

4 Things To Watch In The Case Against Roger Stone

By Jody Godoy

Law360 (January 25, 2019, 10:10 PM EST) -- Longtime adviser to Donald Trump and self-described “dirty trickster” Roger Stone was charged in an indictment revealed on Friday, raising questions about what comes next for Stone and for Special Counsel Robert Mueller's investigation into Russian interference in the 2016 presidential election.

Stone was accused of lying to the House Intelligence Committee in 2017 about seeking damaging information from WikiLeaks on Hillary Clinton ahead of the 2016 presidential election. The charges against Stone had been rumored for months as various Stone associates testified before Mueller's grand jury.

Now that the indictment is out, here are some of the questions about what comes next.

What's his potential trial strategy?

After his appearance in court Friday morning, Stone said he intended to fight the allegations in court. Former prosecutors say the charges are straightforward, and therefore may be difficult to beat at trial.

Stone is accused of lying to the Intelligence Committee on multiple topics — like saying that he never told the Trump campaign about secondhand contacts with Julian Assange when prosecutors say his emails prove otherwise.

The accusation boils down to congressional interviewers asking whether Stone had discussed those conversations with anyone in the campaign and Stone lying when he said “I did not.”

Stone is also charged with obstruction and of attempting to sway the testimony of Randy Credico, a radio host who allegedly relayed information between Stone and Assange. The indictment alleges that Stone sent menacing texts to Credico.

“You are a rat. A stoolie. You backstab your friends-run your mouth my lawyers are dying Rip you to shreds,” Stone purportedly said, followed by what could be construed as a threat to Credico's dog, a small, white fluffball named Bianca.

“I am so ready. Let's get it on. Prepare to die [expletive],” Stone allegedly wrote later that day.

Stone's tough talk is unlikely to do him any favors should he go to trial, said Harry Sandick of Patterson Belknap Webb & Tyler LLP.

“Could you say 'I was just joking around'? I suppose you could, but would anybody really believe that, in this context?” Sandick said.

Stone also said on Friday that the investigation was politically motivated. While that might convince some in the court of public opinion, it's the kind of thing judges don't generally give airtime to at trial, said Robert Litt of Morrison & Foerster LLP.

“It's not a defense to a charge of lying to Congress that somebody may have been politically motivated to bring the prosecution,” Litt said. “The question is, 'did you lie, or did you not lie?’”

Is a deal in the cards?

Stone has struck a defiant pose, vowing to beat the charges and saying he would never “make up lies to ease the pressure on myself,” a sentiment that seemed to echo Trump's opinion of cooperators such as his longtime lawyer Michael Cohen.

Still, former prosecutors say Stone may or may not feel differently once he sits down with his lawyer and does the math on how many years he could be facing.

The federal sentencing guidelines recommend 15 to 21 months for obstruction and related charges. However, that range could increase based on enhancements, such as if Stone's comments to Credico were seen as threats of violence. Those guidelines are just a starting place for judges, who are free to increase or decrease them based on various factors.

Chicago-based former prosecutor Jeffrey Cramer noted that whatever the starting number in Stone's case, it's likely much lower than a defendant like Paul Manafort, who was accused of bank fraud and filing false tax returns, among other things. High-dollar losses trigger exponentially higher sentences.

“At the end of the day, you are either looking at a lot of years, which prompts cooperation, or you are not, which does not usually facilitate cooperation,” Cramer said.

Whether Mueller would want cooperation from Stone is another question.

“A witness who has a serious issue with obstruction is a damaged witness,” Sandick said. “Mueller is not acting as if he is interested, either,” Sandick said, noting that cooperation doesn't typically go hand-in-hand with predawn arrests and raids.

On the other hand, Litt, a former federal prosecutor, noted that the government is well-versed in working with witnesses who haven't been truthful in the past.

“In my day, I put people on the stand that I certainly wouldn't want to buy a car from,” Litt said.

Who “directed” Trump campaign to reach out to Stone?

Rather than a bare-bones recitation of the facts, Stone was charged in a detail-rich speaking indictment, something that has become a hallmark of the Mueller investigation.

However, one particular paragraph raised eyebrows among Mueller-watchers and caught the eye of congressional investigators as much for what it said as for what it did not say.

The excerpt alleges that after WikiLeaks released emails from a Russian hack on the Democratic National Committee in late July 2016, “a senior Trump campaign official was directed to contact Stone about any additional releases and what other damaging information” WikiLeaks had on Clinton's campaign.

The main question is, who asked whom to contact Stone? The person taking the orders was not a bit player but a “senior official,” so the one giving them would logically be someone who was even higher up, noted Sandick.

“That paragraph is a place where Mueller connects the Trump campaign through Stone with WikiLeaks,” Sandick said. “That is the most interesting part of this.”

In an acrobatic use of passive voice, the indictment omits what happened next, saying only that “Stone thereafter told the Trump campaign about potential future releases of damaging material” by Wikileaks.

Trump's press secretary said on Friday that she had not read the indictment but that it has “nothing to do” with the president.

What does this mean for the Mueller investigation?

The indictment of a longtime member of Trump's inner circle is a significant development in the Mueller case.

Whether the case will become a potential domino in the Mueller investigation that leads to someone else does not rely solely on whether or not Stone changes his mind and decides to cooperate, since the FBI searched Stone's home in Florida and apartment in New York on Friday.

Richard Serafini, a former federal prosecutor and defense attorney based in Fort Lauderdale, said that while the Stone case appears to be another step into Trump's inner circle, the new charges leave unanswered questions.

“The question clearly is, is the special counsel developing evidence he just has not disclosed yet for tactical reasons, or is Trump merely the unknowing beneficiary of actions by these people,” Serafini said “That question hasn't been answered yet.”

With the Mueller investigation rumored to be wrapping up in the near future, it's possible that the special counsel could hand the case over to the U.S. Attorney's Office in Washington, D.C.

--Editing by Emily Kokoll and Bruce Goldman.