

TRUMP ADMINISTRATION ACCOUNTABILITY PROJECT



Report on the Possible Misconduct in the Department of Justice interference in the Sentencing of Roger Stone

The Stone Case

Roger Stone is a long-time political strategist, with working ties to the Republican Party dating back to the 1970's.¹ In the 1990s, Stone worked as a lobbyist for Donald Trump's casino business, and later worked on Mr. Trump's unsuccessful White House run in 2000.² Mr. Stone was also a key figure in Donald Trump's 2016 presidential campaign.³ However, he left the Trump campaign in 2015.⁴ There are conflicting narratives surrounding his departure, some reports suggesting he was fired and others that he quit.⁵ Either way, Stone remained an ardent Trump supporter.⁶ Then, in January 2019 Stone was arrested in connection with Special Counsel Robert Mueller's probe into alleged collusion between the Trump campaign and Russia.⁷ In November 2019 a jury found Mr. Stone found guilty of five felony counts of lying to the House of Representatives Intelligence Committee, one count of obstructing a congressional probe, and one count of witness tampering.⁸ Specifically, the jury heard evidence showing that prior to the 2016 presidential election, Mr. Stone worked to obtain emails Russia had hacked and stolen from Democratic computers and subsequently given to WikiLeaks.⁹ Mr. Stone sought to learn how these emails could damage Democrat presidential candidate Hillary Clinton.¹⁰ The jury found Mr. Stone lied to Congress about these efforts.¹¹ The conviction was the closest to criminal conspiracy that Mueller found between a Trump associate and Russia.

Mr. Stone's witness tampering conviction stemmed from attempts to pressure New York radio host Randy Credico to lie to the Intelligence Committee.¹² Stone told Congress that Credico was his sole intermediary with Wikileaks.¹³ Evidence showed Mr. Stone attempted to bully, threaten, and manipulate Mr. Credico to keep him from testifying truthfully that he was not Stone's only intermediary with Wikileaks.¹⁴ After the jury returned their verdict, the maximum penalty Mr. Stone could face was up to 50 years imprisonment.¹⁵

The Sentencing Recommendation

The original sentencing recommendation given to Judge Amy Berman Jackson by federal prosecutors recommended a sentence of seven to nine years.¹⁶ However, superiors in the Justice Department, led by Attorney General William Barr, did not approve of the severity of the suggested sentence and submitted a second sentencing memo, displacing the first.¹⁷ The submission of a second sentencing memo is highly unusual.¹⁸ While the second memo did not make a specific recommendation, it argued that a sentence "far less" than the previously suggested guidelines "would be reasonable under the circumstances."¹⁹ Following the submission of the second memo, four prosecutors in the case—Aaron Zelinsky, Jonathan Kravis,

Adam Jed, and Michael Marando—withdraw from Stone prosecution in protest.²⁰ Mr. Stone was ultimately given a 40-month jail sentence.²¹

The United States Sentencing Guidelines are a tool used to inform and structure the penalty that a convicted criminal defendant should receive based on the crime and characteristics of the defendant.²² The guidelines afford a judge discretion because they are nonbinding. Therefore, the decision of Judge Jackson to sentence Mr. Stone to 40-months does not deserve any scrutiny. It is not unusual for federal judges to impose sentences outside of the recommended sentencing guidelines—in 2018 federal judges did so in roughly a quarter of cases.²³ Here, Judge Jackson explained her decision was based on her personal assessment of relevant facts and that she would have likely chosen a sentence below the guideline range regardless of Attorney General Barr's intervention.²⁴

Improper DOJ Involvement

The Justice Department's involvement in Mr. Stone's sentencing remains suspicious for several other reasons. First, in light of the Trump Administration's position on sentencing guidelines generally, the Attorney General Barr's recommendation appears inconsistent with Justice Department policy. The administration had previously expressed, in what is colloquially referred to as "the Sessions memo," that it wanted prosecutors to recommend sentences *within* the advisory guideline range, and if prosecutors departed from that range, the reasoning should be documented. It is undisputed that the original sentencing recommendation for Mr. Stone adhered to the guideline range, so it is odd the Attorney General would deliberately and publicly undercut it without justification.²⁵ Furthermore, in its second recommendation, the Justice Department repeated many of the same arguments as Stone's *own* lawyers.²⁶ Finally, in a case like Mr. Stone's—where the defendant does not plead guilty or accept responsibility, and instead takes the case to trial—it is customary for prosecutors to at least push for a sentence within the advisory guideline range.²⁷

