

THE SEALED SIDEBAR: KEVIN DOWNING'S ATTEMPT TO SHARE INFORMATION ON THE CASE IN CHIEF FAILS

As I disclosed last month, 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.

Yesterday, the Manafort prosecutors sought and obtained an order sealing a sidebar discussion they had during the prosecution on Tuesday.

On August 7, 2018, the Court held a sidebar conference to address a line of questioning pursued by the defense during their cross-examination of witness Richard Gates. During the sidebar conference, substantive evidence pertaining to an ongoing investigation was revealed. The following portions of the sidebar conference transcript identifies that evidence or reveals details about that evidence:
Aug. 7, 2018 Tr. at 1399: 14-19;
1402:1-2, 14-17; 1403: 12-15.

Disclosing the identified transcript portions would reveal substantive evidence pertaining to an ongoing investigation. The government's interest in protecting the confidentiality of its ongoing investigations is compelling and justifies sealing the limited portion of the sidebar conference at issue here. In addition, sealing will minimize any risk of prejudice from the disclosure of new

information relating to that ongoing investigation.

Because all things about this trial get hyped, there was a silly report reading this as big tea leaves proving that Rick Gates is cooperating in the case in chief against Trump.

Of course he is. You don't get to work off of this amount of money laundering just to rat out your boss!

The exchange might better be analyzed for what Manafort was probably trying to do with it.

Both sides agreed that they weren't going to focus on the campaign, aside for the way Manafort was trading positions on an eventual Trump campaign to obtain fraudulent loans. Manafort didn't want to talk about going from electing corrupt Russian pawn Viktor Yanukovich to electing corrupt Russian pawn Donald Trump.

So better to understand what Manafort was likely trying to achieve here – why Kevin Downing even thought he might get away with raising it.

A tactical reason is to prove that Rick Gates is a liar – which is one of the only defense approaches Manafort is taking here. So the topic is likely something Gates originally lied about and then told Mueller a different story. In the DC case, for example, we know that Gates lied to the AP about his and Manafort's lobbying in an effort to remain on the campaign.

The strategic goal here may be far more interesting, though. I've argued that the entire point of taking this and the DC case to trial is to inflict as much damage on the Mueller investigation as possible, to make two futile attempts to suppress evidence seized in his condo (including those 8 iPods I obsess about), and to learn *and share* as much information about the larger investigation. I'm sure something like that was the expectation set when Trump discussed pardoning Manafort. He does damage to the Russian conspiracy case and Trump will pay

him off – assuming he can be trusted – by pardoning him after this all blows over.

Mueller would have had to give Manafort everything Gates had said to prosecutors before he testified, meaning they'd learn a good deal about the case in chief. But information in the case in chief would be protected from release.

So, in the guise of asking Gates something about which his testimony to Mueller may have changed over time, Downing was likely trying to make public information that would be of use to Manafort's co-conspirators in the case in chief.

It didn't work.