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The Manafort money laundering charges: What's in store?

By Stefan D. Cassella and Michael Zeldin

Paul Manafort and Richard Gates are under a multi-count indictment with each facing up to 20 years in federal prison, if convicted. Money laundering is the most serious crime charged and is premised on Manafort's and Gates' failure to register as foreign agents. While a money laundering case based on a failure to register with the Department of Justice as a foreign agent is not common, the allegations in the indictment, if proven, would appear to satisfy the requirements of the money laundering statute. If convicted, not only would Manafort and Gates face prison time, but they also could forfeit approximately \$18 million in assets. How strong a case Mueller has will be determined at their trial, currently scheduled to begin on May 7, 2018.

It, therefore, is not surprising that Manafort's lawyers have been pushing back. In their motion to modify the conditions of Manafort's release pending trial, they have asserted that the money laundering charge is "based on an extremely novel reading of the money laundering statute." Their argument appears to be that a money laundering case cannot be premised on a violation of the Foreign Agent Registration Act (FARA).

Two kinds of money laundering

To appreciate where the defense may be going with this argument, it is important to understand the relationship between the "specified unlawful activity" (SUA), which is the illegal activity that forms the basis for the money laundering conspiracy -- in this case, the alleged FARA violation--, and the nature and purpose of the transactions.

The money laundering count alleges that Manafort and Gates conspired to violate two relevant provisions of the money laundering statute – the provision that prohibits international money laundering, and the one that prohibits domestic money laundering.

Citing the international money laundering provision, the indictment alleges that Manafort and Gates conspired to transfer money into or out of the United States with the intent to promote the crime of failing to file as a foreign agent. .

Citing the domestic money laundering provision, it alleges that Manafort and Gates conspired to conduct transactions involving the proceeds of the FARA violation with knowledge that the transactions were designed either to conceal or disguise the source of the money or to evade taxes.

The domestic and international money laundering provisions operate differently. Whereas the domestic provision looks rearward – focusing on the source of the money being laundered, *in other words*, the proceeds of illegal activity --, the international ones looks forward, making it an offense to use money derived from any source – legal or illegal -- to commit a specified crime in the future.

So, where the domestic money laundering provision requires proof that the money is derived from another crime – in common parlance, that it is “dirty money”, the international provision does not. Under the international provision, the money can be perfectly “clean;” the crime is in using it to break the law down the road.

For example, under the domestic money laundering provision, it would be a crime to launder drug proceeds by running the money through a complex series of bank accounts and shell companies with the aim of concealing the source of the money or the defendant’s connection to it. In contrast, under the international money laundering provision, it would be an offense to send *untainted* money from the United States to Mexico for the purpose of paying for a shipment of illegal drugs.

The Manafort and Gates indictment accuses the former Trump campaign officials of conspiring to commit both types of money laundering. With respect to the international money laundering allegation, it alleges that the defendants transferred money to the United States for the purpose of “promoting” their criminal act of failing to register as foreign agents for Ukraine. (“Promotion” is defined in the law as doing something that constitutes a step in the commission of a crime, or that facilitates a crime by making it easier to commit or harder to detect.)

Accordingly, to obtain a conviction on the charge of *conspiracy* to commit international money laundering, the prosecutors would have to prove that the defendants entered into an agreement to bring money into the United States for

the purpose of promoting the FARA violation -- for instance, to pay for lobbying services on behalf of the Government of Ukraine that would have required Manafort and Gates to register as foreign agents. The prosecutors would *not* have to show that the money that they brought into the United States was derived from any earlier crime.

The international money laundering transactions listed in the indictment that Manafort allegedly conducted were from Cyprus, and to a lesser extent, from the Grenadines and the United Kingdom, to the United States. These transactions allegedly occurred over a period of several years and enabled Manafort and Gates to purchase goods, personal services, additional lobbying assistance, and real estate totaling approximately \$18 million.

Dirty money

On the other hand, the domestic money laundering provision *does* require the Government to prove that the money the defendants conspired to launder was the proceeds of a crime. Because the indictment alleges that the defendants conspired to launder the proceeds derived from their failure to register as foreign agents, , the prosecutors would have to prove the following to obtain a conviction for the domestic money laundering conspiracy.

First, they would have to show that Manafort and Gates committed or intended to violate FARA and that this offense generated or was intended to generate some proceeds. (“Proceeds” is defined as money (or other property) that the defendants obtained as a consequence of the offense, or that they would not have been able *to retain* but for having committed the offense.) For example, the prosecutors might argue that the consulting fees that Manafort and Gates earned were criminal proceeds because Manafort and Gates would not have been able to continue to earn them except for the continued evasion of the requirement to register as foreign agents.

Second, the prosecutors would have to show that the defendants agreed to conduct financial transactions that involved the proceeds derived from their failure to register as foreign agents.

Finally, the Government would have to show that the defendants agreed to conduct the financial transactions knowing that they were designed to conceal or disguise the illegal source of the money or their connection to it, *for example*, through the use of shell companies and offshore accounts, or to evade taxes.

Whether the Government can prove its allegations against Manafort and Gates, however, will be determined at trial (currently scheduled to start on May 7,

2018). Meanwhile, the two men remain under house arrest and are required to wear GPS monitoring devices. Both have pleaded not guilty to the charges.