

2. Additional Efforts to Have Sessions Unrecuse or Direct Investigations Covered by his Recusal

Later in 2017, the President continued to urge Sessions to reverse his recusal from campaign-related investigations and considered replacing Sessions with an Attorney General who would not be recused.

On October 16, 2017, the President met privately with Sessions and said that the Department of Justice was not investigating individuals and events that the President thought the Department should be investigating.⁷⁵² According to contemporaneous notes taken by Porter, who was at the meeting, the President mentioned Clinton's emails and said, "Don't have to tell us, just take [a] look."⁷⁵³ Sessions did not offer any assurances or promises to the President that the Department of Justice would comply with that request.⁷⁵⁴ Two days later, on October 18, 2017, the President tweeted, "Wow, FBI confirms report that James Comey drafted letter exonerating Crooked Hillary Clinton long before investigation was complete. Many people not interviewed, including Clinton herself. Comey stated under oath that he didn't do this-obviously a fix? Where is Justice Dept?"⁷⁵⁵ On October 29, 2017, the President tweeted that there was "ANGER & UNITY" over a "lack of investigation" of Clinton and "the Comey fix," and concluded: "DO SOMETHING!"⁷⁵⁶

On December 6, 2017, five days after Flynn pleaded guilty to lying about his contacts with the Russian government, the President asked to speak with Sessions in the Oval Office at the end of a cabinet meeting.⁷⁵⁷ During that Oval Office meeting, which Porter attended, the President again suggested that Sessions could "unrecuse," which Porter linked to taking back supervision of the Russia investigation and directing an investigation of Hillary Clinton.⁷⁵⁸ According to contemporaneous notes taken by Porter, the President said, "I don't know if you could un-recuse yourself. You'd be a hero. Not telling you to do anything. Dershowitz says POTUS can get involved. Can order AG to investigate. I don't want to get involved. I'm not going to get involved. I'm not going to do anything or direct you to do anything. I just want to be treated fairly."⁷⁵⁹ According to Porter's notes, Sessions responded, "We are taking steps; whole new leadership

⁷⁵² Porter 5/8/18 302, at 10.

⁷⁵³ SC_RRP000024 (Porter 10/16/17 Notes); *see* Porter 5/8/18 302, at 10.

⁷⁵⁴ Porter 5/8/18 302, at 10.

⁷⁵⁵ @realDonaldTrump 10/18/17 (6:21 a.m. ET) Tweet; @realDonaldTrump 10/18/17 (6:27 a.m. ET) Tweet.

⁷⁵⁶ @realDonaldTrump 10/29/17 (9:53 a.m. ET) Tweet; @realDonaldTrump 10/29/17 (10:02 a.m. ET) Tweet; @realDonaldTrump 10/29/17 (10:17 a.m. ET) Tweet.

⁷⁵⁷ Porter 4/13/18 302, at 5-6; *see* SC_RRP000031 (Porter 12/6/17 Notes) ("12:45pm With the President, Gen. Kelly, and Sessions (who I pulled in after the Cabinet meeting)"); SC_RRP000033 (Porter 12/6/17 Notes) ("Post-cabinet meeting – POTUS asked me to get AG Sessions. Asked me to stay. Also COS Kelly.").

⁷⁵⁸ Porter 5/8/18 302, at 12; Porter 4/13/18 302, at 5-6.

⁷⁵⁹ SC_RRP000033 (Porter 12/6/17 Notes); *see* Porter 4/13/18 302, at 6; Porter 5/8/18 302, at 12.

team. Professionals; will operate according to the law.”⁷⁶⁰ Sessions also said, “I never saw anything that was improper,” which Porter thought was noteworthy because it did not fit with the previous discussion about Clinton.⁷⁶¹ Porter understood Sessions to be reassuring the President that he was on the President’s team.⁷⁶²

At the end of December, the President told the New York Times it was “too bad” that Sessions had recused himself from the Russia investigation.⁷⁶³ When asked whether Holder had been a more loyal Attorney General to President Obama than Sessions was to him, the President said, “I don’t want to get into loyalty, but I will tell you that, I will say this: Holder protected President Obama. Totally protected him. When you look at the things that they did, and Holder protected the president. And I have great respect for that, I’ll be honest.”⁷⁶⁴ Later in January, the President brought up the idea of replacing Sessions and told Porter that he wanted to “clean house” at the Department of Justice.⁷⁶⁵ In a meeting in the White House residence that Porter attended on January 27, 2018, Porter recalled that the President talked about the great attorneys he had in the past with successful win records, such as Roy Cohn and Jay Goldberg, and said that one of his biggest failings as President was that he had not surrounded himself with good attorneys, citing Sessions as an example.⁷⁶⁶ The President raised Sessions’s recusal and brought up and criticized the Special Counsel’s investigation.⁷⁶⁷

Over the next several months, the President continued to criticize Sessions in tweets and media interviews and on several occasions appeared to publicly encourage him to take action in the Russia investigation despite his recusal.⁷⁶⁸ On June 5, 2018, for example, the President

⁷⁶⁰ SC_RRP000033 (Porter 12/6/17 Notes); see Porter 4/13/18 302, at 6.

⁷⁶¹ SC_RRP000033 (Porter 12/6/17 Notes); Porter 4/13/18 302, at 6.

⁷⁶² Porter 4/13/18 302, at 6-7.

⁷⁶³ Michael S. Schmidt & Michael D. Shear, *Trump Says Russia Inquiry Makes U.S. “Look Very Bad”*, New York Times (Dec. 28, 2017).

⁷⁶⁴ Michael S. Schmidt & Michael D. Shear, *Trump Says Russia Inquiry Makes U.S. “Look Very Bad”*, New York Times (Dec. 28, 2017).

⁷⁶⁵ Porter 4/13/18 302, at 14.

⁷⁶⁶ Porter 5/8/18 302, at 15. Contemporaneous notes Porter took of the conversation state, “Roy Cohn (14-0) / Jay Goldberg (12-0).” SC_RRP000047 (Porter 1/27/18 Notes).

⁷⁶⁷ Porter 5/8/18 302, at 15-16.

⁷⁶⁸ See, e.g., @realDonaldTrump 2/28/18 (9:34 a.m. ET) Tweet (“Why is A.G. Jeff Sessions asking the Inspector General to investigate potentially massive FISA abuse. Will take forever, has no prosecutorial power and already late with reports on Comey etc. Isn’t the I.G. an Obama guy? Why not use Justice Department lawyers? DISGRACEFUL!”); @realDonaldTrump 4/7/18 (4:52 p.m. ET) Tweet (“Lawmakers of the House Judiciary Committee are angrily accusing the Department of Justice of missing the Thursday Deadline for turning over UNREDACTED Documents relating to FISA abuse, FBI, Comey, Lynch, McCabe, Clinton Emails and much more. Slow walking – what is going on? BAD!”); @realDonaldTrump 4/22/18 (8:22 a.m. ET) Tweet (“‘GOP Lawmakers asking Sessions to Investigate Comey and Hillary Clinton.’ @FoxNews Good luck with that request!”); @realDonaldTrump 12/16/18 (3:37 p.m. ET) Tweet

tweeted, “The Russian Witch Hunt Hoax continues, all because Jeff Sessions didn’t tell me he was going to recuse himself. . . . I would have quickly picked someone else. So much time and money wasted, so many lives ruined . . . and Sessions knew better than most that there was No Collusion!”⁷⁶⁹ On August 1, 2018, the President tweeted that “Attorney General Jeff Sessions should stop this Rigged Witch Hunt right now.”⁷⁷⁰ On August 23, 2018, the President publicly criticized Sessions in a press interview and suggested that prosecutions at the Department of Justice were politically motivated because Paul Manafort had been prosecuted but Democrats had not.⁷⁷¹ The President said, “I put in an Attorney General that never took control of the Justice Department, Jeff Sessions.”⁷⁷² That day, Sessions issued a press statement that said, “I took control of the Department of Justice the day I was sworn in While I am Attorney General, the actions of the Department of Justice will not be improperly influenced by political considerations.”⁷⁷³ The next day, the President tweeted a response: “Department of Justice will not be improperly influenced by political considerations.’ Jeff, this is GREAT, what everyone wants, so look into all of the corruption on the ‘other side’ including deleted Emails, Comey lies & leaks, Mueller conflicts, McCabe, Strzok, Page, Ohr, FISA abuse, Christopher Steele & his phony and corrupt Dossier, the Clinton Foundation, illegal surveillance of Trump campaign, Russian collusion by Dems – and so much more. Open up the papers & documents without redaction? Come on Jeff, you can do it, the country is waiting!”⁷⁷⁴

On November 7, 2018, the day after the midterm elections, the President replaced Sessions with Sessions’s chief of staff as Acting Attorney General.⁷⁷⁵

Analysis

In analyzing the President’s efforts to have Sessions unrecuse himself and regain control of the Russia investigation, the following considerations and evidence are relevant to the elements of obstruction of justice:

a. Obstructive act. To determine if the President’s efforts to have the Attorney General unrecuse could qualify as an obstructive act, it would be necessary to assess evidence on whether those actions would naturally impede the Russia investigation. That inquiry would take into account the supervisory role that the Attorney General, if unrecused, would play in the Russia investigation. It also would have to take into account that the Attorney General’s recusal covered

(“Jeff Sessions should be ashamed of himself for allowing this total HOAX to get started in the first place!”).

⁷⁶⁹ @realDonaldTrump 6/5/18 (7:31 a.m. ET) Tweet.

⁷⁷⁰ @realDonaldTrump 8/1/18 (9:24 a.m. ET) Tweet.

⁷⁷¹ Fox & Friends Interview of President Trump, Fox News (Aug. 23, 2018).

⁷⁷² Fox & Friends Interview of President Trump, Fox News (Aug. 23, 2018).

⁷⁷³ Sessions 8/23/18 Press Statement.

⁷⁷⁴ @realDonaldTrump 8/24/18 (6:17 a.m. ET) Tweet; @realDonaldTrump 8/24/18 (6:28 a.m. ET) Tweet.

⁷⁷⁵ @realDonaldTrump 11/7/18 (2:44 p.m. ET) Tweet.

other campaign-related matters. The inquiry would not turn on what Attorney General Sessions would actually do if unrecused, but on whether the efforts to reverse his recusal would naturally have had the effect of impeding the Russia investigation.

On multiple occasions in 2017, the President spoke with Sessions about reversing his recusal so that he could take over the Russia investigation and begin an investigation and prosecution of Hillary Clinton. For example, in early summer 2017, Sessions recalled the President asking him to unrecuse, but Sessions did not take it as a directive. When the President raised the issue again in December 2017, the President said, as recorded by Porter, “Not telling you to do anything. . . . I’m not going to get involved. I’m not going to do anything or direct you to do anything. I just want to be treated fairly.” The duration of the President’s efforts—which spanned from March 2017 to August 2018—and the fact that the President repeatedly criticized Sessions in public and in private for failing to tell the President that he would have to recuse is relevant to assessing whether the President’s efforts to have Sessions unrecuse could qualify as obstructive acts.

b. Nexus to an official proceeding. As described above, by mid-June 2017, the existence of a grand jury investigation supervised by the Special Counsel was public knowledge. In addition, in July 2017, a different grand jury supervised by the Special Counsel was empaneled in the District of Columbia, and the press reported on the existence of this grand jury in early August 2017.⁷⁷⁶ Whether the conduct towards the Attorney General would have a foreseeable impact on those proceedings turns on much of the same evidence discussed above with respect to the obstructive-act element.

c. Intent. There is evidence that at least one purpose of the President’s conduct toward Sessions was to have Sessions assume control over the Russia investigation and supervise it in a way that would restrict its scope. By the summer of 2017, the President was aware that the Special Counsel was investigating him personally for obstruction of justice. And in the wake of the disclosures of emails about the June 9 meeting between Russians and senior members of the campaign, *see* Volume II, Section II.G, *supra*, it was evident that the investigation into the campaign now included the President’s son, son-in-law, and former campaign manager. The President had previously and unsuccessfully sought to have Sessions publicly announce that the Special Counsel investigation would be confined to future election interference. Yet Sessions remained recused. In December 2017, shortly after Flynn pleaded guilty, the President spoke to Sessions in the Oval Office with only Porter present and told Sessions that he would be a hero if he unrecused. Porter linked that request to the President’s desire that Sessions take back supervision of the Russia investigation and direct an investigation of Hillary Clinton. The President said in that meeting that he “just want[ed] to be treated fairly,” which could reflect his perception that it was unfair that he was being investigated while Hillary Clinton was not. But a principal effect of that act would be to restore supervision of the Russia investigation to the Attorney General—a position that the President frequently suggested should be occupied by someone like Eric Holder and Bobby Kennedy, who the President described as protecting their

⁷⁷⁶ *E.g.*, Del Quentin Wilbur & Byron Tau, *Special Counsel Robert Mueller Impanels Washington Grand Jury in Russia Probe*, Wall Street Journal (Aug. 3, 2017); Carol D. Leonnig et al., *Special Counsel Mueller using grand jury in federal court in Washington as part of Russia investigation*, Washington Post (Aug. 3, 2017).

presidents. A reasonable inference from those statements and the President's actions is that the President believed that an unrecused Attorney General would play a protective role and could shield the President from the ongoing Russia investigation.

I. The President Orders McGahn to Deny that the President Tried to Fire the Special Counsel

Overview

In late January 2018, the media reported that in June 2017 the President had ordered McGahn to have the Special Counsel fired based on purported conflicts of interest but McGahn had refused, saying he would quit instead. After the story broke, the President, through his personal counsel and two aides, sought to have McGahn deny that he had been directed to remove the Special Counsel. Each time he was approached, McGahn responded that he would not refute the press accounts because they were accurate in reporting on the President's effort to have the Special Counsel removed. The President later personally met with McGahn in the Oval Office with only the Chief of Staff present and tried to get McGahn to say that the President never ordered him to fire the Special Counsel. McGahn refused and insisted his memory of the President's direction to remove the Special Counsel was accurate. In that same meeting, the President challenged McGahn for taking notes of his discussions with the President and asked why he had told Special Counsel investigators that he had been directed to have the Special Counsel removed.

Evidence

1. The Press Reports that the President Tried to Fire the Special Counsel

On January 25, 2018, the New York Times reported that in June 2017, the President had ordered McGahn to have the Department of Justice fire the Special Counsel.⁷⁷⁷ According to the article, "[a]mid the first wave of news media reports that Mr. Mueller was examining a possible obstruction case, the president began to argue that Mr. Mueller had three conflicts of interest that disqualified him from overseeing the investigation."⁷⁷⁸ The article further reported that "[a]fter receiving the president's order to fire Mr. Mueller, the White House counsel . . . refused to ask the Justice Department to dismiss the special counsel, saying he would quit instead."⁷⁷⁹ The article stated that the president "ultimately backed down after the White House counsel threatened to resign rather than carry out the directive."⁷⁸⁰ After the article was published, the President

⁷⁷⁷ Michael S. Schmidt & Maggie Haberman, *Trump Ordered Mueller Fired, but Backed Off When White House Counsel Threatened to Quit*, New York Times (Jan. 25. 2018).

