

SOMETIMES A PLEA IS JUST A PLEA: THE ONGOING CRIMINAL EXPOSURE OF MUELLER'S "COOPERATING" WITNESSES

One of the most interesting details from the government's George Papadopoulos Sentencing Memo released last night is this passage, stating that Papadopoulos' plea was not a standard cooperation agreement.

The plea agreement entered into by the government and the defendant was not a standard cooperation agreement, and the government did not agree to make a motion under U.S.S.G. § 5K1.1 based on cooperation by the defendant.

Nevertheless, the government agreed to "bring to the Court's attention at sentencing the defendant's efforts to cooperate with the Government, on the condition that [the defendant] continues to respond and provide information regarding any and all matters as to which the Government deems relevant." (Plea Agreement p. 4). Pursuant to this agreement, the Government provides the Court with the following information.

[snip]

The defendant did not provide "substantial assistance," and much of the information provided by the defendant came only after the government confronted him with his own emails, text messages, internet search history, and other information it had obtained via search warrants and subpoenas well after

the defendant's FBI interview as the government continued its investigation. The defendant also did not notify the government about a cellular phone he used in London during the course of the campaign – that had on it substantial communications between the defendant and the Professor – until his fourth and final proffer session.

While there had been some discussion about what kind of plea deal Papadopoulos got, this statement seems to say that Papadopoulos didn't offer up any specific cooperation against co-conspirators. Rather, the deal was simply that if he offered up his cooperation about his own actions, the government would tell the court that he did so, with no obligation to ask the court for any downward sentencing. The deal, then, was to limit his exposure to just one false statements charge, rather than the multiple false statements and obstruction charge he could have gotten for trying to confuse the FBI.

Importantly, the deal only applied to conduct specified in the offense – that is, the lies to the FBI and the obstruction of justice by hiding his Facebook and cell phone data. While his statement of offense includes much of his discussion with Russian assets about setting up a meeting, it says nothing about other conduct, such as accepting \$10,000 from a suspected Israeli asset, or his ongoing negotiations with Sergei Millian, basically to spy on the Trump administration in exchange for a monthly payment (which was conditioned on getting a job in the administration, which is one of the reasons – the government suggests in the memo – why Papadopoulos may have lied to the FBI in January 2017).

That is, Papadopoulos not only faces prison time if the court accepts the government's recommended sentence, but he may have ongoing exposure for foreign agent or conspiracy charges not covered by this plea agreement.

He made a deal to get several false statements and obstruction charges turned into one, but he didn't even capitalize on that deal, and may still face additional legal risk tied to the Russian tampering.

That led me to compare the language for all the other plea deals Mueller's team has made (something NYC Southpaw started to do in this thread in February). It's clear that Alex van der Zwaan got the least out of his plea deal (though he may have cooperated more in getting to that deal, which would have been important given his foreign status). That's significant, because the prosecutor compared van der Zwaan to Papadopoulos in their memo.

The other three plea deals – Mike Flynn, Richard Pinedo (for identity theft tied to the Internet trolls), and Rick Gates – do obligate the government to submit a 5K statement for downward departure on sentencing if the person provides substantial cooperation.

But Pinedo and Flynn's deals are limited just to the statement of offense. In Flynn's case, his statement includes several lies to the FBI and his failure to register under FARA, but not a lot of other known conduct, even aside from any conspiracy involving Russia.

Only Gates' plea includes broad forgiveness for criminal conduct (though the charges he pled to also include more significant penalties than Flynn and Papadopoulos). That's yet another sign that he offered quite a bit in his proffer, well beyond incriminating Paul Manafort.

I've been nudging the attentive lawyers to explain what this means in terms of ongoing exposure. But if I were Mike Flynn, the Papadopoulos example might really incentivize me to be more cooperative.

George Papadopoulos:

█ In consideration of your client's guilty

plea to the above offense, your client will not be further prosecuted criminally by this Office for the conduct set forth in the attached Statement of the Offense.

No government obligation section beyond,

agreeing to bring to the Court's attention at sentencing the defendant's efforts to cooperate with the Government, on the condition that your client continues to respond and provide information regarding any and all matters as to which the Government deems relevant.

Mike Flynn:

In consideration of your client's guilty plea to the above offense, your client will not be further prosecuted criminally by this Office for the conduct set forth in the attached Statement of the Offense.

5K language included.

Alex van der Zwaan:

In consideration of your client's guilty plea to the above offense, your client will not be further prosecuted criminally by this Office for the conduct set forth in the attached Statement of the Offense, for any other false statements made by him to the Office on November 3 and December 1, 2017, any destruction, deletion, and withholding of documents and evidence in connection with requests by this Office or his law firm, and any violations of the Foreign Agent Registration Act or other law arising from the preparation and/or roll out of the Tymoshenko report for the Ukraine Ministry of Justice.

No government obligation section.

Richard Pinedo:

In consideration of your client's guilty plea to the above offense, your client will not be further prosecuted criminally by this Office for the conduct set forth in the attached Statement of the Offense.

5K language included.

Rick Gates:

In consideration of your client's guilty plea to the above offenses, and upon the completion of full cooperation as described herein, no additional criminal charges will be brought against the defendant for his heretofore disclosed participation in criminal activity, including money laundering, false statements, personal and corporate tax and FBAR offenses, bank fraud, and obstruction of justice. In addition, subject to the terms of this Agreement, at the time of sentence, the Government will move to dismiss the remaining counts of the Indictment in this matter. In addition, the Office will move promptly to dismiss without prejudice the charges brought against your client in the Eastern District of Virginia and your client waives venue as to such charges in the event he breaches this Agreement.

5K language included.