

THE COVID DELAY SHOULD GIVE REGGIE WALTON FIRST PASS AT THE ROGER STONE UNSEALING

Back when Reggie Walton ordered DOJ to give him a copy of the Mueller Report to review the exemption claims, I suggested that Judge Walton was unlikely to make much more public, except that his review might speed the process of liberating the material on Roger Stone that had been withheld under Amy Berman Jackson's gag.

Be warned, however, that this review is not going to lead to big revelations in the short term.

There are several reasons for that. Many of the most substantive redactions pertain to the Internet Research Agency and Roger Stone cases. Gags remain on both. While Walton is not an Article II pushover, he does take national security claims very seriously, and so should be expected to defer to DOJ's judgments about those redactions.

Where this ruling may matter, though, is in four areas:

- *DOJ hid the circumstances of how both Trump and Don Jr managed to avoid testifying under a grand jury redaction. Walton may judge that these discussions were not truly grand jury materials.*

- DOJ is currently hiding details of people – like KT McFarland – who lied, but then cleaned up their story (Sam Clovis is another person this may be true of). There's no reason someone as senior as McFarland should have her lies protected. All the more so, because DOJ is withholding some of the 302s that show her lies. So Walton may release some of this information.
- Because Walton will have already read the Stone material – that part that most implicates Trump – by the time Judge Amy Berman Jackson releases the gag in that case, he will have a view on what would still need to be redacted. That may mean more of it will be released quickly than otherwise might happen.
- In very short order, the two sides in this case will start arguing over DOJ's withholding of 302s under very

aggressive b5 claims. These claims, unlike most of the redactions in the Mueller Report, are substantively bogus and in many ways serve to cover up the details of Trump's activities. While this won't happen in the near term, I expect this ruling will serve as the basis for a similar in camera review on 302s down the road.

But because of the COVID-related delay in Walton's review, it's likely he'll make a first pass on the Roger Stone declassification, making it far harder for Bill Barr to politicize the release like he has the 302s.

Walton issued his order commanding DOJ to give him an unredacted version of the Mueller Report on March 5. DOJ complied with that order and delivered the report (and two other pages at issue in the lawsuit) on March 30. However, that same day, Walton issued a minute order stating that, because of Chief Judge Beryl Howell's order suspending operations at the courthouse, he would be unable to start the review until April 20.

However, in light of the Chief Judge Howell's March 16, 2020 Order Regarding Court Operations in Exigent Circumstances Created by the COVID-19 Pandemic, Standing Order No. 20-9 (BAH), the Court's review of the unredacted version of the Mueller Report is unable to occur until the Court resumes its normal operations on April 20, 2020, unless the Court's normal operations are

further suspended due to the COVID-19 pandemic. Signed by Judge Reggie B. Walton on March 30, 2020.

He even suggested that if operations were further suspended (as they have been), the review might be further delayed – though EPIC made a case that the review is an essential function and should start on April 20 (that is, yesterday).

EPIC respectfully submits that in camera review of the Mueller Report is an essential function warranting the Court's prompt attention.

[snip]

Time is of the essence in this case. It is vital that the American citizenry know the full extent of Russian interference in the 2016 presidential election before casting their votes in the 2020 presidential election, now just 200 days away. And it is vital that there be judicial review of the DOJ's asserted exemptions that prevent public release of relevant information contained within the Mueller Report.

Walton has not indicated in the docket whether he started the review yesterday or not.

That said, once he does get around to the review, it will be far more substantive than it otherwise might. That's because, days before Walton said he would conduct this review, ABJ issued her opinion denying Stone's bid for a new trial. In her order, she released Stone from her gag.

Also, as of the date of this order, the defendant and his attorneys are hereby released from the media communication order of February 15, 2019 [Dkt. # 36], the minute order of February 21, 2019, and the order of July 17, 2019, [Dkt. #

149], although all other Court orders, including those related to the confidentiality of materials, and all other conditions of the defendant's release, remain in place.