⁷⁷⁸ Michael S. Schmidt & Maggie Haberman, *Trump Ordered Mueller Fired, but Backed Off When White House Counsel Threatened to Quit*, New York Times (Jan. 25. 2018).

⁷⁷⁹ Michael S. Schmidt & Maggie Haberman, *Trump Ordered Mueller Fired, but Backed Off When White House Counsel Threatened to Quit*, New York Times (Jan. 25. 2018).

⁷⁸⁰ Michael S. Schmidt & Maggie Haberman, *Trump Ordered Mueller Fired, but Backed Off When White House Counsel Threatened to Quit*, New York Times (Jan. 25. 2018).

dismissed the story when asked about it by reporters, saying, “Fake news, folks. Fake news. A typical New York Times fake story.”⁷⁸¹

The next day, the Washington Post reported on the same event but added that McGahn had not told the President directly that he intended to resign rather than carry out the directive to have the Special Counsel terminated.⁷⁸² In that respect, the Post story clarified the Times story, which could be read to suggest that McGahn had told the President of his intention to quit, causing the President to back down from the order to have the Special Counsel fired.⁷⁸³

2. The President Seeks to Have McGahn Dispute the Press Reports

On January 26, 2018, the President’s personal counsel called McGahn’s attorney and said that the President wanted McGahn to put out a statement denying that he had been asked to fire the Special Counsel and that he had threatened to quit in protest.⁷⁸⁴ McGahn’s attorney spoke with McGahn about that request and then called the President’s personal counsel to relay that McGahn would not make a statement.⁷⁸⁵ McGahn’s attorney informed the President’s personal counsel that the Times story was accurate in reporting that the President wanted the Special Counsel removed.⁷⁸⁶ Accordingly, McGahn’s attorney said, although the article was inaccurate in some other respects, McGahn could not comply with the President’s request to dispute the story.⁷⁸⁷ Hicks recalled relaying to the President that one of his attorneys had spoken to McGahn’s attorney about the issue.⁷⁸⁸

⁷⁸¹ Sophie Tatum & Kara Scannell, *Trump denies he called for Mueller's firing*, CNN (Jan. 26, 2018); Michael S. Schmidt & Maggie Haberman, *Trump Ordered Mueller Fired, but Backed Off When White House Counsel Threatened to Quit*, New York Times (Jan. 25, 2018).

⁷⁸² The *Post* article stated, “Despite internal objections, Trump decided to assert that Mueller had unacceptable conflicts of interest and moved to remove him from his position. . . . In response, McGahn said he would not remain at the White House if Trump went through with the move. . . . McGahn did not deliver his resignation threat directly to Trump but was serious about his threat to leave.” Rosalind S. Helderman & Josh Dawsey, *Trump moved to fire Mueller in June, bringing White House counsel to the brink of leaving*, Washington Post (Jan. 26, 2018).

⁷⁸³ Rosalind S. Helderman & Josh Dawsey, *Trump moved to fire Mueller in June, bringing White House counsel to the brink of leaving*, Washington Post (Jan. 26, 2018); see McGahn 3/8/17 302, at 3-4.

⁷⁸⁴ McGahn 3/8/18 302, at 3 (agent note).

⁷⁸⁵ McGahn 3/8/18 302, at 3 (agent note).

⁷⁸⁶ McGahn 3/8/18 302, at 3-4 (agent note).

⁷⁸⁷ McGahn 3/8/18 302, at 4 (agent note).

⁷⁸⁸ Hicks 3/13/18 302, at 11. Hicks also recalled that the President spoke on the phone that day with Chief of Staff John Kelly and that the President said Kelly told him that McGahn had totally refuted the story and was going to put out a statement. Hicks 3/13/18 302, at 11. But Kelly said that he did not speak to McGahn when the article came out and did not tell anyone he had done so. Kelly 8/2/18 302, at 1-2.

Also on January 26, 2017, Hicks recalled that the President asked Sanders to contact McGahn about the story.⁷⁸⁹ McGahn told Sanders there was no need to respond and indicated that some of the article was accurate.⁷⁹⁰ Consistent with that position, McGahn did not correct the *Times* story.

On February 4, 2018, Priebus appeared on Meet the Press and said he had not heard the President say that he wanted the Special Counsel fired.⁷⁹¹ After Priebus's appearance, the President called Priebus and said he did a great job on Meet the Press.⁷⁹² The President also told Priebus that the President had "never said any of those things about" the Special Counsel.⁷⁹³

The next day, on February 5, 2018, the President complained about the *Times* article to Porter.⁷⁹⁴ The President told Porter that the article was "bullshit" and he had not sought to terminate the Special Counsel.⁷⁹⁵ The President said that McGahn leaked to the media to make himself look good.⁷⁹⁶ The President then directed Porter to tell McGahn to create a record to make clear that the President never directed McGahn to fire the Special Counsel.⁷⁹⁷ Porter thought the matter should be handled by the White House communications office, but the President said he wanted McGahn to write a letter to the file "for our records" and wanted something beyond a press statement to demonstrate that the reporting was inaccurate.⁷⁹⁸ The President referred to McGahn as a "lying bastard" and said that he wanted a record from him.⁷⁹⁹ Porter recalled the President

⁷⁸⁹ Hicks 3/13/18 302, at 11. Sanders did not recall whether the President asked her to speak to McGahn or if she did it on her own. Sanders 7/23/18 302, at 2.

⁷⁹⁰ Sanders 7/23/18 302, at 1-2.

⁷⁹¹ Meet the Press Interview with Reince Priebus, NBC (Feb. 4, 2018).

⁷⁹² Priebus 4/3/18 302, at 10.

⁷⁹³ Priebus 4/3/18 302, at 10.

⁷⁹⁴ Porter 4/13/18 302, at 16-17. Porter did not recall the timing of this discussion with the President. Porter 4/13/18 302, at 17. Evidence indicates it was February 5, 2018. On the back of a pocket card dated February 5, 2018, Porter took notes that are consistent with his description of the discussion: "COS: (1) Letter from DM – Never threatened to quit – DJT never told him to fire M." SC_RRP000053 (Porter Undated Notes). Porter said it was possible he took the notes on a day other than February 5. Porter 4/13/18 302, at 17. But Porter also said that "COS" referred to matters he wanted to discuss with Chief of Staff Kelly, Porter 4/13/18 302, at 17, and Kelly took notes dated February 5, 2018, that state "POTUS – Don McGahn letter – Mueller + resigning." WH000017684 (Kelly 2/5/18 Notes). Kelly said he did not recall what the notes meant, but thought the President may have "mused" about having McGahn write a letter. Kelly 8/2/18 302, at 3. McGahn recalled that Porter spoke with him about the President's request about two weeks after the New York Times story was published, which is consistent with the discussion taking place on or about February 5. McGahn 3/8/18 302, at 4.

⁷⁹⁵ Porter 4/13/18 302, at 17.

⁷⁹⁶ Porter 4/13/18 302, at 17.

⁷⁹⁷ Porter 4/13/18 302, at 17.

⁷⁹⁸ Porter 4/13/18 302, at 17; Porter 5/8/18 302, at 18.

⁷⁹⁹ Porter 4/13/18 302, at 17; Porter 5/8/18 302, at 18.

saying something to the effect of, "If he doesn't write a letter, then maybe I'll have to get rid of him."⁸⁰⁰

Later that day, Porter spoke to McGahn to deliver the President's message.⁸⁰¹ Porter told McGahn that he had to write a letter to dispute that he was ever ordered to terminate the Special Counsel.⁸⁰² McGahn shrugged off the request, explaining that the media reports were true.⁸⁰³ McGahn told Porter that the President had been insistent on firing the Special Counsel and that McGahn had planned to resign rather than carry out the order, although he had not personally told the President he intended to quit.⁸⁰⁴ Porter told McGahn that the President suggested that McGahn would be fired if he did not write the letter.⁸⁰⁵ McGahn dismissed the threat, saying that the optics would be terrible if the President followed through with firing him on that basis.⁸⁰⁶ McGahn said he would not write the letter the President had requested.⁸⁰⁷ Porter said that to his knowledge the issue of McGahn's letter never came up with the President again, but Porter did recall telling Kelly about his conversation with McGahn.⁸⁰⁸

The next day, on February 6, 2018, Kelly scheduled time for McGahn to meet with him and the President in the Oval Office to discuss the Times article.⁸⁰⁹ The morning of the meeting, the President's personal counsel called McGahn's attorney and said that the President was going to be speaking with McGahn and McGahn could not resign no matter what happened in the meeting.⁸¹⁰

The President began the Oval Office meeting by telling McGahn that the New York Times story did not "look good" and McGahn needed to correct it.⁸¹¹ McGahn recalled the President said, "I never said to fire Mueller. I never said 'fire.' This story doesn't look good. You need to correct this. You're the White House counsel."⁸¹²

⁸⁰⁰ Porter 4/13/18 302, at 17.

⁸⁰¹ Porter 4/13/18 302, at 17; McGahn 3/8/18 302, at 4.

⁸⁰² Porter 4/13/18 302, at 17; McGahn 3/8/18 302, at 4.

⁸⁰³ Porter 4/13/18 302, at 17; McGahn 3/8/18 302, at 4.

⁸⁰⁴ Porter 4/13/18 302, at 17; McGahn 3/8/18 302, at 4.

⁸⁰⁵ Porter 4/13/18 302, at 17; McGahn 3/8/18 302, at 4.

⁸⁰⁶ Porter 4/13/18 302, at 17-18; McGahn 3/8/18 302, at 4.

⁸⁰⁷ McGahn 3/8/18 302, at 4.

⁸⁰⁸ Porter 4/13/18 302, at 18.

⁸⁰⁹ McGahn 3/8/18 302, at 4; WH000017685 (Kelly 2/6/18 Notes). McGahn recalled that, before the Oval Office meeting, he told Kelly that he was not inclined to fix the article. McGahn 3/8/18 302, at 4.

⁸¹⁰ McGahn 3/8/18 302, at 5 (agent note); 2/26/19 Email, Counsel for Don McGahn to Special Counsel's Office (confirming February 6, 2018 date of call from the President's personal counsel).

⁸¹¹ McGahn 3/8/18 302, at 4; Kelly 8/2/18 302, at 2.

⁸¹² McGahn 3/8/18 302, at 4; Kelly 8/2/18 302, at 2.

In response, McGahn acknowledged that he had not told the President directly that he planned to resign, but said that the story was otherwise accurate.⁸¹³ The President asked McGahn, “Did I say the word ‘fire’?”⁸¹⁴ McGahn responded, “What you said is, ‘Call Rod [Rosenstein], tell Rod that Mueller has conflicts and can’t be the Special Counsel.’”⁸¹⁵ The President responded, “I never said that.”⁸¹⁶ The President said he merely wanted McGahn to raise the conflicts issue with Rosenstein and leave it to him to decide what to do.⁸¹⁷ McGahn told the President he did not understand the conversation that way and instead had heard, “Call Rod. There are conflicts. Mueller has to go.”⁸¹⁸ The President asked McGahn whether he would “do a correction,” and McGahn said no.⁸¹⁹ McGahn thought the President was testing his mettle to see how committed McGahn was to what happened.⁸²⁰ Kelly described the meeting as “a little tense.”⁸²¹

The President also asked McGahn in the meeting why he had told Special Counsel’s Office investigators that the President had told him to have the Special Counsel removed.⁸²² McGahn responded that he had to and that his conversations with the President were not protected by attorney-client privilege.⁸²³ The President then asked, “What about these notes? Why do you take notes? Lawyers don’t take notes. I never had a lawyer who took notes.”⁸²⁴ McGahn responded that he keeps notes because he is a “real lawyer” and explained that notes create a record and are not a bad thing.⁸²⁵ The President said, “I’ve had a lot of great lawyers, like Roy Cohn. He did not take notes.”⁸²⁶

After the Oval Office meeting concluded, Kelly recalled McGahn telling him that McGahn and the President “did have that conversation” about removing the Special Counsel.⁸²⁷ McGahn recalled that Kelly said that he had pointed out to the President after the Oval Office that McGahn

⁸¹³ McGahn 3/8/18 302, at 4.

⁸¹⁴ McGahn 3/8/18 302, at 4; Kelly 8/2/18 302, at 2.

⁸¹⁵ McGahn 3/8/18 302, at 5.

⁸¹⁶ McGahn 3/8/18 302, at 5.

⁸¹⁷ McGahn 3/8/18 302, at 5.

⁸¹⁸ McGahn 3/8/18 302, at 5.

⁸¹⁹ McGahn 3/8/18 302, at 5; Kelly 8/2/18 302, at 2.

⁸²⁰ McGahn 3/8/18 302, at 5.

⁸²¹ Kelly 8/2/18 302, at 2.

⁸²² McGahn 3/8/18 302, at 5.

⁸²³ McGahn 3/8/18 302, at 5.

⁸²⁴ McGahn 3/8/18 302, at 5. McGahn said the President was referring to Donaldson’s notes, which the President thought of as McGahn’s notes. McGahn 3/8/18 302, at 5.

⁸²⁵ McGahn 3/8/18 302, at 5.

⁸²⁶ McGahn 3/8/18 302, at 5.

⁸²⁷ Kelly 8/2/18 302, at 2.

had not backed down and would not budge.⁸²⁸ Following the Oval Office meeting, the President's personal counsel called McGahn's counsel and relayed that the President was "fine" with McGahn.⁸²⁹

Analysis

In analyzing the President's efforts to have McGahn deny that he had been ordered to have the Special Counsel removed, the following evidence is relevant to the elements of obstruction of justice:

a. Obstructive act. The President's repeated efforts to get McGahn to create a record denying that the President had directed him to remove the Special Counsel would qualify as an obstructive act if it had the natural tendency to constrain McGahn from testifying truthfully or to undermine his credibility as a potential witness if he testified consistently with his memory, rather than with what the record said.

There is some evidence that at the time the New York Times and Washington Post stories were published in late January 2018, the President believed the stories were wrong and that he had never told McGahn to have Rosenstein remove the Special Counsel. The President correctly understood that McGahn had not told the President directly that he planned to resign. In addition, the President told Priebus and Porter that he had not sought to terminate the Special Counsel, and in the Oval Office meeting with McGahn, the President said, "I never said to fire Mueller. I never said 'fire.'" That evidence could indicate that the President was not attempting to persuade McGahn to change his story but was instead offering his own—but different—recollection of the substance of his June 2017 conversations with McGahn and McGahn's reaction to them.

