

# THE GOVERNMENT ACCUSES ROGER STONE OF BEING A DISORGANIZED FIGURE WHO COMMITTED A CRIME

The government and Roger Stone are arguing over whether prosecutors can show the Frank Pentangeli clip from the Godfather II at his trial. Last month, the government argued they need to show the clip to explain the context of Stone's orders to Randy Credico to "Start practicing your Pantagele."

The clip of Pentangeli's testimony is directly relevant to the charge of witness tampering in this case (count 7). To prove that charge, the government must prove that Stone corruptly persuaded or attempted to corruptly persuade a witness (Person 2), intended to interfere in that witness's testimony, and did so with a current or future proceeding in mind. See 18 U.S.C. § 1512(b)(1); *United States v. Edlind*, 887 F.3d 166, 172-174 (4th Cir. 2018). Several of the allegedly criminal acts at issue involve Stone's referencing Pentangeli and Pentangeli's testimony before Congress. To understand Stone's messages to Person 2—including what Stone was asking Person 2 to do—it is necessary to understand those references. Taken in context, Stone's references to Pentangeli and to specific lines spoken by Pentangeli are unmistakable. This clip is highly probative of the meaning of Stone's communications to Person 2.

[snip]

Watching the movie clip and seeing the context in which Pentangeli delivers the lines that Stone quotes to Person 2 makes clear that Stone's messages were not mere references to Person 2's abilities as an impressionist, but rather were a suggestion that Person 2 testify falsely to Congress. The clip is an important piece of evidence on this critical, disputed issue.

In response, in one of their most seriously argued filings, Stone's team argued the clip would unduly link Stone with the mafia (though they got the role Stone would play in the analogy wrong).

Any reference to "The Godfather" (regardless of which one) brings up a clear and unalienable connection to the Italian-American Mafia. Any attempts to compare the conduct of Stone to that of an alleged mafia member, testifying that he murdered on the orders of 'the Godfather' will instantly create a connection in the minds of the jurors that Stone is somehow similar to a murderous mafioso.

[snip]

Stone objects because unlike the other movies and interviews cited by the government, the Godfather trilogy is iconic and its themes and implications are known by most people who are potential jurors. A clip of the movie triggers the implication of the entire series – cold, calculated, violence and crime.<sup>3</sup> Once a Mafia connection is made the damage will be done.

In a footnote, Stone's lawyers suggest that the government didn't include a transcript because it would alert Judge Amy Berman Jackson to how damning the clip would be. They claim to include

a transcript as an exhibit.

The government either assumes the Court is necessarily familiar with the movie clip from the *Godfather II*, or recognizes that if it were to see it the nature of its improper character evidence and unfairly prejudicial clip would be apparent. The transcript of the scene is presented as Exhibit – 1, the movie clip itself is presented here ([click here](#)).

Today, the government responded, in part, by suggesting that showing the clip would not be unfairly prejudicial, it would just fully explain the crime Stone allegedly committed.

As the D.C. Circuit has observed, Rule 403 does not apply to “powerful, or even ‘prejudicial’ evidence” but instead “focuses on the ‘danger of *unfair* prejudice.’” *United States v. Gartmon*, 146 F.3d 1015, 1021 (D.C. Cir. 1998) (Court’s emphasis). This means “an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one.” *Old Chief v. United States*, 519 U.S. 172, 192 (1997). While the scene from *The Godfather Part II* may be dramatic in some sense, Stone chose to reference it, and Rule 403 “does not provide a shield for defendants . . . permitting only the crimes of Caspar Milquetoasts to be described fully to a jury.”

In a footnote, however, they note that the transcript Stone included inaccurately described both the words and actions from the movie.

Stone’s response attached a purported transcript of the clip at issue. See Doc. 171, Ex. 1. This transcript is inaccurate in several respects, including the words transcribed and

actions described. The government respectfully suggests that the Court review the film clip itself, and the government can make a copy available for the Court's review upon request.

In point of fact, they didn't make the transcription errors themselves; they just used an an early draft of the screenplay they found online. (h/t AL) The miscitation is ironic, though, in part because Stone appears to be prepping a challenge to the accuracy of the transcript of his interview with HPSCI, and also because it's clear from Stone's references to the scene in communications to Credico that *he knows the scene* better than whoever lazily just copied this from the web.

Ultimately, though, it shows that even in Stone's most aggressively argued motion, his defense is still (as it has been repeatedly) totally disorganized and sloppy.

He might have done better arguing he has nothing in common with The Godfather because he's a disorganized crime figure.

(h/t WB for the pun.)