That means several of the exemptions invoked to hide Roger Stone's efforts to optimize the WikiLeaks releases – everything under a b7A or b7B exemption starting on page 52 and in some other places – no longer apply. And given the way the timing has worked out, Reggie Walton will have first dibs on deciding whether President Trump's personal involvement in Stone's effort is entitled to any privacy consideration.

It may take Walton a while to get through this stuff (particularly if the 71-year old judge decides COVID threats prevent him from starting). But he should be able to get first review of what gets unsealed now.

Meanwhile, there's another imminent source of more transparency coming.

Back in February 2019, a bunch of media outlets moved to get the warrants,

associated with the application for, issuance of, and returns regarding warrants related to the Russia Investigation generally and the Stone prosecution in particular.

The government interpreted that request this way:

It is unclear whether the movant's request is limited to warrants issued pursuant to Rule 41 or also includes warrants under the SCA. In an abundance of caution, the government is treating the request as covering both categories. It is similarly unclear whether the reference to "warrants relevant to the Prosecution of Roger J. Stone, Jr."

means only warrants to search Stone's property and facilities or includes other warrants that were executed as part of the same line of investigation. Again, in an abundance of caution, the government is treating the request as covering both categories.³

³ The government does not understand the request to include warrants that were not related to Stone or that line of investigation but that merely happened to yield evidence that concerns Stone and is being provided to him in discovery.

Back in January, the government said it could release the materials most closely related to Stone.

MR. KRAVIS: Yes, Your Honor. We believe that there are some materials in the warrant affidavits that can now be unsealed – in the affidavits that are responsive to the access request that can now be unsealed in light of the conclusion of the Roger Stone trial.

THE COURT: All right.

MR. KRAVIS: However, there are other materials in those warrant affidavits that the government believes should remain under seal either because those materials relate to other pending investigations – that is, investigations other than the one that culminated in the Roger Stone trial – and materials that implicate the privacy and reputational interests of uncharged third parties. And so the government's request at this point is for the Court to set a deadline – the government would propose 60 days – for the government to go back and review the search warrant affidavits that are responsive to the movant's access requests and make a

recommendation to the Court as to which materials can be unsealed and which materials should remain under seal. And then the Court would have an opportunity to hear from Mr. Stone on that point, and then the Court could decide how to handle the matter from there.

Based on that schedule, the government submitted 33 exhibits – each of them, presumably, a warrant application – under seal for the court’s review. After Judge Christopher Cooper ordered the government to give Stone a copy of the warrants so he could argue to redact more of the affidavits, the government asked that the protective order from the trial extend to these warrants because, “not all of them were previously provided to counsel for Mr. Stone in criminal discovery.”

After getting a COVID-related extension, Stone and his lawyers have until Friday to object to the privacy and grand jury related redactions in the warrants in question.

The upcoming release of warrants targeting Stone is interesting not least because we may see why he was investigated for hacking and wire fraud (though those are the kind of affidavit filings Stone once said they would fight to keep sealed). But filings in his case (this ABJ opinion is the most detailed) described that he received just 18 warrants in discovery. Which means there are 16 warrant applications that Stone had not seen before a few weeks ago, which either targeted people like Jerome Corsi and Randy Credico (and maybe even Steven Bannon and Ted Malloch), or of a scope previously unknown.

In the pandemic era, things have a way of getting delayed. And Stone has made it clear he’ll try to hide details explaining why the FBI thought he might have liability under the CFAA.

But as we’ve been focused on COVID, the release of Stone-related materials in the wake of his trial has inched closer.

Update: Judge Walton scheduled a status conference for June 18, which will likely be the earliest that we might learn what else he'll release. And Stone submitted their response on the 33 warrants this morning, under seal.

Update: Stone did not object to the government's redactions, so Judge Cooper ordered the government to release the warrants (there are actually 33, not 34 as I initially wrote) on Tuesday. The redactions include non-public information on pending investigations.