Other evidence cuts against that understanding of the President's conduct. As previously described, *see* Volume II, Section II.E, *supra*, substantial evidence supports McGahn's account that the President had directed him to have the Special Counsel removed, including the timing and context of the President's directive; the manner in which McGahn reacted; and the fact that the President had been told the conflicts were insubstantial, were being considered by the Department of Justice, and should be raised with the President's personal counsel rather than brought to McGahn. In addition, the President's subsequent denials that he had told McGahn to have the Special Counsel removed were carefully worded. When first asked about the New York Times story, the President said, "Fake news, folks. Fake news. A typical New York Times fake story." And when the President spoke with McGahn in the Oval Office, he focused on whether he had used the word "fire," saying, "I never said to fire Mueller. I never said 'fire'" and "Did I say the word 'fire'?" The President's assertion in the Oval Office meeting that he had never directed McGahn to have the Special Counsel removed thus runs counter to the evidence.

In addition, even if the President sincerely disagreed with McGahn's memory of the June 17, 2017 events, the evidence indicates that the President knew by the time of the Oval Office

⁸²⁸ McGahn 3/8/18 302, at 5. Kelly did not recall discussing the Oval Office meeting with the President after the fact. Kelly 8/2/18 302, at 2. Handwritten notes taken by Kelly state, "Don[:] Mueller discussion in June. - Bannon Priebus - came out okay." WH000017685 (Kelly 2/6/18 Notes).

⁸²⁹ McGahn 3/8/18 302, at 5 (agent note).

meeting that McGahn's account differed and that McGahn was firm in his views. Shortly after the story broke, the President's counsel told McGahn's counsel that the President wanted McGahn to make a statement denying he had been asked to fire the Special Counsel, but McGahn responded through his counsel that that aspect of the story was accurate and he therefore could not comply with the President's request. The President then directed Sanders to tell McGahn to correct the story, but McGahn told her he would not do so because the story was accurate in reporting on the President's order. Consistent with that position, McGahn never issued a correction. More than a week later, the President brought up the issue again with Porter, made comments indicating the President thought McGahn had leaked the story, and directed Porter to have McGahn create a record denying that the President had tried to fire the Special Counsel. At that point, the President said he might "have to get rid of" McGahn if McGahn did not comply. McGahn again refused and told Porter, as he had told Sanders and as his counsel had told the President's counsel, that the President had in fact ordered him to have Rosenstein remove the Special Counsel. That evidence indicates that by the time of the Oval Office meeting the President was aware that McGahn did not think the story was false and did not want to issue a statement or create a written record denying facts that McGahn believed to be true. The President nevertheless persisted and asked McGahn to repudiate facts that McGahn had repeatedly said were accurate.

b. Nexus to an official proceeding. By January 2018, the Special Counsel's use of a grand jury had been further confirmed by the return of several indictments. The President also was aware that the Special Counsel was investigating obstruction-related events because, among other reasons, on January 8, 2018, the Special Counsel's Office provided his counsel with a detailed list of topics for a possible interview with the President.⁸³⁰ The President knew that McGahn had personal knowledge of many of the events the Special Counsel was investigating and that McGahn had already been interviewed by Special Counsel investigators. And in the Oval Office meeting, the President indicated he knew that McGahn had told the Special Counsel's Office about the President's effort to remove the Special Counsel. The President challenged McGahn for disclosing that information and for taking notes that he viewed as creating unnecessary legal exposure. That evidence indicates the President's awareness that the June 17, 2017 events were relevant to the Special Counsel's investigation and any grand jury investigation that might grow out of it.

To establish a nexus, it would be necessary to show that the President's actions would have the natural tendency to affect such a proceeding or that they would hinder, delay, or prevent the communication of information to investigators. Because McGahn had spoken to Special Counsel investigators before January 2018, the President could not have been seeking to influence his prior statements in those interviews. But because McGahn had repeatedly spoken to investigators and the obstruction inquiry was not complete, it was foreseeable that he would be interviewed again on obstruction-related topics. If the President were focused solely on a press strategy in seeking to have McGahn refute the New York Times article, a nexus to a proceeding or to further investigative interviews would not be shown. But the President's efforts to have McGahn write a letter "for our records" approximately ten days after the stories had come out—well past the typical

⁸³⁰ 1/29/18 Letter, President's Personal Counsel to Special Counsel's Office, at 1-2 ("In our conversation of January 8, your office identified the following topics as areas you desired to address with the President in order to complete your investigation on the subjects of alleged collusion and obstruction of justice"; listing 16 topics).

time to issue a correction for a news story—indicates the President was not focused solely on a press strategy, but instead likely contemplated the ongoing investigation and any proceedings arising from it.

c. Intent. Substantial evidence indicates that in repeatedly urging McGahn to dispute that he was ordered to have the Special Counsel terminated, the President acted for the purpose of influencing McGahn's account in order to deflect or prevent further scrutiny of the President's conduct towards the investigation.

Several facts support that conclusion. The President made repeated attempts to get McGahn to change his story. As described above, by the time of the last attempt, the evidence suggests that the President had been told on multiple occasions that McGahn believed the President had ordered him to have the Special Counsel terminated. McGahn interpreted his encounter with the President in the Oval Office as an attempt to test his mettle and see how committed he was to his memory of what had occurred. The President had already laid the groundwork for pressing McGahn to alter his account by telling Porter that it might be necessary to fire McGahn if he did not deny the story, and Porter relayed that statement to McGahn. Additional evidence of the President's intent may be gleaned from the fact that his counsel was sufficiently alarmed by the prospect of the President's meeting with McGahn that he called McGahn's counsel and said that McGahn could not resign no matter what happened in the Oval Office that day. The President's counsel was well aware of McGahn's resolve not to issue what he believed to be a false account of events despite the President's request. Finally, as noted above, the President brought up the Special Counsel investigation in his Oval Office meeting with McGahn and criticized him for telling this Office about the June 17, 2017 events. The President's statements reflect his understanding—and his displeasure—that those events would be part of an obstruction-of-justice inquiry.

J. The President's Conduct Towards Flynn, Manafort, HOM

Overview

In addition to the interactions with McGahn described above, the President has taken other actions directed at possible witnesses in the Special Counsel's investigation, including Flynn, Manafort, HOM and as described in the next section, Cohen. When Flynn withdrew from a joint defense agreement with the President, the President's personal counsel stated that Flynn's actions would be viewed as reflecting "hostility" towards the President. During Manafort's prosecution and while the jury was deliberating, the President repeatedly stated that Manafort was being treated unfairly and made it known that Manafort could receive a pardon. Harm to Ongoing Matter

Evidence

1. Conduct Directed at Michael Flynn

As previously noted, *see* Volume II, Section II.B, *supra*, the President asked for Flynn's resignation on February 13, 2017. Following Flynn's resignation, the President made positive public comments about Flynn, describing him as a "wonderful man," "a fine person," and a "very

good person.”⁸³¹ The President also privately asked advisors to pass messages to Flynn conveying that the President still cared about him and encouraging him to stay strong.⁸³²

In late November 2017, Flynn began to cooperate with this Office. On November 22, 2017, Flynn withdrew from a joint defense agreement he had with the President.⁸³³ Flynn’s counsel told the President’s personal counsel and counsel for the White House that Flynn could no longer have confidential communications with the White House or the President.⁸³⁴ Later that night, the President’s personal counsel left a voicemail for Flynn’s counsel that said:

I understand your situation, but let me see if I can’t state it in starker terms. . . . [I]t wouldn’t surprise me if you’ve gone on to make a deal with . . . the government. . . . [I]f . . . there’s information that implicates the President, then we’ve got a national security issue, . . . so, you know, . . . we need some kind of heads up. Um, just for the sake of protecting all our interests if we can. . . . [R]emember what we’ve always said about the President and his feelings toward Flynn and, that still remains⁸³⁵

On November 23, 2017, Flynn’s attorneys returned the call from the President’s personal counsel to acknowledge receipt of the voicemail.⁸³⁶ Flynn’s attorneys reiterated that they were no longer in a position to share information under any sort of privilege.⁸³⁷ According to Flynn’s attorneys, the President’s personal counsel was indignant and vocal in his disagreement.⁸³⁸ The President’s personal counsel said that he interpreted what they said to him as a reflection of Flynn’s

⁸³¹ See, e.g., *Remarks by President Trump in Press Conference*, White House (Feb. 16, 2018) (stating that “Flynn is a fine person” and “I don’t think [Flynn] did anything wrong. If anything, he did something right . . . You know, he was just doing his job”); *Interview of Donald J. Trump*, NBC (May 11, 2017) (stating that Flynn is a “very good person”).

⁸³² See Priebus 1/18/17 302, at 9-10 (the President asked Priebus to contact Flynn the week he was terminated to convey that the President still cared about him and felt bad about what happened to him; Priebus thought the President did not want Flynn to have a problem with him); McFarland 12/22/17 302, at 18 (about a month or two after Flynn was terminated, the President asked McFarland to get in touch with Flynn and tell him that he was a good guy, he should stay strong, and the President felt bad for him); Flynn 1/19/18 302, at 9 (recalling the call from Priebus and an additional call from Hicks who said she wanted to relay on behalf of the President that the President hoped Flynn was okay); Christie 2/13/19 302, at 3 (describing a phone conversation between Kushner and Flynn the day after Flynn was fired where Kushner said, “You know the President respects you. The President cares about you. I’ll get the President to send out a positive tweet about you later,” and the President nodded his assent to Kushner’s comment promising a tweet).

⁸³³ Counsel for Flynn 3/1/18 302, at 1.

⁸³⁴ Counsel for Flynn 3/1/18 302, at 1.

⁸³⁵ 11/22/17 Voicemail Transcript, President’s Personal Counsel to Counsel for Michael Flynn.

⁸³⁶ Counsel for Flynn 3/1/18 302, at 1.

⁸³⁷ Counsel for Flynn 3/1/18 302, at 1.

⁸³⁸ Counsel for Flynn 3/1/18 302, at 1.

hostility towards the President and that he planned to inform his client of that interpretation.⁸³⁹ Flynn's attorneys understood that statement to be an attempt to make them reconsider their position because the President's personal counsel believed that Flynn would be disturbed to know that such a message would be conveyed to the President.⁸⁴⁰

On December 1, 2017, Flynn pleaded guilty to making false statements pursuant to a cooperation agreement.⁸⁴¹ The next day, the President told the press that he was not concerned about what Flynn might tell the Special Counsel.⁸⁴² In response to a question about whether the President still stood behind Flynn, the President responded, "We'll see what happens."⁸⁴³ Over the next several days, the President made public statements expressing sympathy for Flynn and indicating he had not been treated fairly.⁸⁴⁴ On December 15, 2017, the President responded to a press inquiry about whether he was considering a pardon for Flynn by saying, "I don't want to talk about pardons for Michael Flynn yet. We'll see what happens. Let's see. I can say this: When you look at what's gone on with the FBI and with the Justice Department, people are very, very angry."⁸⁴⁵

2. Conduct Directed at Paul Manafort

On October 27, 2017, a grand jury in the District of Columbia indicted Manafort and former deputy campaign manager Richard Gates on multiple felony counts, and on February 22, 2018, a grand jury in the Eastern District of Virginia indicted Manafort and Gates on additional felony

⁸³⁹ Counsel for Flynn 3/1/18 302, at 2. Because of attorney-client privilege issues, we did not seek to interview the President's personal counsel about the extent to which he discussed his statements to Flynn's attorneys with the President.

⁸⁴⁰ Counsel for Flynn 3/1/18 302, at 2.

⁸⁴¹ Information, *United States v. Michael T. Flynn*, 1:17-cr-232 (D.D.C. Dec. 1, 2017), Doc. 1; Plea Agreement, *United States v. Michael T. Flynn*, 1:17-cr-232 (D.D.C. Dec. 1, 2017), Doc. 3.

⁸⁴² *President Trump Remarks on Tax Reform and Michael Flynn's Guilty Plea*, C-SPAN (Dec. 2, 2017).

⁸⁴³ *President Trump Remarks on Tax Reform and Michael Flynn's Guilty Plea*, C-SPAN (Dec. 2, 2017).

⁸⁴⁴ See @realDonaldTrump 12/2/17 (9:06 p.m. ET) Tweet ("So General Flynn lies to the FBI and his life is destroyed, while Crooked Hillary Clinton, on that now famous FBI holiday 'interrogation' with no swearing in and no recording, lies many times . . . and nothing happens to her? Rigged system, or just a double standard?"); President Trump Departure Remarks, C-SPAN (Dec. 4, 2017) ("Well, I feel badly for General Flynn. I feel very badly. He's led a very strong life. And I feel very badly.").

⁸⁴⁵ *President Trump White House Departure*, C-SPAN (Dec. 15, 2017).

counts.⁸⁴⁶ The charges in both cases alleged criminal conduct by Manafort that began as early as 2005 and continued through 2018.⁸⁴⁷

In January 2018, Manafort told Gates that he had talked to the President's personal counsel and they were "going to take care of us."⁸⁴⁸ Manafort told Gates it was stupid to plead, saying that he had been in touch with the President's personal counsel and repeating that they should "sit tight" and "we'll be taken care of."⁸⁴⁹ Gates asked Manafort outright if anyone mentioned pardons and Manafort said no one used that word.⁸⁵⁰

As the proceedings against Manafort progressed in court, the President told Porter that he never liked Manafort and that Manafort did not know what he was doing on the campaign.⁸⁵¹ The President discussed with aides whether and in what way Manafort might be cooperating with the Special Counsel's investigation, and whether Manafort knew any information that would be harmful to the President.⁸⁵²

In public, the President made statements criticizing the prosecution and suggesting that Manafort was being treated unfairly. On June 15, 2018, before a scheduled court hearing that day on whether Manafort's bail should be revoked based on new charges that Manafort had tampered with witnesses while out on bail, the President told the press, "I feel badly about a lot of them

⁸⁴⁶ Indictment, *United States v. Paul J. Manafort, Jr. and Richard W. Gates III*, 1:17-cr-201 (D.D.C. Oct. 27, 2017), Doc. 13 ("*Manafort and Gates D.D.C. Indictment*"); Indictment, *United States v. Paul J. Manafort, Jr. and Richard W. Gates III*, 1:18-cr-83 (E.D. Va. Feb. 22, 2018), Doc. 9 ("*Manafort and Gates E.D. Va. Indictment*")

⁸⁴⁷ *Manafort and Gates D.D.C. Indictment*; *Manafort and Gates E.D. Va. Indictment*.

