

Manafort, Mueller et al.

by Gary Fouse



I have no inside information on the Manafort indictments, but based on the news I have heard today and my own experience in federal law enforcement, I offer my own initial speculations on the case(s). That includes the (missing) investigation on the Clinton Foundation and the Russians.

First of all, Paul Manafort and his business associate, Rick Gates, have been charged with money laundering in connection with Ukraine-all before Manafort joined the Trump campaign. (There are also other charges related to acting for a foreign government.) Therefore, the White House is rightfully declaring that this has no connection to President Trump or his campaign. However, if Manafort decides to cooperate with Special Counsel Robert Mueller, presumably that cooperation would involve whatever knowledge or involvement he had with the focus of the investigation-the allegation that the Trump campaign colluded with the Russians to influence the 2016 election in Trump's favor.

More to the point of the collusion question is the plea deal

reached with George Papadopoulos, who served as a volunteer foreign policy adviser for the Trump campaign. He has been charged with lying to the FBI. In addition, the FBI has emails showing that Papadopoulos was discussing contacts with Russians with other Trump campaign people. The question I have is whether any of those communications discussed actually colluding with Russian attempts to sway the election in Trump's favor as opposed to say, improved US-Russian ties or that they may have been in possession of Hillary Clinton emails. Moreover, he is being described as a "proactive cooperating " individual. That could mean many things including possibly having worn a wire.

In legal terms, this is also a conspiracy investigation. It is a widely misunderstood law, one that is often used in drug investigations. A conspiracy in federal legal terms is when one or more persons agree to violate a law. The crime is complete when one or more of the conspirators commits an overt act in furtherance of the conspiracy. For example, in a drug case, the conspirators enter into the agreement to smuggle 100 kilos of cocaine from South America. After that (the agreement), one of the conspirators buys a ticket to Colombia (overt act). Technically, at that point, the conspiracy is complete. Note that overt acts don't have to be crimes in and of themselves. Buying a ticket to Colombia is not illegal-except that it is in furtherance of the conspiracy. Obviously, buying the drugs, transporting them and selling them in the US are all overt acts as well. The actual substantive crime does not technically have to be completed. In practical terms, however, conspiracy laws in federal drug cases (See Title 21) are used to prosecute the higher ups who rarely if ever touch the drugs. We are not prosecuting people who merely consider and discuss going into the drug trade. The effort is to get everyone actually involved in drug organizations.

In working conspiracy cases, at some point a cooperating witness is almost always needed. Somebody has to testify to

the actual agreement and other overt acts. Naturally, the testimony of cooperating defendants must be corroborated as much as possible since their testimony will automatically be suspect.

So who should police and prosecutors try to “flip” and turn into a witness? While you always want to work your way up the ladder and get a person higher on the scale, in large conspiracies, the really small fish are usually not in a position to get you Mr. Big. For example, a courier arrested trying to bring in a kilo of cocaine into the US would not be in a position to provide direct evidence against Pablo Escobar or “Chapo” Guzman. For that, you need to “flip” someone much higher up the chain, someone who could provide direct evidence against the heads of drug organizations.

I expect that Mueller will now try to obtain Manafort’s (and Gates’) cooperation. It also remains to be seen who Papadopolous has led investigators to as they go up the ladder (or attempt to). More people will definitely be put under pressure to cooperate.

So has Mueller “broken” the case? No. At least not from what we know. Someday, we may look back on today as a key development. But we don’t know that yet.

I still feel that Mueller has a conflict of interest due to his close relationship with James Comey, who is a central figure in the matter. Mueller who served as FBI Director from 2001-2013, was Comey’s predecessor.

There is also the matter of the Russian connection to the Clintons and their involvement, not to mention enrichment, over a deal signed off on by then Secretary of State Hillary Clinton by which Russia acquired 20% of America’s uranium supply. (Clinton was one of nine cabinet officials who signed off on the Uranium One deal.) The Clinton Foundation received millions of dollars from the interests involved in that deal.

Bill Clinton went to Moscow in 2010 and gave a speech sponsored by those same interests in which he received around \$500,000. The FBI, under Mueller at the time, was aware of the matter. However, we have no special prosecutor looking into this. If Mueller can indict Manafort for charges and acts that happened before he joined Trump's presidential campaign, he can look into what the Russian connection to the Clinton Foundation was. But then he would have a conflict of interest because he was FBI director when it was all happening. They knew about it, yet then Attorney General Eric Holder was one of the officials who signed off on it.

Of course, nobody is talking about all that now. Today and well into the future, the talk is about Manafort et al.