

TRUMP'S PARDON JENGA, STARTING WITH THE JULIAN ASSANGE BUILDING BLOCK

I was going to wait to address Trump's likely use of his power of clemency in the days ahead until it was clear he was going to leave without a fight and I will return to it once that's clear. But there have already been a slew of pieces on the likely upcoming pardons:

- Jack Goldsmith on how Congress might limit future abuses
- Stanley Arkin, Karen J. Greenberg and Michel Paradis arguing that Trump can't pardon himself
- A group story on likely recipients of pardons from CNN that claims to have done reporting
- Garrett Graff's pre-election Transition prediction story, including pardons

None of them mentions Julian Assange (though Graff does consider the possibility of a Snowden pardon, which I consider related, not least for the terms on which Glenn Greenwald is pitching a package deal as a way for Trump to damage the Deep State).

I would argue that unless a piece considers an Assange pardon, it cannot capture the complexity facing Trump as he tries to negotiate a way to use pardons (and other clemency) to eliminate his legal exposure itself.

I'm not saying Trump's decision on whether to

give Assange a pardon is his hardest decision. But it may be one of a few that could bring any hope of protecting himself from falling down.

Trump has talked about pardons, generally, covering a number of crimes in which he himself (or a family member) is implicated:

- Asking DHS officials to violate the law in order to build the wall
- Working with the National Enquirer to capture and kill damaging stories during the 2016 election
- Dodging impeachment
- Steve Bannon's Build the Wall gift (which likely implicates Jr)

There are others whom Trump would give a pardon because they're loyal criminals, like Ryan Zinke or Commerce Officials and others who've lied in court. There are hybrid cases; in addition to Bannon, Erik Prince has legal exposure both for his own lies that protected Trump, but also for his efforts to sell mercenary services to hostile foreign governments. And Rudy Giuliani has committed his own crimes as well as possible crimes to protect the President. With the possible exception of Rudy (who still might claim attorney client privilege to refuse to testify about Trump), those pardons create challenges, but they're highly likely (unless Trump made some pardons contingent on remaining in power).

Then there's the Mueller Report. In 2019 testimony to HPSCI, Michael Cohen credibly described Jay Sekulow considering mass "pre-pardons" in the summer of 2017 in an attempt to make the Russian investigation go away. But the Mueller Report itself only obviously talks about five pardons:

- An extensive discussion of the reasons why pardons for Mike Flynn, Paul Manafort, and Roger Stone would amount to obstruction (a sentiment with which Billy Barr once agreed)
- A discussion of Robert Costello's efforts to broker silence from Cohen in exchange for a pardon and almost certainly a still-redacted referral of Costello for the same; Costello is currently Rudy Giuliani's attorney
- A question about discussions of a Julian Assange pardon, even while the report did not mention or obscured the tie with underlying evidence proving such an effort occurred, possibly as a part of a quid pro quo to optimize the WikiLeaks releases

There are difficulties – albeit surmountable ones – for pardons of Flynn and Manafort, not least because Billy Barr has found other ways for Trump to keep them out of jail (so far), even while issuing a DOJ ruling that his prior pardon dangles are not obstruction. Costello is someone who has no privilege directly with Trump and so might implicate him personally in trading pardons for silence if Trump himself is not pardoned.

But Stone (and quite possibly Don Jr) is indelibly tied to an Assange pardon.

It's possible something might make this easier between now and January 20. If British Judge Vanessa Baraister rules on January 4, 2021 in favor of Julian Assange's Lauri Love gambit, arguing that American prisons are not humane for those on the autism spectrum, then there's a decent chance he'll beat extradition. If not, his chances are slim. And even if he beats extradition the UK could choose to prosecute him on Official Secrets Act charges tied to Vault 7.

That presents Trump limited choices. He could pardon just Stone (and Don Jr, who will undoubtedly get a broad pardon in any case). But then both could be coerced to testify against Assange under threat of contempt or perjury from a Biden DOJ.

He could pardon all three, including a broad pardon (including Vault 7) for Assange. But if he did that, it could complete the conspiracy, a quid pro quo tied to Russian interference in 2016. That would make a Pence pardon of Trump much more politically costly; it would likewise make a Trump self-pardon much more toxic for even a very partisan SCOTUS to rubber stamp.

But if he doesn't pardon Assange, he risks pissing off those who helped him in 2016, with whatever repercussions that would have for Trump Organization funding going forward. To sum up:

- Pardoning just Stone and Jr would expose them to coercion to testify against Assange and maybe others
- Pardoning all three would make Trump's own pardons much less defensible to those who would have to ensure he himself got immunity
- Pardoning Assange at all would complete the

conspiracy Mueller never
charged

- Not pardoning Assange might
risk ire from Russia

I'm not saying he can't find a way out of this
dilemma. But it is one of the reasons why
Trump's pardon gambit is far more complex than
others are accounting for.