⁸⁴⁸ Gates 4/18/18 302, at 4. In February 2018, Gates pleaded guilty, pursuant to a cooperation plea agreement, to a superseding criminal information charging him with conspiring to defraud and commit multiple offenses (*i.e.*, tax fraud, failure to report foreign bank accounts, and acting as an unregistered agent of a foreign principal) against the United States, as well as making false statements to our Office. Superseding Criminal Information, *United States v. Richard W. Gates III*, 1:17-cr-201 (D.D.C. Feb. 23, 2018), Doc. 195; Plea Agreement, *United States v. Richard W. Gates III*, 1:17-cr-201 (D.D.C. Feb. 23, 2018), Doc. 205. Gates has provided information and in-court testimony that the Office has deemed to be reliable.

⁸⁴⁹ Gates 4/18/18 302, at 4.

⁸⁵⁰ Gates 4/18/18 302, at 4. Manafort told this Office that he never told Gates that he had talked to the President's personal counsel or suggested that they would be taken care of. Manafort also said he hoped for a pardon but never discussed one with the President, although he noticed the President's public comments about pardons. Manafort 10/1/18 302, at 11. As explained in Volume I, Section IV.A.8, *supra*, Manafort entered into a plea agreement with our Office. The U.S. District Court for the District of Columbia determined that he breached the agreement by being untruthful in proffer sessions and before the grand jury. Order, *United States v. Manafort*, 1:17-cr-201 (D.D.C. Feb. 13, 2019), Doc. 503.

⁸⁵¹ Porter 5/8/18 302, at 11. Priebus recalled that the President never really liked Manafort. *See* Priebus 4/3/18 302, at 11. Hicks said that candidate Trump trusted Manafort's judgment while he worked on the Campaign, but she also once heard Trump tell Gates to keep an eye on Manafort. Hicks 3/13/18 302, at 16.

⁸⁵² Porter 5/8/18 302, at 11; McGahn 12/14/17 302, at 14.

because I think a lot of it is very unfair. I mean, I look at some of them where they go back 12 years. Like Manafort has nothing to do with our campaign. But I feel so—I tell you, I feel a little badly about it. They went back 12 years to get things that he did 12 years ago? . . . I feel badly for some people, because they’ve gone back 12 years to find things about somebody, and I don’t think it’s right.”⁸⁵³ In response to a question about whether he was considering a pardon for Manafort or other individuals involved in the Special Counsel’s investigation, the President said, “I don’t want to talk about that. No, I don’t want to talk about that. . . . But look, I do want to see people treated fairly. That’s what it’s all about.”⁸⁵⁴ Hours later, Manafort’s bail was revoked and the President tweeted, “Wow, what a tough sentence for Paul Manafort, who has represented Ronald Reagan, Bob Dole and many other top political people and campaigns. Didn’t know Manafort was the head of the Mob. What about Comey and Crooked Hillary and all the others? Very unfair!”⁸⁵⁵

Immediately following the revocation of Manafort’s bail, the President’s personal lawyer, Rudolph Giuliani, gave a series of interviews in which he raised the possibility of a pardon for Manafort. Giuliani told the New York Daily News that “[w]hen the whole thing is over, things might get cleaned up with some presidential pardons.”⁸⁵⁶ Giuliani also said in an interview that, although the President should not pardon anyone while the Special Counsel’s investigation was ongoing, “when the investigation is concluded, he’s kind of on his own, right?”⁸⁵⁷ In a CNN interview two days later, Giuliani said, “I guess I should clarify this once and for all. . . . The president has issued no pardons in this investigation. The president is not going to issue pardons in this investigation. . . . When it’s over, hey, he’s the president of the United States. He retains his pardon power. Nobody is taking that away from him.”⁸⁵⁸ Giuliani rejected the suggestion that his and the President’s comments could signal to defendants that they should not cooperate in a criminal prosecution because a pardon might follow, saying the comments were “certainly not intended that way.”⁸⁵⁹ Giuliani said the comments only acknowledged that an individual involved in the investigation would not be “excluded from [a pardon], if in fact the president and his advisors . . . come to the conclusion that you have been treated unfairly.”⁸⁶⁰ Giuliani observed that pardons were not unusual in political investigations but said, “That doesn’t mean they’re going to happen

⁸⁵³ Remarks by President Trump in Press Gaggle, White House (June 15, 2018).

⁸⁵⁴ Remarks by President Trump in Press Gaggle, White House (June 15, 2018).

⁸⁵⁵ @realDonaldTrump 6/15/18 (1:41 p.m. ET) Tweet.

⁸⁵⁶ Chris Sommerfeldt, *Rudy Giuliani says Mueller probe ‘might get cleaned up’ with ‘presidential pardons’ in light of Paul Manafort going to jail*, New York Daily News (June 15, 2018).

⁸⁵⁷ Sharon LaFraniere, *Judge Orders Paul Manafort Jailed Before Trial, Citing New Obstruction Charges*, New York Times (June 15, 2018) (quoting Giuliani).

⁸⁵⁸ *State of the Union with Jake Tapper Transcript*, CNN (June 17, 2018); see Karoun Demirjian, *Giuliani suggests Trump may pardon Manafort after Mueller’s probe*, Washington Post (June 17, 2018).

⁸⁵⁹ *State of the Union with Jake Tapper Transcript*, CNN (June 17, 2018).

⁸⁶⁰ *State of the Union with Jake Tapper Transcript*, CNN (June 17, 2018).

here. Doesn't mean that anybody should rely on it. . . . Big signal is, nobody has been pardoned yet."⁸⁶¹

On July 31, 2018, Manafort's criminal trial began in the Eastern District of Virginia, generating substantial news coverage.⁸⁶² The next day, the President tweeted, "This is a terrible situation and Attorney General Jeff Sessions should stop this Rigged Witch Hunt right now, before it continues to stain our country any further. Bob Mueller is totally conflicted, and his 17 Angry Democrats that are doing his dirty work are a disgrace to USA!"⁸⁶³ Minutes later, the President tweeted, "Paul Manafort worked for Ronald Reagan, Bob Dole and many other highly prominent and respected political leaders. He worked for me for a very short time. Why didn't government tell me that he was under investigation. These old charges have nothing to do with Collusion—a Hoax!"⁸⁶⁴ Later in the day, the President tweeted, "Looking back on history, who was treated worse, Alfonse Capone, legendary mob boss, killer and 'Public Enemy Number One,' or Paul Manafort, political operative & Reagan/Dole darling, now serving solitary confinement—although convicted of nothing? Where is the Russian Collusion?"⁸⁶⁵ The President's tweets about the Manafort trial were widely covered by the press.⁸⁶⁶ When asked about the President's tweets, Sanders told the press, "Certainly, the President's been clear. He thinks Paul Manafort's been treated unfairly."⁸⁶⁷

On August 16, 2018, the Manafort case was submitted to the jury and deliberations began. At that time, Giuliani had recently suggested to reporters that the Special Counsel investigation needed to be "done in the next two or three weeks,"⁸⁶⁸ and media stories reported that a Manafort acquittal would add to criticism that the Special Counsel investigation was not worth the time and expense, whereas a conviction could show that ending the investigation would be premature.⁸⁶⁹

⁸⁶¹ *State of the Union with Jake Tapper Transcript*, CNN (June 17, 2018).

⁸⁶² See, e.g., Katelyn Polantz, *Takeaways from day one of the Paul Manafort trial*, CNN (July 31, 2018); Frank Bruni, *Paul Manafort's Trial Is Donald Trump's, Too*, New York Times Opinion (July 31, 2018); Rachel Weiner et al., *Paul Manafort trial Day 2: Witnesses describe extravagant clothing purchases, home remodels, lavish cars paid with wire transfers*, Washington Post (Aug. 1, 2018).

⁸⁶³ @realDonaldTrump 8/1/18 (9:24 a.m. ET) Tweet. Later that day, when Sanders was asked about the President's tweet, she told reporters, "It's not an order. It's the President's opinion." Sarah Sanders, *White House Daily Briefing*, C-SPAN (Aug. 1, 2018).

⁸⁶⁴ @realDonaldTrump 8/1/18 (9:34 a.m. ET) Tweet.

⁸⁶⁵ @realDonaldTrump 8/1/18 (11:35 a.m. ET) Tweet.

⁸⁶⁶ See, e.g., Carol D. Leonnig et al., *Trump calls Manafort prosecution "a hoax," says Sessions should stop Mueller investigation "right now"*, Washington Post (Aug. 1, 2018); Louis Nelson, *Trump claims Manafort case has "nothing to do with collusion"*, Politico (Aug. 1, 2018).

⁸⁶⁷ Sarah Sanders, *White House Daily Briefing*, C-SPAN (Aug. 1, 2018).

⁸⁶⁸ Chris Strohm & Shannon Pettypiece, *Mueller Probe Doesn't Need to Shut Down Before Midterms, Officials Say*, Bloomberg (Aug. 15, 2018).

⁸⁶⁹ See, e.g., Katelyn Polantz et al., *Manafort jury ends first day of deliberations without a verdict*, CNN (Aug. 16, 2018); David Voreacos, *What Mueller's Manafort Case Means for the Trump Battle to*

On August 17, 2018, as jury deliberations continued, the President commented on the trial from the South Lawn of the White House. In an impromptu exchange with reporters that lasted approximately five minutes, the President twice called the Special Counsel's investigation a "rigged witch hunt."⁸⁷⁰ When asked whether he would pardon Manafort if he was convicted, the President said, "I don't talk about that now. I don't talk about that."⁸⁷¹ The President then added, without being asked a further question, "I think the whole Manafort trial is very sad when you look at what's going on there. I think it's a very sad day for our country. He worked for me for a very short period of time. But you know what, he happens to be a very good person. And I think it's very sad what they've done to Paul Manafort."⁸⁷² The President did not take further questions.⁸⁷³ In response to the President's statements, Manafort's attorney said, "Mr. Manafort really appreciates the support of President Trump."⁸⁷⁴

On August 21, 2018, the jury found Manafort guilty on eight felony counts. Also on August 21, Michael Cohen pleaded guilty to eight offenses, including a campaign-finance violation that he said had occurred "in coordination with, and at the direction of, a candidate for federal office."⁸⁷⁵ The President reacted to Manafort's convictions that day by telling reporters, "Paul Manafort's a good man" and "it's a very sad thing that happened."⁸⁷⁶ The President described the Special Counsel's investigation as "a witch hunt that ends in disgrace."⁸⁷⁷ The next day, the President tweeted, "I feel very badly for Paul Manafort and his wonderful family. 'Justice' took a 12 year old tax case, among other things, applied tremendous pressure on him and, unlike Michael Cohen, he refused to 'break'—make up stories in order to get a 'deal.' Such respect for a brave man!"⁸⁷⁸

In a Fox News interview on August 22, 2018, the President said: "[Cohen] makes a better deal when he uses me, like everybody else. And one of the reasons I respect Paul Manafort so much is he went through that trial—you know they make up stories. People make up stories. This

Come, Bloomberg (Aug. 2, 2018); Gabby Morrongiello, *What a guilty verdict for Manafort would mean for Trump and Mueller*, Washington Examiner (Aug. 18, 2018).

⁸⁷⁰ President Trump Remarks on John Brennan and Mueller Probe, C-SPAN (Aug. 17, 2018).

⁸⁷¹ President Trump Remarks on John Brennan and Mueller Probe, C-SPAN (Aug. 17, 2018).

⁸⁷² President Trump Remarks on John Brennan and Mueller Probe, C-SPAN (Aug. 17, 2018).

⁸⁷³ President Trump Remarks on John Brennan and Mueller Probe, C-SPAN (Aug. 17, 2018).

⁸⁷⁴ *Trump calls Manafort "very good person," All In with Chris Hayes* (Aug. 17, 2018) (transcript); *Manafort lawyer: We appreciate Trump's support*, CNN (Aug. 17, 2018) (<https://www.cnn.com/videos/politics/2018/08/17/paul-manafort-attorney-trump-jury-deliberations-schneider-lead-vpx.cnn>).

⁸⁷⁵ Transcript at 23, *United States v. Michael Cohen*, 1:18-cr-602 (S.D.N.Y. Aug. 21, 2018), Doc. 7 (Cohen 8/21/18 Transcript).

⁸⁷⁶ *President Trump Remarks on Manafort Trial*, C-SPAN (Aug. 21, 2018).

⁸⁷⁷ *President Trump Remarks on Manafort Trial*, C-SPAN (Aug. 21, 2018).

⁸⁷⁸ @realDonaldTrump 8/22/18 (9:21 a.m. ET) Tweet.

whole thing about flipping, they call it, I know all about flipping.”⁸⁷⁹ The President said that flipping was “not fair” and “almost ought to be outlawed.”⁸⁸⁰ In response to a question about whether he was considering a pardon for Manafort, the President said, “I have great respect for what he’s done, in terms of what he’s gone through. . . . He worked for many, many people many, many years, and I would say what he did, some of the charges they threw against him, every consultant, every lobbyist in Washington probably does.”⁸⁸¹ Giuliani told journalists that the President “really thinks Manafort has been horribly treated” and that he and the President had discussed the political fallout if the President pardoned Manafort.⁸⁸² The next day, Giuliani told the Washington Post that the President had asked his lawyers for advice on the possibility of a pardon for Manafort and other aides, and had been counseled against considering a pardon until the investigation concluded.⁸⁸³

On September 14, 2018, Manafort pleaded guilty to charges in the District of Columbia and signed a plea agreement that required him to cooperate with investigators.⁸⁸⁴ Giuliani was reported to have publicly said that Manafort remained in a joint defense agreement with the President following Manafort’s guilty plea and agreement to cooperate, and that Manafort’s attorneys regularly briefed the President’s lawyers on the topics discussed and the information Manafort had provided in interviews with the Special Counsel’s Office.⁸⁸⁵ On November 26, 2018, the Special Counsel’s Office disclosed in a public court filing that Manafort had breached his plea agreement by lying about multiple subjects.⁸⁸⁶ The next day, Giuliani said that the President had been “upset for weeks” about what he considered to be “the un-American, horrible treatment of

⁸⁷⁹ *Fox & Friends Exclusive Interview with President Trump*, Fox News (Aug. 23, 2018) (recorded the previous day).

⁸⁸⁰ *Fox & Friends Exclusive Interview with President Trump*, Fox News (Aug. 23, 2018) (recorded the previous day).

⁸⁸¹ *Fox & Friends Exclusive Interview with President Trump*, Fox News (Aug. 23, 2018) (recorded the previous day).