Judge Jackson noted that the government's second recommendation, endorsing a sentence lower than the federal sentencing guidelines would recommend, was a departure from the Trump Administration's prior actions.²⁸ At Stone's sentencing hearing, Judge Jackson responded to the "harshness" of the first recommendation: "It's not just a question of whether it was good faith, but it was fully consistent with current DOJ policy."²⁹ She followed, "The current policy of this Department of Justice is to charge and prosecute the most serious offense available in order to get the highest level guideline."³⁰

These inconsistencies suggest the Trump Administration improperly intervened in Mr. Stone's sentencing. The Department of Justice has a long history of freedom from political influence. It is uncommon for the Department to intervene in any sentencing once prosecutors have already submitted a recommendation. Many career Justice Department employees believed the Department's interference demonstrated undue influence from President Trump's political desires.³¹

Trump had publicly disapproved of the trial and conviction of Mr. Stone on multiple occasions. President Trump tweeted a condemnation of the original seven to nine year recommendation,

calling it “horrible and very unfair” and adding “[we] cannot allow this miscarriage of justice!”.³² President Trump later publicly supported Barr for intervening in the sentencing, tweeting “Congratulations to Attorney General Bill Barr for taking charge of a case that was totally out of control and perhaps should not have even been brought...”.³³ The President also suggested in a tweet that the prosecutors who withdrew did so because they “cut and ran after being exposed for recommending a ridiculous 9 year prison sentence...”.³⁴

Notably, Aaron Zelinsky—one of the prosecutors who withdrew from the case—later testified that he was told that then-acting U.S. Attorney for the District of Columbia Timothy Shea was giving Roger Stone favorable treatment because Shea was afraid of President Trump.³⁵

Additionally, around 2,000 former Justice Department officials from both Republican and Democratic administrations have signed an open letter urging Barr to resign after his Justice Department intervened in Stone’s case, calling the action by top officials at the department “unheard of.”³⁶ Barr has publicly denied that President Trump asked him to interfere, claiming that Trump has never had him “to do anything in a criminal case”, and has denounced Trump’s tweets specific to the matter. Barr said the tweets “make it impossible for me to do my job.”³⁷

Possible Future Charges

It is hard to say whether anyone could be criminally charged for the second sentencing memo. Its submission probably constituted an official act, which implicates the federal bribery statute. However, since Barr insists he never communicated with Trump about it, and Stone was the beneficiary of the act while Trump benefitted from a purported exchange of silence, a bribery charge in this instance would be incredibly difficult to prove.

Obstruction of justice—impeding an official proceeding with corrupt intent—is a more likely charge but will still be difficult to prove. It is true that the second memo *delayed* the proceeding, but by the Judge’s own admission it did not change her sentence. The memo parroted Stone’s own talking points instead of supplying a Department of Justice rationale for the change in recommendation, which itself appears obstructive of the proceeding by causing unnecessary delay in merely repeating arguments. But proving corrupt intent (which could be done by interviewing Acting U.S. Attorney Shea and others at the Department about Barr’s and Shea’s intent) would be most difficult. That’s because even if a prosecutor could demonstrate a corrupt motive—for Barr, Shea, or any other defendant—these individuals could point to their official roles as DOJ appointees and the discretion they have to recommend sentences as a possible blanket defense. In effect, they could argue that their role is to administer justice, and state that they did not believe the original recommendation was just and therefore that was their true intent. While such an argument may be judged harshly in the political sphere, it could work when considering whether obstruction occurred *without a reasonable doubt*.

Ultimately, the Justice Department is meant to be independent from politics. Attorney General William Barr’s Justice Department interference in Roger Stone’s sentencing was highly unusual. When coupled with President Trump’s insistence on leniency for his political ally, such interference is cause for concern and further investigation.

¹ *Roger Stone: Trump ally, political strategist, Nixon fan and Russia probe defendant*, BBC NEWS (Feb. 20, 2020), <https://www.bbc.com/news/world-us-canada-47002918>.

² *Roger Stone: Trump ally, political strategist, Nixon fan and Russia probe defendant*, *Supra* note i.

