

LOOSE ENDS AS THE STONE TRIAL MOVES TO CLOSING ARGUMENTS

Somewhat unexpectedly, the government announced this morning it would rest after testimony from Rick Gates and the FBI Agent, Michelle Taylor. My overall take is that Stone is likely to be found guilty on a number of the false statements charges, though may skate on witness tampering. But that nevertheless will be a win for him, because he has been playing for a pardon, not acquittal, and he retreated to a new cover story – that he had no intermediary with WikiLeaks – which is what Trump needed him to say. I think the smartest thing Stone has done in the last several years was *not* to take the stand and I half wonder whether prosecutors tried to bait him to do so by finishing early.

Stone filed for an acquittal, which is fairly normal. By my read, it misstated the indictment, pretending that Stone was accused of lying about having an interlocutor with WikiLeaks rather than lying about who his was (which, again, serves his goal of getting a pardon). Amy Berman Jackson seemed to adhere to my reading as well, noting that none of the charges require that Stone actually have an interlocutor (though she did warn prosecutors they need to be very specific about what language in the transcript they're saying are lies). Nevertheless, ABJ reserved judgment on that motion.

I'll say more about what I think really went down once the final exhibits are released to journalists and after closing arguments tomorrow.

But I wanted to capture a number of loose threads from the trial (and this is based off live tweeting, so it's more vague than I would wish):

- Prosecutors made sure to get

Steve Bannon to explain the relationship between Ted Malloch and Erik Prince and the campaign, yet Prince did not testify and Malloch's testimony wasn't entered. So why include that detail?

- The government tried to enter Bannon's grand jury testimony, unsuccessfully, after he had to be held to his prior testimony. Was there a discrepancy or a different articulation prosecutors were trying to hold him to?
- Footnote 989 of Volume I of the Mueller Report seems to suggest that Bannon's testimony came in under a proffer agreement (and his first interview clearly stretched the truth). But that proffer did not get introduced into evidence. Why not?
- The defense did *not* raise the most obvious challenge to Gates' testimony, that his claim Stone knew of hacked emails in April 2016 might represent a confusion with Hillary's FOIAed emails. Since they could only make this argument with Gates' testimony, I'm curious why they didn't

raise it.

- The defense spent a lot of time talking to Gates about Stone's role in compiling voter rolls. Why?
- Prosecutors named a bunch of Stone's flunkies as witnesses, and subpoenaed and flew in Andrew Miller. They seem to have first informed Miller he'd be testifying at what would be the end of a full week trial (what they initially said they expected), then held him through Stone's defense, suggesting they might use him as a rebuttal witness. But he never testified. Why not?
- The government never presented something they had planned to as 404b information – that Stone also lied about whether the campaign knew of his campaign finance shenanigans. They didn't do so. Why not? (This may related to the Miller question.)
- Prosecutors made a point of having Gates describe Stone asking for Jared Kushner's contact so he could brief him on stolen emails. But that point was dropped. That

loose end is particularly interesting given that they had Bannon testify about the July 18 email Stone sent him, which probably pertains to an investigation that was ongoing in March.

Update: I've reviewed the acquittal motion and actually think Stone may win on this point:

COUNT 6 – FALSE STATEMENT

STONE testified falsely that he had never discussed his conversations with the person he referred to as his "go-between," "mutual friend," and "intermediary" with anyone involved in the Trump Campaign.

Evidence as to Count 6 suffers from the same infirmity as Counts 4 and 5. The count fails because of the government's failure to prove the conversations with the Trump Campaign contained, or specifically related to, information Mr. Stone received from Mr. Credico. There was no evidence presented that any of the information was not already available in the public domain. Furthermore, there was no evidence presented that the conversation were about, or relating to, Russian interference. "And did you discuss your conversations with the intermediary with anyone involved in the Trump campaign?" HPSCI transcript, at 102 (emphasis added). No, the conversation had nothing to do with Randy Credico. Even if, *arguendo*, Stone spoke to a Campaign official, Bannon, Trump, or if Stone had non-public information from an intermediary, but did not cite to Credico in those communications, then the answer is not false. The government must live with the imprecise wording of

Count VI.

Stone absolutely *did* lie about speaking to Trump people about what he knew about WikiLeaks. But in doing so, as far as we know, he always attributed his information to Assange directly, not to Credico or Corsi (though I'm fairly certain he could prove that he gave Corsi credit). So I actually think that's why ABJ reserved on this front: because Stone is right. The government fucked up the wording on this.