⁸⁸² Maggie Haberman & Katie Rogers, “How Did We End Up Here?” *Trump Wonders as the White House Soldiers On*, New York Times (Aug. 22, 2018).

⁸⁸³ Carol D. Leonnig & Josh Dawsey, *Trump recently sought his lawyers’ advice on possibility of pardoning Manafort, Giuliani says*, Washington Post (Aug. 23, 2018).

⁸⁸⁴ Plea Agreement, *United States v. Paul J. Manafort, Jr.*, 1:17-cr-201 (D.D.C. Sept. 14, 2018), Doc. 422.

⁸⁸⁵ Karen Freifeld & Nathan Layne, *Trump lawyer: Manafort said nothing damaging in Mueller interviews*, Reuters (Oct. 22, 2018); Michael S. Schmidt et al., *Manafort’s Lawyer Said to Brief Trump Attorneys on What He Told Mueller*, New York Times (Nov. 27, 2018); Dana Bash, *Manafort team briefed Giuliani on Mueller meetings*, CNN, Posted 11/28/18, available at <https://www.cnn.com/videos/politics/2018/11/28/manafort-lawyers-keeping-trump-lawyers-giuliani-updated-mueller-probe-bash-sot-nr-vpx.cnn>; see Sean Hannity, *Interview with Rudy Giuliani*, Fox News (Sept. 14, 2018) (Giuliani: “[T]here was a quote put out by a source close to Manafort that the plea agreement has, and cooperation agreement has, nothing to do with the Trump campaign. . . . Now, I know that because I’ve been privy to a lot of facts I can’t repeat.”).

⁸⁸⁶ Joint Status Report, *United States v. Paul J. Manafort, Jr.*, (D.D.C Nov. 26, 2018), Doc. 455.

Manafort.”⁸⁸⁷ In an interview on November 28, 2018, the President suggested that it was “very brave” that Manafort did not “flip”:

If you told the truth, you go to jail. You know this flipping stuff is terrible. You flip and you lie and you get—the prosecutors will tell you 99 percent of the time they can get people to flip. It’s rare that they can’t. But I had three people: Manafort, Corsi—I don’t know Corsi, but he refuses to say what they demanded.⁸⁸⁸ Manafort, Corsi **HOM**. It’s actually very brave.⁸⁸⁹

In response to a question about a potential pardon for Manafort, the President said, “It was never discussed, but I wouldn’t take it off the table. Why would I take it off the table?”⁸⁹⁰

3. **Harm to Ongoing Matter**

Harm to Ongoing Matter

⁸⁹¹ **Harm to Ongoing Matter**

⁸⁹² **Harm to Ongoing Matter**

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Harm to Ongoing Matter

⁸⁹⁴ **Harm to Ongoing Matter**

⁸⁸⁷ Stephen Collinson, *Trump appears consumed by Mueller investigation as details emerge*, CNN (Nov. 29, 2018).

⁸⁸⁸ “Corsi” is a reference to Jerome Corsi, **HOM** who was involved in efforts to coordinate with WikiLeaks and Assange, and who stated publicly at that time that he had refused a plea offer from the Special Counsel’s Office because he was “not going to sign a lie.” Sara Murray & Eli Watkins, **HOM** says he won’t agree to plea deal, CNN (Nov. 26, 2018).

⁸⁸⁹ Marisa Schultz & Nikki Schwab, *Oval Office Interview with President Trump: Trump says pardon for Paul Manafort still a possibility*, New York Post (Nov. 28, 2018). That same day, the President tweeted: “While the disgusting Fake News is doing everything within their power not to report it that way, at least 3 major players are intimating that the Angry Mueller Gang of Dems is viciously telling witnesses to lie about facts & they will get relief. This is our Joseph McCarthy Era!” @realDonaldTrump 11/28/18 (8:39 a.m. ET) Tweet.

⁸⁹⁰ Marisa Schultz & Nikki Schwab, *New York Post Oval Office Interview with President Trump: Trump says pardon for Paul Manafort still a possibility*, New York Post (Nov. 28, 2018).

⁸⁹¹ **Harm to Ongoing Matter**

⁸⁹² **Harm to Ongoing Matter**

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Analysis

In analyzing the President's conduct towards Flynn, Manafort, **HOM**, the following evidence is relevant to the elements of obstruction of justice:

a. Obstructive act. The President's actions towards witnesses in the Special Counsel's investigation would qualify as obstructive if they had the natural tendency to prevent particular witnesses from testifying truthfully, or otherwise would have the probable effect of influencing, delaying, or preventing their testimony to law enforcement.

With regard to Flynn, the President sent private and public messages to Flynn encouraging him to stay strong and conveying that the President still cared about him before he began to cooperate with the government. When Flynn's attorneys withdrew him from a joint defense agreement with the President, signaling that Flynn was potentially cooperating with the government, the President's personal counsel initially reminded Flynn's counsel of the President's warm feelings towards Flynn and said "that still remains." But when Flynn's counsel reiterated that Flynn could no longer share information under a joint defense agreement, the President's personal counsel stated that the decision would be interpreted as reflecting Flynn's hostility towards the President. That sequence of events could have had the potential to affect Flynn's decision to cooperate, as well as the extent of that cooperation. Because of privilege issues, however, we could not determine whether the President was personally involved in or knew about the specific message his counsel delivered to Flynn's counsel.

With respect to Manafort, there is evidence that the President's actions had the potential to influence Manafort's decision whether to cooperate with the government. The President and his personal counsel made repeated statements suggesting that a pardon was a possibility for Manafort, while also making it clear that the President did not want Manafort to "flip" and cooperate with the government. On June 15, 2018, the day the judge presiding over Manafort's D.C. case was considering whether to revoke his bail, the President said that he "felt badly" for Manafort and stated, "I think a lot of it is very unfair." And when asked about a pardon for Manafort, the President said, "I do want to see people treated fairly. That's what it's all about." Later that day, after Manafort's bail was revoked, the President called it a "tough sentence" that was "Very unfair!" Two days later, the President's personal counsel stated that individuals involved in the Special Counsel's investigation could receive a pardon "if in fact the [P]resident and his advisors . . . come to the conclusion that you have been treated unfairly"—using language that paralleled how the President had already described the treatment of Manafort. Those statements, combined with the President's commendation of Manafort for being a "brave man" who "refused to 'break'," suggested that a pardon was a more likely possibility if Manafort continued not to cooperate with the government. And while Manafort eventually pleaded guilty pursuant to a cooperation agreement, he was found to have violated the agreement by lying to investigators.

The President's public statements during the Manafort trial, including during jury deliberations, also had the potential to influence the trial jury. On the second day of trial, for example, the President called the prosecution a "terrible situation" and a "hoax" that "continues to stain our country" and referred to Manafort as a "Reagan/Dole darling" who was "serving solitary confinement" even though he was "convicted of nothing." Those statements were widely picked up by the press. While jurors were instructed not to watch or read news stories about the case and

are presumed to follow those instructions, the President's statements during the trial generated substantial media coverage that could have reached jurors if they happened to see the statements or learned about them from others. And the President's statements during jury deliberations that Manafort "happens to be a very good person" and that "it's very sad what they've done to Paul Manafort" had the potential to influence jurors who learned of the statements, which the President made just as jurors were considering whether to convict or acquit Manafort.

Harm to Ongoing Matter

b. Nexus to an official proceeding. The President's actions towards Flynn, Manafort, **HOM** appear to have been connected to pending or anticipated official proceedings involving each individual. The President's conduct towards Flynn **HOM** principally occurred when both were under criminal investigation by the Special Counsel's Office and press reports speculated about whether they would cooperate with the Special Counsel's investigation. And the President's conduct towards Manafort was directly connected to the official proceedings involving him. The President made statements about Manafort and the charges against him during Manafort's criminal trial. And the President's comments about the prospect of Manafort "flipping" occurred when it was clear the Special Counsel continued to oversee grand jury proceedings.

c. Intent. Evidence concerning the President's intent related to Flynn as a potential witness is inconclusive. As previously noted, because of privilege issues we do not have evidence establishing whether the President knew about or was involved in his counsel's communications with Flynn's counsel stating that Flynn's decision to withdraw from the joint defense agreement and cooperate with the government would be viewed as reflecting "hostility" towards the President. And regardless of what the President's personal counsel communicated, the President continued to express sympathy for Flynn after he pleaded guilty pursuant to a cooperation agreement, stating that Flynn had "led a very strong life" and the President "fe[lt] very badly" about what had happened to him.

Evidence concerning the President's conduct towards Manafort indicates that the President intended to encourage Manafort to not cooperate with the government. Before Manafort was convicted, the President repeatedly stated that Manafort had been treated unfairly. One day after Manafort was convicted on eight felony charges and potentially faced a lengthy prison term, the President said that Manafort was "a brave man" for refusing to "break" and that "flipping" "almost ought to be outlawed." At the same time, although the President had privately told aides he did not like Manafort, he publicly called Manafort "a good man" and said he had a "wonderful family." And when the President was asked whether he was considering a pardon for Manafort, the President did not respond directly and instead said he had "great respect for what [Manafort]'s done, in terms of what he's gone through." The President added that "some of the charges they threw against him, every consultant, every lobbyist in Washington probably does." In light of the President's counsel's previous statements that the investigations "might get cleaned up with some presidential pardons" and that a pardon would be possible if the President "come[s] to the conclusion that you have been treated unfairly," the evidence supports the inference that the

President intended Manafort to believe that he could receive a pardon, which would make cooperation with the government as a means of obtaining a lesser sentence unnecessary.

We also examined the evidence of the President's intent in making public statements about Manafort at the beginning of his trial and when the jury was deliberating. Some evidence supports a conclusion that the President intended, at least in part, to influence the jury. The trial generated widespread publicity, and as the jury began to deliberate, commentators suggested that an acquittal would add to pressure to end the Special Counsel's investigation. By publicly stating on the second day of deliberations that Manafort "happens to be a very good person" and that "it's very sad what they've done to Paul Manafort" right after calling the Special Counsel's investigation a "rigged witch hunt," the President's statements could, if they reached jurors, have the natural tendency to engender sympathy for Manafort among jurors, and a factfinder could infer that the President intended that result. But there are alternative explanations for the President's comments, including that he genuinely felt sorry for Manafort or that his goal was not to influence the jury but to influence public opinion. The President's comments also could have been intended to continue sending a message to Manafort that a pardon was possible. As described above, the President made his comments about Manafort being "a very good person" immediately after declining to answer a question about whether he would pardon Manafort.

Harm to Ongoing Matter



K. The President's Conduct Involving Michael Cohen

Overview

The President's conduct involving Michael Cohen spans the full period of our investigation. During the campaign, Cohen pursued the Trump Tower Moscow project on behalf of the Trump Organization. Cohen briefed candidate Trump on the project numerous times, including discussing whether Trump should travel to Russia to advance the deal. After the media began questioning Trump's connections to Russia, Cohen promoted a "party line" that publicly distanced Trump from Russia and asserted he had no business there. Cohen continued to adhere to that party line in 2017, when Congress asked him to provide documents and testimony in its Russia investigation. In an attempt to minimize the President's connections to Russia, Cohen submitted a letter to Congress falsely stating that he only briefed Trump on the Trump Tower Moscow project three times, that he did not consider asking Trump to travel to Russia, that Cohen had not received a response to an outreach he made to the Russian government, and that the project ended in January 2016, before the first Republican caucus or primary. While working on the congressional statement, Cohen had extensive discussions with the President's personal counsel, who, according to Cohen, said that Cohen should not contradict the President and should keep the statement short and "tight." After the FBI searched Cohen's home and office in April 2018, the President publicly asserted that Cohen would not "flip" and privately passed messages of support to him. Cohen also discussed pardons with the President's personal counsel and believed that if he stayed on message, he would get a pardon or the President would do "something else" to make the investigation end. But after Cohen began cooperating with the government in July 2018, the President publicly criticized him, called him a "rat," and suggested his family members had committed crimes.

Evidence

1. Candidate Trump's Awareness of and Involvement in the Trump Tower Moscow Project

The President's interactions with Cohen as a witness took place against the background of the President's involvement in the Trump Tower Moscow project.

As described in detail in Volume I, Section IV.A.1, *supra*, from September 2015 until at least June 2016, the Trump Organization pursued a Trump Tower Moscow project in Russia, with negotiations conducted by Cohen, then-executive vice president of the Trump Organization and special counsel to Donald J. Trump.⁹⁰⁹ The Trump Organization had previously and

⁹⁰⁹ In August 2018 and November 2018, Cohen pleaded guilty to multiple crimes of deception, including making false statements to Congress about the Trump Tower Moscow project, as described later in this section. When Cohen first met with investigators from this Office, he repeated the same lies he told Congress about the Trump Tower Moscow project. Cohen 8/7/18 302, at 12-17. But after Cohen pleaded guilty to offenses in the Southern District of New York on August 21, 2018, he met with investigators again and corrected the record. The Office found Cohen's testimony in these subsequent proffer sessions to be consistent with and corroborated by other information obtained in the course of the Office's investigation. The Office's sentencing submission in Cohen's criminal case stated: "Starting with his second meeting with the [Special Counsel's Office] in September 2018, the defendant has accepted responsibility not only for

unsuccessfully pursued a building project in Moscow.⁹¹⁰ According to Cohen, in approximately September 2015 he obtained internal approval from Trump to negotiate on behalf of the Trump Organization to have a Russian corporation build a tower in Moscow that licensed the Trump name and brand.⁹¹¹ Cohen thereafter had numerous brief conversations with Trump about the project.⁹¹² Cohen recalled that Trump wanted to be updated on any developments with Trump Tower Moscow and on several occasions brought the project up with Cohen to ask what was happening on it.⁹¹³ Cohen also discussed the project on multiple occasions with Donald Trump Jr. and Ivanka Trump.⁹¹⁴

In the fall of 2015, Trump signed a Letter of Intent for the project that specified highly lucrative terms for the Trump Organization.⁹¹⁵ In December 2015, Felix Sater, who was handling negotiations between Cohen and the Russian corporation, asked Cohen for a copy of his and Trump's passports to facilitate travel to Russia to meet with government officials and possible financing partners.⁹¹⁶ Cohen recalled discussing the trip with Trump and requesting a copy of Trump's passport from Trump's personal secretary, Rhona Graff.⁹¹⁷

By January 2016, Cohen had become frustrated that Sater had not set up a meeting with Russian government officials, so Cohen reached out directly by email to the office of Dmitry

his false statements concerning the [Trump Tower] Moscow Project, but also his broader efforts through public statements and testimony before Congress to minimize his role in, and what he knew about, contacts between the [Trump Organization] and Russian interests during the course of the campaign. . . . The information provided by Cohen about the [Trump Tower] Moscow Project in these proffer sessions is consistent with and corroborated by other information obtained in the course of the [Special Counsel's Office's] investigation. . . . The defendant, without prompting by the [Special Counsel's Office], also corrected other false and misleading statements that he had made concerning his outreach to and contacts with Russian officials during the course of the campaign." Gov't Sentencing Submission at 4, *United States v. Michael Cohen*, 1:18-cr-850 (S.D.N.Y. Dec. 7, 2018), Doc. 14. At Cohen's sentencing, our Office further explained that Cohen had "provided valuable information . . . while taking care and being careful to note what he knows and what he doesn't know." Transcript at 19, *United States v. Michael Cohen*, 1:18-cr-850 (S.D.N.Y. Dec. 12, 2018), Doc. 17 (*Cohen* 12/12/18 Transcript).