³ Matt Zapposky et. al., *Prosecutors quit amid escalating Justice Dept. fight over Roger Stone's prison term*, WASH. POST (Feb. 11, 2020), https://www.washingtonpost.com/national-security/justice-dept-to-reduce-sentencing-recommendation-for-trump-associate-roger-stone-official-says-after-president-calls-it-unfair/2020/02/11/ad81fd36-4cf0-11ea-bf44-f5043eb3918a_story.html.

⁴ *Roger Stone: Trump ally, political strategist, Nixon fan and Russia probe defendant*, *supra* note i.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Darren Samuelsohn and Josh Gerstein, *Roger Stone was found guilty. Now all eyes turn to Trump.*, POLITICO, (Nov. 15, 2019), <https://www.politico.com/news/2019/11/15/roger-stone-found-guilty-of-lying-to-congress-witness-tampering-071124>.

⁹ *Id.*

¹⁰ Eileen Sullivan and Sharon LaFraniere, *Here's What We Learned From Roger Stone's Indictment*, N.Y. TIMES (Jan. 25, 2019), <https://www.nytimes.com/2019/01/25/us/politics/roger-stone-indictment.html>.

¹¹ Hsu et. al., *Roger Stone guilty on all counts of lying to Congress, witness tampering*, WASH. POST (Nov. 15, 2019) https://www.washingtonpost.com/local/public-safety/roger-stone-jury-weighs-evidence-and-a-defense-move-to-make-case-about-mueller/2019/11/15/554fff5a-06ff-11ea-8292-c46ee8cb3dce_story.html.

¹² Mark Mazzetti et. al., *Indicting Roger Stone, Mueller Shows Link Between Trump Campaign and WikiLeaks*, N.Y. TIMES (Jan. 25, 2019) <https://www.nytimes.com/2019/01/25/us/politics/roger-stone-trump-mueller.html>.

¹³ *Roger Stone guilty on all counts of lying to Congress, witness tampering*, *supra* note xi.

¹⁴ Sharon LaFraniere and Zach Montague, *Roger Stone Is Convicted of Impeding Investigators in a Bid to Protect Trump*, N.Y. TIMES (Nov. 15, 2019) <https://www.nytimes.com/2019/11/15/us/politics/roger-stone-trial-guilty.html?login=email&auth=login-email&login=email&auth=login-email>.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Roger Stone: Trump ally, political strategist, Nixon fan and Russia probe defendant*, *supra* note i.

²² Noah Bookbinder, *What Barr Did for Roger Stone Is Like Nothing I've Seen Before*, N.Y. TIMES (Feb. 20, 2020) <https://www.nytimes.com/2020/02/20/opinion/roger-stone-william-barr-trump.html>.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ Darren Samuelsohn and Josh Gerstein, *Roger Stone sentenced to over 3 years in prison*, POLITICO (Feb. 20, 2020) <https://www.politico.com/news/2020/02/20/roger-stone-sentenced-to-over-three-years-in-prison-116326>.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Prosecutors quit amid escalating Justice Dept. fight over Roger Stone's prison term*, *supra* note iii.

³² Katie Benner et. al., *Prosecutors Quit Roger Stone Case After Justice Dept. Intervenes on Sentencing*, N.Y. TIMES (Feb. 11, 2020) <https://www.nytimes.com/2020/02/11/us/politics/roger-stone-sentencing.html>.

³³ Brian Naylor, *Attorney General Barr to Testify in House Amid Criticism Over Roger Stone Case*, NPR (Feb. 12, 2020) <https://www.npr.org/2020/02/12/805159485/trump-praises-attorney-general-barr-for-taking-charge-of-roger-stone-case>.

³⁴ *Prosecutors quit amid escalating Justice Dept. fight over Roger Stone's prison term*, *supra* note iii.

³⁵ Jeremy Herb and Katelyn Polantz, *Roger Stone sentencing recommendation watered down from 'highest levels,' former prosecutor tells Congress*, CNN POLITICS (Jun. 24, 2020) <https://www.cnn.com/2020/06/24/politics/house-judiciary-committee-hearing/index.html>.

³⁶ Melissa Quinn, *2,000 ex-Justice Department employees call on Barr to resign over Roger Stone case*, CBS NEWS (Feb. 18, 2020) <https://www.cbsnews.com/news/1100-ex-justice-department-employees-call-on-william-barr-to-resign-over-roger-stone-case/>.

³⁷ *Id.*