

TWO FACTORS THAT MAY CHANGE THE IMPEACHMENT CALCULUS, PART TWO: CRIMINALIZING A ROGER STONE PARDON

In this post, I described how recent developments in Michael Cohen's case give Congress a number of reasons to use it as a basis for impeachment. The neat fit of so many details might affect the calculus on whether Democrats carry out an impeachment inquiry on Trump.

In this post, I'll point to a cynical electoral reason to begin impeachment: to prevent Trump from preempting Stone's pre-election trial which, if it takes place in November 2019 as scheduled, will be utterly damning to the President. Don't get me wrong – Democrats should move to stop Trump from using pardons to suborn perjury as a basic rule of law thing. But the timing of Stone's trial and the extent to which it will implicate the President makes that imperative electorally beneficial for Democrats as well.

**Even as currently
charged, Stone's case
implicates the
President directly**

As I've noted, because everything in the Mueller Report pertaining to Roger Stone got redacted to (appropriately) preserve Stone's right to a fair trial, lots of details on how Trump himself was involved in pushing Stone to optimize the WikiLeaks releases is redacted.

[I]t seems highly likely that some of the information in these redacted passages is stuff that would only prejudice Stone's case by raising the import of it to Trump.

Consider, for starters, that (unless I'm mistaken) not a word from Stone's indictment appears in this Report. [For example,] the indictment makes it clear that Stone was talking to the campaign about WikiLeaks releases.

ROGER JASON STONE, JR. was a political consultant who worked for decades in U.S. politics and on U.S. political campaigns. STONE was an official on the U.S. presidential campaign of Donald J. Trump ("Trump Campaign") until in or around August 2015, and maintained regular contact with and publicly supported the Trump Campaign through the 2016 election.

During the summer of 2016, STONE spoke to senior Trump Campaign officials about Organization 1 and information it might have had that would be damaging to the Clinton Campaign. STONE was contacted by senior Trump Campaign officials to inquire about future releases by Organization 1.

[snip]

By in or around June and July 2016, STONE informed senior Trump Campaign officials that he had information indicating Organization 1 had documents whose release would be damaging to the Clinton Campaign. The head of Organization 1 was

located at all relevant times at the Ecuadorian Embassy in London, United Kingdom.

After the July 22, 2016 release of stolen DNC emails by Organization 1, a senior Trump Campaign official was directed to contact STONE about any additional releases and what other damaging information Organization 1 had regarding the Clinton Campaign. STONE thereafter told the Trump Campaign about potential future releases of damaging material by Organization 1.

We see outlines of precisely who those references are to in the report.

Most notably, after describing Trump's enthusiasm after Stone told Trump while Michael Cohen was listening on the speaker phone that the DNC emails would drop in a few days just before they did (which Cohen described in his testimony to Oversight), these two paragraphs, appear to describe Manafort and Trump's enthusiasm after the DNC release, with Manafort telling both Stone directly and Gates that he wanted to be kept informed via Stone of what was coming. And having gotten some indication of what was coming, the campaign started making plans to optimize those releases. It appears that Gates, like Cohen before him, witnessed a Stone-Trump call where the rat-fucker told the candidate what was coming.

Harm to Ongoing Matter

According to Gates, Manafort expressed excitement about the release. ²⁰³ HOM
²⁰³ Manafort, for his part, told the Office that, shortly after WikiLeaks's July 22 release, Manafort also spoke with candidate Trump.
Harm to Ongoing Matter

²⁰⁴ Harm to Ongoing Matter

²⁰³ Manafort also ²⁰⁴ HOM wanted to be kept apprised of any

developments with WikiLeaks and separately told Gates to keep in touch **HOM** about future WikiLeaks releases.²⁰⁶

According to Gates, by the late summer of 2016, the Trump Campaign was planning a press strategy, a communications campaign, and messaging based on the possible release of Clinton emails by WikiLeaks.²⁰⁷ **Harm to Ongoing Matter**
Harm to Ongoing Matter²⁰⁸ **Harm to Ongoing Matter**
Harm to Ongoing Matter while Trump and Gates were driving to LaGuardia Airport, **Harm to Ongoing Matter**, shortly after the call candidate Trump told Gates that more releases of damaging information would be coming.²⁰⁹

These pages also have more background about how important all this was to Trump, who was frustrated that Hillary's deleted emails hadn't been found (something also told, in Flynn's voice, in the Peter Smith section).

The references to Stone in these passages may well be appropriately redacted. But the descriptions of conversations between Trump and Manafort or Gates should not impact Stone's defense – unless you want to argue that Trump's personal involvement in Stone's rat-fucking might change the deliberations for a jury. They don't serve to hide Stone's actions. They hide Trump's enthusiasm for using materials stolen by Russia to win.