⁹¹⁰ See Volume I, Section IV.A.1, *supra* (noting that starting in at least 2013, several employees of the Trump Organization, including then-president of the organization Donald J. Trump, pursued a Trump Tower Moscow deal with several Russian counterparties).

⁹¹¹ Cohen 9/12/18 302, at 1-4; Cohen 8/7/18 302, at 15.

⁹¹² Cohen 9/12/18 302, at 2, 4.

⁹¹³ Cohen 9/12/18 302, at 4.

⁹¹⁴ Cohen 9/12/18 302, at 4, 10.

⁹¹⁵ MDC-H-000618-25 (10/28/15 Letter of Intent, signed by Donald J. Trump, Trump Acquisition, LLC and Andrey Rozov, I.C. Expert Investment Company); Cohen 9/12/18 302, at 3; Written Responses of Donald J. Trump (Nov. 20, 2018), at 15 (Response to Question III, Parts (a) through (g)).

⁹¹⁶ MDC-H-000600 (12/19/15 Email, Sater to Cohen).

⁹¹⁷ Cohen 9/12/18 302, at 5.

Peskov, who was Putin's deputy chief of staff and press secretary.⁹¹⁸ On January 20, 2016, Cohen received an email response from Elena Poliakova, Peskov's personal assistant, and phone records confirm that they then spoke for approximately twenty minutes, during which Cohen described the Trump Tower Moscow project and requested assistance in moving the project forward.⁹¹⁹ Cohen recalled briefing candidate Trump about the call soon afterwards.⁹²⁰ Cohen told Trump he spoke with a woman he identified as "someone from the Kremlin," and Cohen reported that she was very professional and asked detailed questions about the project.⁹²¹ Cohen recalled telling Trump he wished the Trump Organization had assistants who were as competent as the woman from the Kremlin.⁹²²

Cohen thought his phone call renewed interest in the project.⁹²³ The day after Cohen's call with Poliakova, Sater texted Cohen, asking him to "[c]all me when you have a few minutes to chat . . . It's about Putin they called today."⁹²⁴ Sater told Cohen that the Russian government liked the project and on January 25, 2016, sent an invitation for Cohen to visit Moscow "for a working visit."⁹²⁵ After the outreach from Sater, Cohen recalled telling Trump that he was waiting to hear back on moving the project forward.⁹²⁶

After January 2016, Cohen continued to have conversations with Sater about Trump Tower Moscow and continued to keep candidate Trump updated about those discussions and the status of the project.⁹²⁷ Cohen recalled that he and Trump wanted Trump Tower Moscow to succeed and that Trump never discouraged him from working on the project because of the campaign.⁹²⁸ In March or April 2016, Trump asked Cohen if anything was happening in Russia.⁹²⁹ Cohen also

⁹¹⁸ See FS00004 (12/30/15 Text Message, Cohen to Sater); TRUMPORG_MC_000233 (1/11/16 Email, Cohen to pr_peskova@prpress.gof.ru); MDC-H-000690 (1/14/16 Email, Cohen to info@prpress.gov.ru); TRUMPORG_MC_000235 (1/16/16 Email, Cohen to pr_peskova@prpress.gov.ru).

⁹¹⁹ 1/20/16 Email, Poliakova to Cohen; Call Records of Michael Cohen. (Showing a 22-minute call on January 20, 2016, between Cohen and the number Poliakova provided in her email); Cohen 9/12/18 302, at 2-3. After the call, Cohen saved Poliakova's contact information in his Trump Organization Outlook contact list. 1/20/16 Cohen Microsoft Outlook Entry (6:22 a.m.).

⁹²⁰ Cohen 11/20/18 302, at 5.

⁹²¹ Cohen 11/20/18 302, at 5-6; Cohen 11/12/18 302, at 4.

⁹²² Cohen 11/20/18 302, at 5.

⁹²³ Cohen 9/12/18 302, at 5.

⁹²⁴ FS00011 (1/21/16 Text Messages, Sater & Cohen).

⁹²⁵ Cohen 9/12/18 302, at 5; 1/25/16 Email, Sater to Cohen (attachment).

⁹²⁶ Cohen 11/20/18 302, at 5.

⁹²⁷ Cohen 9/12/18 302, at 6. In later congressional testimony, Cohen stated that he briefed Trump on the project approximately six times after January 2016. *Hearing on Issues Related to Trump Organization Before the House Oversight and Reform Committee*, 116th Cong. (Feb. 27, 2019) (CQ Cong. Transcripts, at 24) (testimony of Michael Cohen).

⁹²⁸ Cohen 9/12/18 302, at 6.

⁹²⁹ Cohen 9/18/18 302, at 4.

recalled briefing Donald Trump Jr. in the spring—a conversation that Cohen said was not “idle chit chat” because Trump Tower Moscow was potentially a \$1 billion deal.⁹³⁰

Cohen recalled that around May 2016, he again raised with candidate Trump the possibility of a trip to Russia to advance the Trump Tower Moscow project.⁹³¹ At that time, Cohen had received several texts from Sater seeking to arrange dates for such a trip.⁹³² On May 4, 2016, Sater wrote to Cohen, “I had a chat with Moscow. ASSUMING the trip does happen the question is before or after the convention. . . . Obviously the premeeting trip (you only) can happen anytime you want but the 2 big guys [is] the question. I said I would confirm and revert.”⁹³³ Cohen responded, “My trip before Cleveland. Trump once he becomes the nominee after the convention.”⁹³⁴ On May 5, 2016, Sater followed up with a text that Cohen thought he probably read to Trump:

Peskov would like to invite you as his guest to the St. Petersburg Forum which is Russia’s Davos it’s June 16-19. He wants to meet there with you and possibly introduce you to either Putin or Medvedev. . . . This is perfect. The entire business class of Russia will be there as well. He said anything you want to discuss including dates and subjects are on the table to discuss.⁹³⁵

Cohen recalled discussing the invitation to the St. Petersburg Economic Forum with candidate Trump and saying that Putin or Russian Prime Minister Dmitry Medvedev might be there.⁹³⁶ Cohen remembered that Trump said that he would be willing to travel to Russia if Cohen could “lock and load” on the deal.⁹³⁷ In June 2016, Cohen decided not to attend the St. Petersburg Economic Forum because Sater had not obtained a formal invitation for Cohen from Peskov.⁹³⁸ Cohen said he had a quick conversation with Trump at that time but did not tell him that the project was over because he did not want Trump to complain that the deal was on-again-off-again if it were revived.⁹³⁹

During the summer of 2016, Cohen recalled that candidate Trump publicly claimed that he had nothing to do with Russia and then shortly afterwards privately checked with Cohen about the status of the Trump Tower Moscow project, which Cohen found “interesting.”⁹⁴⁰ At some point

⁹³⁰ Cohen 9/12/18 302, at 10.

⁹³¹ Cohen 9/12/18 302, at 7.

⁹³² Cohen 9/12/18 302, at 7.

⁹³³ FS00015 (5/4/16 Text Message, Sater to Cohen).

⁹³⁴ FS00015 (5/4/16 Text Message, Cohen to Sater).

⁹³⁵ FS00016-17 (5/5/16 Text Messages, Sater & Cohen).

⁹³⁶ Cohen 9/12/18 302, at 7.

⁹³⁷ Cohen 9/12/18 302, at 7.

⁹³⁸ Cohen 9/12/18 302, at 7-8.

⁹³⁹ Cohen 9/12/18 302, at 8.

⁹⁴⁰ Cohen 3/19/19 302, at 2.

that summer, Cohen recalled having a brief conversation with Trump in which Cohen said the Trump Tower Moscow project was going nowhere because the Russian development company had not secured a piece of property for the project.⁹⁴¹ Trump said that was “too bad,” and Cohen did not recall talking with Trump about the project after that.⁹⁴² Cohen said that at no time during the campaign did Trump tell him not to pursue the project or that the project should be abandoned.⁹⁴³

2. Cohen Determines to Adhere to a “Party Line” Distancing Candidate Trump From Russia

As previously discussed, *see* Volume II, Section II.A, *supra*, when questions about possible Russian support for candidate Trump emerged during the 2016 presidential campaign, Trump denied having any personal, financial, or business connection to Russia, which Cohen described as the “party line” or “message” to follow for Trump and his senior advisors.⁹⁴⁴

After the election, the Trump Organization sought to formally close out certain deals in advance of the inauguration.⁹⁴⁵ Cohen recalled that Trump Tower Moscow was on the list of deals to be closed out.⁹⁴⁶ In approximately January 2017, Cohen began receiving inquiries from the media about Trump Tower Moscow, and he recalled speaking to the President-Elect when those inquiries came in.⁹⁴⁷ Cohen was concerned that truthful answers about the Trump Tower Moscow project might not be consistent with the “message” that the President-Elect had no relationship with Russia.⁹⁴⁸

In an effort to “stay on message,” Cohen told a New York Times reporter that the Trump Tower Moscow deal was not feasible and had ended in January 2016.⁹⁴⁹ Cohen recalled that this was part of a “script” or talking points he had developed with President-Elect Trump and others to

⁹⁴¹ Cohen 3/19/19 302, at 2. Cohen could not recall the precise timing of this conversation, but said he thought it occurred in June or July 2016. Cohen recalled that the conversation happened at some point after candidate Trump was publicly stating that he had nothing to do with Russia. Cohen 3/19/19 302, at 2.

⁹⁴² Cohen 3/19/19 302, at 2.

⁹⁴³ Cohen 3/19/19 302, at 2.

⁹⁴⁴ Cohen 11/20/18 302, at 1; Cohen 9/18/18 302, at 3, 5; Cohen 9/12/18 302, at 9.

⁹⁴⁵ Cohen 9/18/18 302, at 1-2; *see also* Rtskhiladze 4/4/18 302, at 8-9.

⁹⁴⁶ Cohen 9/18/18 302, at 1-2.

⁹⁴⁷ Cohen 9/18/18 302, at 3.

⁹⁴⁸ Cohen 11/20/18 302, at 4.

⁹⁴⁹ Cohen 9/18/18 302, at 5. The article was published on February 19, 2017, and reported that Sater and Cohen had been working on plan for a Trump Tower Moscow “as recently as the fall of 2015” but had come to a halt because of the presidential campaign. Consistent with Cohen’s intended party line message, the article stated, “Cohen said the Trump Organization had received a letter of intent for a project in Moscow from a Russian real estate developer at that time but determined that the project was not feasible.” Megan Twohey & Scott Shane, *A Back-Channel Plan for Ukraine and Russia, Courtesy of Trump Associates*, New York Times (Feb. 19, 2017).

dismiss the idea of a substantial connection between Trump and Russia.⁹⁵⁰ Cohen said that he discussed the talking points with Trump but that he did not explicitly tell Trump he thought they were untrue because Trump already knew they were untrue.⁹⁵¹ Cohen thought it was important to say the deal was done in January 2016, rather than acknowledge that talks continued in May and June 2016, because it limited the period when candidate Trump could be alleged to have a relationship with Russia to an early point in the campaign, before Trump had become the party's presumptive nominee.⁹⁵²

3. Cohen Submits False Statements to Congress Minimizing the Trump Tower Moscow Project in Accordance with the Party Line

In early May 2017, Cohen received requests from Congress to provide testimony and documents in connection with congressional investigations of Russian interference in the 2016 election.⁹⁵³ At that time, Cohen understood Congress's interest in him to be focused on the allegations in the Steele reporting concerning a meeting Cohen allegedly had with Russian officials in Prague during the campaign.⁹⁵⁴ Cohen had never traveled to Prague and was not concerned about those allegations, which he believed were provably false.⁹⁵⁵ On May 18, 2017, Cohen met with the President to discuss the request from Congress, and the President instructed Cohen that he should cooperate because there was nothing there.⁹⁵⁶

Cohen eventually entered into a joint defense agreement (JDA) with the President and other individuals who were part of the Russia investigation.⁹⁵⁷ In the months leading up to his congressional testimony, Cohen frequently spoke with the President's personal counsel.⁹⁵⁸ Cohen

⁹⁵⁰ Cohen 9/18/18 302, at 5-6.

⁹⁵¹ Cohen 9/18/18 302, at 6.

⁹⁵² Cohen 9/12/18 302, at 10.

⁹⁵³ P-SCO-000000328 (5/9/17 Letter, HPSCI to Cohen); P-SCO-000000331 (5/12/17 Letter, SSCI to Cohen).

⁹⁵⁴ Cohen 11/20/18 302, at 2-3.

⁹⁵⁵ Cohen 11/20/18 302, at 2-3.

⁹⁵⁶ Cohen 11/12/18 302, at 2; Cohen 11/20/19 302, at 3.

⁹⁵⁷ Cohen 11/12/18 302, at 2.

