledged, "Don't fool yourself. That money we have is blood money." And our democracy, as well as more corrupt regimes around the globe where Manafort was happy to work, are much less just because of Manafort's life's work.

Which is why I take more solace in something that happened the night before Manafort's sentencing: A CNN report that DOJ has put Brandon Van Grack – a prosecutor who, under Mueller, prosecuted Mike Flynn and his sleazy influence peddler business partners – in charge of a renewed effort to crack down on unregistered sleazy influence peddlers.

The initiative at the Justice Department to pursue violations of the Foreign Agents Registration Act, which requires that an entity representing a foreign political party or government file public reports detailing the relationship, will be overseen by Brandon Van Grack, who left Mueller's team in recent months to rejoin the national security division.

Van Grack's appointment to the newly created position and the Justice Department's interest in expanding its pursuit of foreign influence cases stemmed largely from the impact of Russian operations on the 2016 presidential election, John Demers, the head of the national security division, said Wednesday at a conference on white-collar crime.

With Van Grack's new role, the Justice Department will shift "from treating FARA as an administrative obligation and regulatory obligation to one that is increasingly an enforcement priority," Demers said.

He also pointed to the impact of a recent settlement with one of the

country's highest-profile law firms – Skadden, Arps, Slate, Meagher & Flom LLP – on the department's decision to escalate its enforcement in that area.

[snip]

Demers added that the Justice Department is considering seeking congressional authorization for administrative subpoena power to enforce the Foreign Agents Registration Act, which it currently lacks.

“That’s something that we’re taking a hard look at,” he said. Referencing Skadden, he added: “Do I think the firm would have behaved differently if they had received a subpoena versus they had just received a letter? Yes.”

This marks a decision to treat FARA violations – sleazy influence peddling that hides the ultimate foreign customer – as a real risk to our country. As I have laid out in my comparison of Manafort's “otherwise blameless life” and Maria Butina's efforts to infiltrate right wing politics, a venal insider with an already rich political network will be far more effective (and insidious) than even a beautiful woman backed by a mobbed up foreign government official and abetted by her own washed out Republican insider.

I don't know what Mueller is doing with all the evidence of a conspiracy that he continues to protect. I don't know that he'll be able to deliver a prosecutorial conclusion that will deliver justice for the sleazy things that Trump did to win the election. Prosecuting very powerful people is very difficult, and we shouldn't forget that.

But one other point of this entire investigative process was to learn lessons, to make it harder for hostile outsiders to hijack our democratic process going forward.

In letting Manafort off with a metaphorical wrist-slap, TS Ellis did nothing to deter others who, like Manafort, will sell out our country for an ostrich skin jacket. Even ABJ will face some difficult challenges in DC when she tries to sentence FARA crimes (particularly those of Sam Patten, who cooperated) without precedents to do so.

But the way to build those precedents – the way to establish a record that causes a Skadden Arps or a Rob Kelner to treat FARA registration as the official declaration to the government that it is – is to pursue more of these cases, against sleazy influence peddlers working for all foreign entities, not just the ones we despise.

So Manafort may get off easy for helping Russia interfere in our election in a bid to line up his next gig white-washing brutal oligarchs.

But along the way, our justice system may be adapting to the certainty that he did not live an otherwise blameless life

As I disclosed last July, I provided information to the FBI on issues related to the Mueller investigation, so I'm going to include disclosure statements on Mueller investigation posts from here on out. I will include the disclosure whether or not the stuff I shared with the FBI pertains to the subject of the post.