So the part of the 2016 operation that clearly amounted to coordination but was not charged because of First Amendment considerations, and the part of the 2016 operation for which (perhaps because witnesses learned it would not be charged as a conspiracy) there's the most evidence of Trump's direct involvement, remains hidden from view out of concerns for Stone's due process rights.

Right now, Stone's trial is scheduled to start on November 5. A recent status report on Rick Gates' cooperation makes it clear he is likely to be a witness at Stone's trial. While Gates' testimony is probably not necessary to prove that Stone lied to HPSCI, it would be useful to explain Stone's motive: significantly, protecting Trump.

If Andrew Miller's testimony leads to new charges, the tie to Trump may be still more damning

Tuesday, the DC Circuit Court issued its final order in Stone associate Andrew Miller's challenge to a grand jury subpoena.

Yesterday – technically minutes after Mueller's press conference announcing the investigation was completed and he's going home – Judge Beryl Howell rejected another attempt by Miller to challenge the subpoena. Multiple outlets report that he has agreed to testify Friday at 9:30.

Miller's testimony Friday is premised on potential new charges against Stone and before Howell rejected Miller's challenge, Aaron "Zelinsky and Jonathan Kravis from the US Attorney's Office in DC told the judge privately why they still needed Miller."

Last night, Howell released some of the details behind Miller's most recent challenge. Along with a useful timeline from Miller's lawyers on their challenge, it makes it pretty clear that prosecutors are still looking for information on (as Miller lawyer Paul Kamenar describes it) "Roger Stone's actions during the 2016 election and his involvement in WikiLeaks, Julian Assange, and the hacking of Hillary Clinton's and the DNC's emails and any collusion with Russia" or (as Aaron Zelinsky has described it), "Roger Stone's connection to WikiLeaks, Julian Assange, Guccifer 2.0, Russia."

In other words, it appears that prosecutors might still indict Stone with new crimes pertaining to the core issues that were under investigation.

That's one reason I find the timing of Mueller's announcement so interesting. The Howell hearing

yesterday was technically after Mueller's statement finished. I don't know when yesterday's announcement will become official, but it would seem to be final before Friday's Miller grand jury appearance.

That would mean any charges that former Mueller prosecutor Aaron Zelinsky (as well as DC AUSA Jonathan Kravis, who has picked up the bulk of the ongoing matters from Mueller's team) might decide to pursue after Friday would be subject neither to the logic of the Mueller investigation – which decided not to charge Stone for some WikiLeaks-related crimes in part based on First Amendment considerations, nor to the direct supervision of Attorney General Barr.

As I've noted, the logic EDVA used in its superseding indictment of Assange is in direct conflict with the logic Mueller used in deciding that WikiLeaks' and Trump's "wish lists" for Hillary emails do not establish a basis for a conspiracy charge in the same way WikiLeaks' wish list for classified materials was used. That *might* mean that decisions made after Miller's testimony Friday would work out differently than decisions on Stone's charges in January. Mueller's off the case. It's DC US Attorney Jesse Liu's decision now.

All of which is to say, even assuming Friday's testimony doesn't lead to new charges, unless Trump finds a way to pre-empt Stone's trial, it will mean some of the most damning information about Trump's involvement in what Mueller didn't charge as conspiracy but which by most definitions would count as "collusion" will get aired less than a year before the 2020 election.

Given how rock solid that Stone indictment is, there are just two ways to avoid that: for Stone to flip on Trump or others (though prosecutors are unlikely to give Stone a deal without vetting his claims after the way Paul Manafort abused the process, and it would be too late to flip on Assange). Or for Trump to pardon Stone.

Some of the clearest evidence of obstruction of

justice in the Mueller Report pertains to Trump floating pardons, including a 2.5 page redacted passage (Volume II pages 128-130) pertaining to Stone himself. Even Bill Barr says it would be a crime to float pardons to prevent someone from testifying truthfully. Note, too, that Mueller asked Trump whether he considered pardoning Assange before he was inaugurated (to which Trump gave a typically contemptuous non-answer), and Stone was involved in an attempt to pardon Assange as recently as January 2018, which has been the subject of Mueller's questioning.

The political hit from a Stone trial – and the kind of pardon-related obstruction that Barr himself conducted to kill the Iran-Contra investigation – might well be enough for Trump to prefer the political hit of pardoning Stone. Democrats have one way of altering that calculus to ensure the Stone trial – with all the damning details of Trump's actions it'll reveal – happens as scheduled.

While I'm not, at all, a fan of gaming trials for political effect, the fact of the matter is that if Stone's trial goes forward, it would present as damning a case against Trump's cheating as any impeachment trial could do. But to ensure that happens, Democrats need to make it clear that pardoning his way out of this will incur even greater costs for the President.

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.