⁹⁵⁸ Cohen 11/12/18 302, at 2-3; Cohen 11/20/18, at 2-6. Cohen told investigators about his conversations with the President's personal counsel after waiving any privilege of his own and after this Office advised his counsel not to provide any communications that would be covered by any other privilege, including communications protected by a joint defense or common interest privilege. As a result, most of what Cohen told us about his conversations with the President's personal counsel concerned what Cohen had communicated to the President's personal counsel, and not what was said in response. Cohen described certain statements made by the President's personal counsel, however, that are set forth in this section. Cohen and his counsel were better positioned than this Office to evaluate whether any privilege protected those statements because they had knowledge of the scope of their joint defense agreement and access to privileged communications that may have provided context for evaluating the statements they shared. After interviewing Cohen about these matters, we asked the President's personal counsel if he wished to provide information to us about his conversations with Cohen related to Cohen's congressional testimony about

said that in those conversations the President's personal counsel would sometimes say that he had just been with the President.⁹⁵⁹ Cohen recalled that the President's personal counsel told him the JDA was working well together and assured him that there was nothing there and if they stayed on message the investigations would come to an end soon.⁹⁶⁰ At that time, Cohen's legal bills were being paid by the Trump Organization,⁹⁶¹ and Cohen was told not to worry because the investigations would be over by summer or fall of 2017.⁹⁶² Cohen said that the President's personal counsel also conveyed that, as part of the JDA, Cohen was protected, which he would not be if he "went rogue."⁹⁶³ Cohen recalled that the President's personal counsel reminded him that "the President loves you" and told him that if he stayed on message, the President had his back.⁹⁶⁴

In August 2017, Cohen began drafting a statement about Trump Tower Moscow to submit to Congress along with his document production.⁹⁶⁵ The final version of the statement contained several false statements about the project.⁹⁶⁶ First, although the Trump Organization continued to pursue the project until at least June 2016, the statement said, "The proposal was under consideration at the Trump Organization from September 2015 until the end of January 2016. By the end of January 2016, I determined that the proposal was not feasible for a variety of business reasons and should not be pursued further. Based on my business determinations, the Trump Organization abandoned the proposal."⁹⁶⁷ Second, although Cohen and candidate Trump had discussed possible travel to Russia by Trump to pursue the venture, the statement said, "Despite overtures by Mr. Sater, I never considered asking Mr. Trump to travel to Russia in connection with this proposal. I told Mr. Sater that Mr. Trump would not travel to Russia unless there was a definitive agreement in place."⁹⁶⁸ Third, although Cohen had regularly briefed Trump on the status

Trump Tower Moscow. The President's personal counsel declined and, through his own counsel, indicated that he could not disaggregate information he had obtained from Cohen from information he had obtained from other parties in the JDA. In view of the admonition this Office gave to Cohen's counsel to withhold communications that could be covered by privilege, the President's personal counsel's uncertainty about the provenance of his own knowledge, the burden on a privilege holder to establish the elements to support a claim of privilege, and the substance of the statements themselves, we have included relevant statements Cohen provided in this report. If the statements were to be used in a context beyond this report, further analysis could be warranted.

⁹⁵⁹ Cohen 11/20/18 302, at 6.

⁹⁶⁰ Cohen 11/20/18 302, at 2, 4.

⁹⁶¹ Cohen 11/20/18 302, at 4.

⁹⁶² Cohen 9/18/18 302, at 8; Cohen 11/20/18 302, at 3-4.

⁹⁶³ Cohen 11/20/18 302, at 4.

⁹⁶⁴ Cohen 9/18/18 302, at 11; Cohen 11/20/18 302, at 2.

⁹⁶⁵ P-SCO-000003680 and P-SCO-0000003687 (8/16/17 Email and Attachment, Michael Cohen's Counsel to Cohen). Cohen said it was not his idea to write a letter to Congress about Trump Tower Moscow. Cohen 9/18/18 302, at 7.

⁹⁶⁶ P-SCO-00009478 (Statement of Michael D. Cohen, Esq. (Aug. 28, 2017)).

⁹⁶⁷ P-SCO-00009478 (Statement of Michael D. Cohen, Esq. (Aug. 28, 2017)).

⁹⁶⁸ P-SCO-00009478 (Statement of Michael D. Cohen, Esq. (Aug. 28, 2017)).

of the project and had numerous conversations about it, the statement said, “Mr. Trump was never in contact with anyone about this proposal other than me on three occasions, including signing a non-binding letter of intent in 2015.”⁹⁶⁹ Fourth, although Cohen’s outreach to Peskov in January 2016 had resulted in a lengthy phone call with a representative from the Kremlin, the statement said that Cohen did “not recall any response to my email [to Peskov], nor any other contacts by me with Mr. Peskov or other Russian government officials about the proposal.”⁹⁷⁰

Cohen’s statement was circulated in advance to, and edited by, members of the JDA.⁹⁷¹ Before the statement was finalized, early drafts contained a sentence stating, “The building project led me to make limited contacts with Russian government officials.”⁹⁷² In the final version of the statement, that line was deleted.⁹⁷³ Cohen thought he was told that it was a decision of the JDA to take out that sentence, and he did not push back on the deletion.⁹⁷⁴ Cohen recalled that he told the President’s personal counsel that he would not contest a decision of the JDA.⁹⁷⁵

Cohen also recalled that in drafting his statement for Congress, he spoke with the President’s personal counsel about a different issue that connected candidate Trump to Russia: Cohen’s efforts to set up a meeting between Trump and Putin in New York during the 2015 United Nations General Assembly.⁹⁷⁶ In September 2015, Cohen had suggested the meeting to Trump, who told Cohen to reach out to Putin’s office about it.⁹⁷⁷ Cohen spoke and emailed with a Russian official about a possible meeting, and recalled that Trump asked him multiple times for updates on the proposed meeting with Putin.⁹⁷⁸ When Cohen called the Russian official a second time, she told him it would not follow proper protocol for Putin to meet with Trump, and Cohen relayed that

⁹⁶⁹ P-SCO-00009478 (Statement of Michael D. Cohen, Esq. (Aug. 28, 2017)).

⁹⁷⁰ P-SCO-00009478 (Statement of Michael D. Cohen, Esq. (Aug. 28, 2017)).

⁹⁷¹ Cohen 9/12/18 302, at 8-9. Cohen also testified in Congress that the President’s counsel reviewed and edited the statement. *Hearing on Issues Related to Trump Organization Before the House Oversight and Reform Committee*, 116th Cong. (Feb. 27, 2019) (CQ Cong. Transcripts, at 24-25) (testimony by Michael Cohen). Because of concerns about the common interest privilege, we did not obtain or review all drafts of Cohen’s statement. Based on the drafts that were released through this Office’s filter process, it appears that the substance of the four principal false statements described above were contained in an early draft prepared by Cohen and his counsel. P-SCO-0000003680 and P-SCO-0000003687 (8/16/17 Email and Attachment, Cohen’s counsel to Cohen).

⁹⁷² P-SCO-0000003687 (8/16/17 Draft Statement of Michael Cohen); Cohen 11/20/18 302, at 4.

⁹⁷³ Cohen 11/20/18 302, at 4. A different line stating that Cohen did “not recall any response to my email [to Peskov in January 2016], nor any other contacts by me with Mr. Peskov or other Russian government officials about the proposal” remained in the draft. See P-SCO-0000009478 (Statement of Michael D. Cohen, Esq. (Aug. 28, 2017)).

⁹⁷⁴ Cohen 11/20/18 302, at 4.

⁹⁷⁵ Cohen 11/20/18 302, at 5.

⁹⁷⁶ Cohen 9/18/18 302, at 10-11.

⁹⁷⁷ Cohen 9/18/18 302, at 11; Cohen 11/12/18 302, at 4.

⁹⁷⁸ Cohen 9/18/18 302, at 11; Cohen 11/12/18 302, at 5.

message to Trump.⁹⁷⁹ Cohen anticipated he might be asked questions about the proposed Trump-Putin meeting when he testified before Congress because he had talked about the potential meeting on Sean Hannity's radio show.⁹⁸⁰ Cohen recalled explaining to the President's personal counsel the "whole story" of the attempt to set up a meeting between Trump and Putin and Trump's role in it.⁹⁸¹ Cohen recalled that he and the President's personal counsel talked about keeping Trump out of the narrative, and the President's personal counsel told Cohen the story was not relevant and should not be included in his statement to Congress.⁹⁸²

Cohen said that his "agenda" in submitting the statement to Congress with false representations about the Trump Tower Moscow project was to minimize links between the project and the President, give the false impression that the project had ended before the first presidential primaries, and shut down further inquiry into Trump Tower Moscow, with the aim of limiting the ongoing Russia investigations.⁹⁸³ Cohen said he wanted to protect the President and be loyal to him by not contradicting anything the President had said.⁹⁸⁴ Cohen recalled he was concerned that if he told the truth about getting a response from the Kremlin or speaking to candidate Trump about travel to Russia to pursue the project, he would contradict the message that no connection existed between Trump and Russia, and he rationalized his decision to provide false testimony because the deal never happened.⁹⁸⁵ He was not concerned that the story would be contradicted by individuals who knew it was false because he was sticking to the party line adhered to by the whole group.⁹⁸⁶ Cohen wanted the support of the President and the White House, and he believed that following the party line would help put an end to the Special Counsel and congressional investigations.⁹⁸⁷

Between August 18, 2017, when the statement was in an initial draft stage, and August 28, 2017, when the statement was submitted to Congress, phone records reflect that Cohen spoke with the President's personal counsel almost daily.⁹⁸⁸ On August 27, 2017, the day before Cohen

⁹⁷⁹ Cohen 11/12/18 302, at 5.

⁹⁸⁰ Cohen 9/18/18 302, at 11.

⁹⁸¹ Cohen 3/19/19 302, at 2.

⁹⁸² Cohen 3/19/19 302, at 2; *see* Cohen 9/18/18 302, at 11 (recalling that he was told that if he stayed on message and kept the President out of the narrative, the President would have his back).

⁹⁸³ Cohen 9/12/18 302, at 8; Information at 4-5, *United States v. Michael Cohen*, 1:18-cr-850 (S.D.N.Y. Nov. 29, 2018), Doc. 2 (*Cohen* Information).

⁹⁸⁴ Cohen 11/20/18 302, at 4.

⁹⁸⁵ Cohen 11/20/18 302, at 4; Cohen 11/12/18 302, at 2-3, 4, 6.

⁹⁸⁶ Cohen 9/12/18 302, at 9.

⁹⁸⁷ Cohen 9/12/18 302, at 8-9.

⁹⁸⁸ Cohen 11/12/18 302, at 2-3; Cohen 11/20/18 302, at 5; Call Records of Michael Cohen (Reflecting three contacts on August 18, 2017 (24 seconds; 5 minutes 25 seconds; and 10 minutes 58 seconds); two contacts on August 19 (23 seconds and 24 minutes 26 seconds); three contacts on August 23 (8 seconds; 20 minutes 33 seconds; and 5 minutes 8 seconds); one contact on August 24 (11 minutes 59 seconds); 14 contacts on August 27 (28 seconds; 4 minutes 37 seconds; 1 minute 16 seconds; 1 minutes 35

submitted the statement to Congress, Cohen and the President's personal counsel had numerous contacts by phone, including calls lasting three, four, six, eleven, and eighteen minutes.⁹⁸⁹ Cohen recalled telling the President's personal counsel, who did not have first-hand knowledge of the project, that there was more detail on Trump Tower Moscow that was not in the statement, including that there were more communications with Russia and more communications with candidate Trump than the statement reflected.⁹⁹⁰ Cohen stated that the President's personal counsel responded that it was not necessary to elaborate or include those details because the project did not progress and that Cohen should keep his statement short and "tight" and the matter would soon come to an end.⁹⁹¹ Cohen recalled that the President's personal counsel said "his client" appreciated Cohen, that Cohen should stay on message and not contradict the President, that there was no need to muddy the water, and that it was time to move on.⁹⁹² Cohen said he agreed because it was what he was expected to do.⁹⁹³ After Cohen later pleaded guilty to making false statements to Congress about the Trump Tower Moscow project, this Office sought to speak with the President's personal counsel about these conversations with Cohen, but counsel declined, citing potential privilege concerns.⁹⁹⁴

At the same time that Cohen finalized his written submission to Congress, he served as a source for a Washington Post story published on August 27, 2017, that reported in depth for the first time that the Trump Organization was "pursuing a plan to develop a massive Trump Tower in Moscow" at the same time as candidate Trump was "running for president in late 2015 and early 2016."⁹⁹⁵ The article reported that "the project was abandoned at the end of January 2016, just before the presidential primaries began, several people familiar with the proposal said."⁹⁹⁶ Cohen recalled that in speaking to the Post, he held to the false story that negotiations for the deal ceased in January 2016.⁹⁹⁷

seconds; 6 minutes 16 seconds; 1 minutes 10 seconds; 3 minutes 5 seconds; 18 minutes 55 seconds; 4 minutes 56 seconds; 11 minutes 6 seconds; 8 seconds; 3 seconds; 2 seconds; 2 seconds).

⁹⁸⁹ Cohen 11/20/18 302, at 5; Call Records of Michael Cohen. (Reflecting 14 contacts on August 27, 2017 (28 seconds; 4 minutes 37 seconds; 1 minute 16 seconds; 1 minutes 35 seconds; 6 minutes 16 seconds; 1 minutes 10 seconds; 3 minutes 5 seconds; 18 minutes 55 seconds; 4 minutes 56 seconds; 11 minutes 6 seconds; 8 seconds; 3 seconds; 2 seconds; 2 seconds)).

⁹⁹⁰ Cohen 11/20/18 302, at 5.

⁹⁹¹ Cohen 11/20/18 302, at 5. Cohen also vaguely recalled telling the President's personal counsel that he spoke with a woman from the Kremlin and that the President's personal counsel responded to the effect of "so what?" because the deal never happened. Cohen 11/20/18 302, at 5.

⁹⁹² Cohen 11/20/18 302, at 5.

⁹⁹³ Cohen 11/20/18 302, at 5.

⁹⁹⁴ 2/8/19 email, Counsel for personal counsel to the President to Special Counsel's Office.

⁹⁹⁵ Cohen 9/18/18 302, at 7; Carol D. Leonnig et al., *Trump's business sought deal on a Trump Tower in Moscow while he ran for president*, Washington Post (Aug. 27, 2017).

⁹⁹⁶ Carol D. Leonnig et al., *Trump's business sought deal on a Trump Tower in Moscow while he ran for president*, Washington Post (Aug. 27, 2017).

⁹⁹⁷ Cohen 9/18/18 302, at 7.

On August 28, 2017, Cohen submitted his statement about the Trump Tower Moscow project to Congress.⁹⁹⁸ Cohen did not recall talking to the President about the specifics of what the statement said or what Cohen would later testify to about Trump Tower Moscow.⁹⁹⁹ He recalled speaking to the President more generally about how he planned to stay on message in his testimony.¹⁰⁰⁰ On September 19, 2017, in anticipation of his impending testimony, Cohen orchestrated the public release of his opening remarks to Congress, which criticized the allegations in the Steele material and claimed that the Trump Tower Moscow project “was terminated in January of 2016; which occurred before the Iowa caucus and months before the very first primary.”¹⁰⁰¹ Cohen said the release of his opening remarks was intended to shape the narrative and let other people who might be witnesses know what Cohen was saying so they could follow the same message.¹⁰⁰² Cohen said his decision was meant to mirror Jared Kushner’s decision to release a statement in advance of Kushner’s congressional testimony, which the President’s personal counsel had told Cohen the President liked.¹⁰⁰³ Cohen recalled that on September 20, 2017, after Cohen’s opening remarks had been printed by the media, the President’s personal counsel told him that the President was pleased with the Trump Tower Moscow statement that had gone out.¹⁰⁰⁴

On October 24 and 25, 2017, Cohen testified before Congress and repeated the false statements he had included in his written statement about Trump Tower Moscow.¹⁰⁰⁵ Phone records show that Cohen spoke with the President’s personal counsel immediately after his testimony on both days.¹⁰⁰⁶

4. The President Sends Messages of Support to Cohen

In January 2018, the media reported that Cohen had arranged a \$130,000 payment during the campaign to prevent a woman from publicly discussing an alleged sexual encounter she had

⁹⁹⁸ P-SCO-000009477 - 9478 (8/28/17 Letter and Attachment, Cohen to SSCI).

⁹⁹⁹ Cohen 11/12/18 302, at 2; Cohen 9/12/18 302, at 9.

¹⁰⁰⁰ Cohen 9/12/18 302, at 9.

¹⁰⁰¹ Cohen 9/18/18 302, at 7; *see, e.g., READ: Michael Cohen’s statement to the Senate intelligence committee*, CNN (Sept. 19, 2017).

¹⁰⁰² Cohen 9/18/18 302, at 7.

¹⁰⁰³ Cohen 9/18/18 302, at 7; Cohen 11/20/18 302, at 6.

¹⁰⁰⁴ Cohen 11/20/18 302, at 6. Phone records show that the President’s personal counsel called Cohen on the morning of September 20, 2017, and they spoke for approximately 11 minutes, and that they had two more contacts that day, one of which lasted approximately 18 minutes. Call Records of Michael Cohen. (Reflecting three contacts on September 20, 2017, with calls lasting for 11 minutes 3 seconds; 2 seconds; and 18 minutes 38 seconds).

¹⁰⁰⁵ *Cohen Information*, at 4; Executive Session, Permanent Select Committee on Intelligence, U.S. House of Representatives, Interview of Michael Cohen (Oct. 24, 2017), at 10-11, 117-119.

¹⁰⁰⁶ Call Records of Michael Cohen. (Reflecting two contacts on October 24, 2017 (12 minutes 8 seconds and 8 minutes 27 seconds) and three contacts on October 25, 2017 (1 second; 4 minutes 6 seconds; and 6 minutes 6 seconds)).

with the President before he ran for office.¹⁰⁰⁷ This Office did not investigate Cohen's campaign-period payments to women.¹⁰⁰⁸ However, those events, as described here, are potentially relevant to the President's and his personal counsel's interactions with Cohen as a witness who later began to cooperate with the government.

On February 13, 2018, Cohen released a statement to news organizations that stated, "In a private transaction in 2016, I used my own personal funds to facilitate a payment of \$130,000 to [the woman]. Neither the Trump Organization nor the Trump campaign was a party to the transaction with [the woman], and neither reimbursed me for the payment, either directly or indirectly."¹⁰⁰⁹ In congressional testimony on February 27, 2019, Cohen testified that he had discussed what to say about the payment with the President and that the President had directed Cohen to say that the President "was not knowledgeable . . . of [Cohen's] actions" in making the payment.¹⁰¹⁰ On February 19, 2018, the day after the New York Times wrote a detailed story attributing the payment to Cohen and describing Cohen as the President's "fixer," Cohen received a text message from the President's personal counsel that stated, "Client says thanks for what you do."¹⁰¹¹

On April 9, 2018, FBI agents working with the U.S. Attorney's Office for the Southern District of New York executed search warrants on Cohen's home, hotel room, and office.¹⁰¹² That day, the President spoke to reporters and said that he had "just heard that they broke into the office of one of my personal attorneys—a good man."¹⁰¹³ The President called the searches "a real disgrace" and said, "It's an attack on our country, in a true sense. It's an attack on what we all

¹⁰⁰⁷ See, e.g., Michael Rothfeld & Joe Palazzolo, *Trump Lawyer Arranged \$130,000 Payment for Adult-Film Star's Silence*, Wall Street Journal (Jan. 12, 2018).

¹⁰⁰⁸ The Office was authorized to investigate Cohen's establishment and use of Essential Consultants LLC, which Cohen created to facilitate the \$130,000 payment during the campaign, based on evidence that the entity received funds from Russian-backed entities. Cohen's use of Essential Consultants to facilitate the \$130,000 payment to the woman during the campaign was part of the Office's referral of certain Cohen-related matters to the U.S. Attorney's Office for the Southern District of New York.

¹⁰⁰⁹ See, e.g., Mark Berman, *Longtime Trump attorney says he made \$130,000 payment to Stormy Daniels with his money*, Washington Post (Feb. 14, 2018).

¹⁰¹⁰ *Hearing on Issues Related to Trump Organization Before the House Oversight and Reform Committee*, 116th Cong. (Feb. 27, 2019) (CQ Cong. Transcripts, at 147-148) (testimony of Michael Cohen). Toll records show that Cohen was connected to a White House phone number for approximately five minutes on January 19, 2018, and for approximately seven minutes on January 30, 2018, and that Cohen called Melania Trump's cell phone several times between January 26, 2018, and January 30, 2018. Call Records of Michael Cohen.

¹⁰¹¹ 2/19/18 Text Message, President's personal counsel to Cohen; see Jim Rutenberg et al., *Tools of Trump's Fixer: Payouts, Intimidation and the Tabloids*, New York Times (Feb. 18, 2018).

¹⁰¹² Gov't Opp. to Def. Mot. for Temp. Restraining Order, *In the Matter of Search Warrants Executed on April 9, 2018*, 18-mj-3161 (S.D.N.Y. Apr. 13, 2018), Doc. 1 ("On April 9, 2018, agents from the New York field office of the Federal Bureau of Investigation . . . executed search warrants for Michael Cohen's residence, hotel room, office, safety deposit box, and electronic devices.").

¹⁰¹³ Remarks by President Trump Before Meeting with Senior Military Leadership, White House (Apr. 9, 2018).

stand for.”¹⁰¹⁴ Cohen said that after the searches he was concerned that he was “an open book,” that he did not want issues arising from the payments to women to “come out,” and that his false statements to Congress were “a big concern.”¹⁰¹⁵

A few days after the searches, the President called Cohen.¹⁰¹⁶ According to Cohen, the President said he wanted to “check in” and asked if Cohen was okay, and the President encouraged Cohen to “hang in there” and “stay strong.”¹⁰¹⁷ Cohen also recalled that following the searches he heard from individuals who were in touch with the President and relayed to Cohen the President’s support for him.¹⁰¹⁸ Cohen recalled that PP [REDACTED], a friend of the President’s, reached out to say that he was with “the Boss” in Mar-a-Lago and the President had said “he loves you” and not to worry.¹⁰¹⁹ Cohen recalled that Personal Privacy [REDACTED] for the Trump Organization, told him, “the boss loves you.”¹⁰²⁰ And Cohen said that PP [REDACTED], a friend of the President’s, told him, “everyone knows the boss has your back.”¹⁰²¹

On or about April 17, 2018, Cohen began speaking with an attorney, Robert Costello, who had a close relationship with Rudolph Giuliani, one of the President’s personal lawyers.¹⁰²² Costello told Cohen that he had a “back channel of communication” to Giuliani, and that Giuliani had said the “channel” was “crucial” and “must be maintained.”¹⁰²³ On April 20, 2018, the New York Times published an article about the President’s relationship with and treatment of Cohen.¹⁰²⁴ The President responded with a series of tweets predicting that Cohen would not “flip”:

The New York Times and a third rate reporter . . . are going out of their way to destroy Michael Cohen and his relationship with me in the hope that he will ‘flip.’ They use non-existent ‘sources’ and a drunk/drugged up loser who hates Michael, a fine person with a wonderful family. Michael is a businessman for his own account/lawyer who I have always liked & respected. Most people will flip if the Government lets them out of trouble, even

¹⁰¹⁴ Remarks by President Trump Before Meeting with Senior Military Leadership, White House (Apr. 9, 2018).

¹⁰¹⁵ Cohen, 10/17/18 302, at 11.

¹⁰¹⁶ Cohen 3/19/19 302, at 4.

¹⁰¹⁷ Cohen 3/19/19 302, at 4.

¹⁰¹⁸ Cohen 9/12/18 302, at 11.

¹⁰¹⁹ Cohen 9/12/18 302, at 11.

¹⁰²⁰ Cohen 9/12/18 302, at 11.

¹⁰²¹ Cohen 9/12/18 302, at 11.

¹⁰²² 4/17/18 Email, Citron to Cohen; 4/19/18 Email, Costello to Cohen; MC-SCO-001 (7/7/18 redacted billing statement from Davidoff, Hutcher & Citron to Cohen).

¹⁰²³ 4/21/18 Email, Costello to Cohen.

¹⁰²⁴ See Maggie Haberman et al., *Michael Cohen Has Said He Would Take a Bullet for Trump. Maybe Not Anymore.*, New York Times (Apr. 20, 2018).

if it means lying or making up stories. Sorry, I don't see Michael doing that despite the horrible Witch Hunt and the dishonest media!¹⁰²⁵

In an email that day to Cohen, Costello wrote that he had spoken with Giuliani.¹⁰²⁶ Costello told Cohen the conversation was "Very Very Positive[.] You are 'loved'. . . they are in our corner. . . . Sleep well tonight[], you have friends in high places."¹⁰²⁷

Cohen said that following these messages he believed he had the support of the White House if he continued to toe the party line, and he determined to stay on message and be part of the team.¹⁰²⁸ At the time, Cohen's understood that his legal fees were still being paid by the Trump Organization, which he said was important to him.¹⁰²⁹ Cohen believed he needed the power of the President to take care of him, so he needed to defend the President and stay on message.¹⁰³⁰

Cohen also recalled speaking with the President's personal counsel about pardons after the searches of his home and office had occurred, at a time when the media had reported that pardon discussions were occurring at the White House.¹⁰³¹ Cohen told the President's personal counsel he had been a loyal lawyer and servant, and he said that after the searches he was in an uncomfortable position and wanted to know what was in it for him.¹⁰³² According to Cohen, the President's personal counsel responded that Cohen should stay on message, that the investigation was a witch hunt, and that everything would be fine.¹⁰³³ Cohen understood based on this conversation and previous conversations about pardons with the President's personal counsel that as long as he stayed on message, he would be taken care of by the President, either through a pardon or through the investigation being shut down.¹⁰³⁴

¹⁰²⁵ @realDonaldTrump 4/21/18 (9:10 a.m. ET) Tweets.

¹⁰²⁶ 4/21/18 Email, Costello to Cohen.

¹⁰²⁷ 4/21/18 Email, Costello to Cohen. **Harm to Ongoing Matter**

¹⁰²⁸ Cohen 9/12/18 302, at 11.

¹⁰²⁹ Cohen 9/12/18 302, at 10.

¹⁰³⁰ Cohen 9/12/18 302, at 10.

¹⁰³¹ Cohen 11/20/18 302, at 7. At a White House press briefing on April 23, 2018, in response to a question about whether the White House had "close[d] the door one way or the other on the President pardoning Michael Cohen," Sanders said, "It's hard to close the door on something that hasn't taken place. I don't like to discuss or comment on hypothetical situations that may or may not ever happen. I would refer you to personal attorneys to comment on anything specific regarding that case, but we don't have anything at this point." Sarah Sanders, *White House Daily Briefing*, C-SPAN (Apr. 23, 2018).

¹⁰³² Cohen 11/20/18 302, at 7; Cohen 3/19/19 302, at 3.

¹⁰³³ Cohen 3/19/19 302, at 3.

¹⁰³⁴ Cohen 3/19/19 302, at 3-4.

On April 24, 2018, the President responded to a reporter's inquiry whether he would consider a pardon for Cohen with, "Stupid question."¹⁰³⁵ On June 8, 2018, the President said he "hadn't even thought about" pardons for Manafort or Cohen, and continued, "It's far too early to be thinking about that. They haven't been convicted of anything. There's nothing to pardon."¹⁰³⁶ And on June 15, 2018, the President expressed sympathy for Cohen, Manafort, and Flynn in a press interview and said, "I feel badly about a lot of them, because I think a lot of it is very unfair."¹⁰³⁷

5. The President's Conduct After Cohen Began Cooperating with the Government

On July 2, 2018, ABC News reported based on an "exclusive" interview with Cohen that Cohen "strongly signaled his willingness to cooperate with special counsel Robert Mueller and federal prosecutors in the Southern District of New York—even if that puts President Trump in jeopardy."¹⁰³⁸ That week, the media reported that Cohen had added an attorney to his legal team who previously had worked as a legal advisor to President Bill Clinton.¹⁰³⁹

Beginning on July 20, 2018, the media reported on the existence of a recording Cohen had made of a conversation he had with candidate Trump about a payment made to a second woman who said she had had an affair with Trump.¹⁰⁴⁰ On July 21, 2018, the President responded: "Inconceivable that the government would break into a lawyer's office (early in the morning)—almost unheard of. Even more inconceivable that a lawyer would tape a client—totally unheard of & perhaps illegal. The good news is that your favorite President did nothing wrong!"¹⁰⁴¹ On July 27, 2018, after the media reported that Cohen was willing to inform investigators that Donald Trump Jr. told his father about the June 9, 2016 meeting to get "dirt" on Hillary Clinton,¹⁰⁴² the President tweeted: "[S]o the Fake News doesn't waste my time with dumb questions, NO, I did NOT know of the meeting with my son, Don jr. Sounds to me like someone is trying to make up

¹⁰³⁵ Remarks by President Trump and President Macron of France Before Restricted Bilateral Meeting, The White House (Apr. 24, 2018).

¹⁰³⁶ *President Donald Trump Holds Media Availability Before Departing for the G-7 Summit*, CQ Newsmaker Transcripts (June 8, 2018).

¹⁰³⁷ Remarks by President Trump in Press Gaggle, The White House (June 15, 2018).

¹⁰³⁸ *EXCLUSIVE: Michael Cohen says family and country, not President Trump, is his 'first loyalty'*, ABC (July 2, 2018). Cohen said in the interview, "To be crystal clear, my wife, my daughter and my son, and this country have my first loyalty."

¹⁰³⁹ See e.g., Darren Samuelsohn, *Michael Cohen hires Clinton scandal veteran Lanny Davis*, Politico (July 5, 2018).

¹⁰⁴⁰ See, e.g., Matt Apuzzo et al., *Michael Cohen Secretly Taped Trump Discussing Payment to Playboy Model*, New York Times (July 20, 2018).

¹⁰⁴¹ @realDonaldTrump 7/21/18 (8:10 a.m. ET) Tweet.

¹⁰⁴² See, e.g., Jim Sciutto, *Cuomo Prime Time Transcript*, CNN (July 26, 2018).