Engel, Steven A. (OLC)

From:	Engel, Steven A. (OLC)
Sent:	Sunday, November 11, 2018 7:52 PM
To:	Weinsheimer, Bradley (ODAG)
Subject:	Letter from Senate Dems
Attachments:	Letter to DOJ Lofthus re Whitaker Ethics 11-11-2018.pdf; ATT00001.txt

FYI, in case you haven't seen it. (b) (5) . I'm in the office on Monday, but assume this can wait until Tuesday too.

The letter is addressed to Lee, but am I correct that you would be the designated ethics official for the Attorney General, not Lee?

https://www.democrats.senate.gov/imo/media/doc/Letter%20to%20DOJ%20Lofthus%20re%20Whitaker%20Ethics%2011-11-2018.pdf

Sent from my iPad

Congress of the United States

Washington, DC 20510

November 11, 2018

The Honorable Lee J. Lofthus
Assistant Attorney General for Administration
and Designated Agency Ethics Officer
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Assistant Attorney General Lofthus:

We are writing to you in your capacity as the Justice Department's Designated Agency Ethics Official regarding the supervision of Special Counsel Robert Mueller by Mr. Matt Whitaker, the newly appointed Acting Attorney General. There are serious ethical considerations that require Mr. Whitaker's immediate recusal from any involvement with the Special Counsel investigation of the Russian government's efforts to interfere in the 2016 presidential election.

Mr. Whitaker has a history of hostile statements toward Special Counsel Mueller's investigation, including televised statements suggesting that the investigation be defunded or subjected to strict limitations on its scope. On June 9, 2017—not even a month after the Special Counsel was appointed—Mr. Whitaker stated on a radio show: "There is no criminal obstruction of justice charge to be had here. The evidence is weak. No reasonable prosecutor would bring a case."[1]

On July 26, 2017, Mr. Whitaker stated that he "could see a scenario where Jeff Sessions is replaced with a recess appointment and that attorney general doesn't fire Bob Mueller but he just reduces his budget so low that his investigations grinds to almost a halt."[2] Mr. Whitaker has also made reference to the Special Counsel investigation as "a mere witch hunt" and published an opinion article entitled "Mueller's Investigation of Trump Is Going Too Far" in which he argued that Deputy Attorney General Rod

---

[1] The David Webb Show (June 9, 2017) (online at www.youtube.com/watch?v=IYQzupQzNOQ).

[2] *CNN Tonight*, CNN (July 26, 2017) (online at http://transcripts.cnn.com/TRANSCRIPTS/1707/26/cnnt.01.html).

Rosenstein should place limits on the scope of the investigation.[3] He has even claimed publicly that "[t]he left is trying to sow this theory that essentially Russians interfered with the U.S. election. Which has been proven false. They did not have any impact in the election that is very clear from the Obama Administration."[4] This statement demonstrates plainly that Mr. Whitaker has pre judged the outcome of the Special Counsel investigation.

In addition to his public criticism of the Special Counsel investigation, Mr. Whitaker appears to have troubling conflicts of interest that may also require his recusal from the investigation. In 2014, Mr. Whitaker served as chairman of the campaign of Sam Clovis to be Iowa State Treasurer, and Mr. Whitaker and Mr. Clovis have reportedly remained in close contact.[5] Mr. Clovis served as a national co chairman of the Trump presidential campaign, and in that capacity supervised George Papadopoulos, the Trump foreign policy advisor who sought to set up a meeting between Vladimir Putin and Donald Trump during the 2016 campaign, and who has pleaded guilty to making false statements to the FBI regarding his contacts with agents of the Russian government.[6] As you know, following advice from career Department ethics officials, Attorney General Sessions recused from the Special Counsel investigation given his senior role on the Trump campaign and a series of undisclosed contacts with Russian government officials.[7]

The official supervising the Special Counsel investigation must be – in both fact and appearance – independent and impartial. Regrettably, Mr. Whitaker's statements indicate a clear bias against the investigation that would cause a reasonable person to question his impartiality. Allowing a vocal opponent of the investigation to oversee it will severely undermine public confidence in the Justice Department's work on this critically important matter. Mr. Whitaker's relationship with Mr. Clovis, who is a grand jury witness in the Special Counsel investigation, as well as Mr. Whitaker's other entanglements, raise additional concerns about his ability to supervise the investigation independently and impartially.

For these reasons, we request that you immediately notify us in writing regarding whether you, or any other ethics officials at the Justice Department, have advised Mr. Whitaker to recuse from supervision of the Special Counsel investigation, and the basis for that recommendation. We also request that you provide us all ethics guidance the

---

[3] Matthew Whitaker, *Mueller's Investigation of Trump Is Going Too Far*, CNN (Aug. 6, 2017) (online at www.cnn.com/2017/08/06/opinions/rosenstein-should-curb-mueller-whittaker-opinion/index.html).

[4] *The Chosen Generation Radio Program* (Mar. 3, 2017) (online at www.youtube.com/watch?v=QCA120DtAhI).

[5] *See, e.g.*, *Whitaker's Friendship with Trump Aide Reignites Recusal Debate*, Reuters (Nov. 8, 2018) (online at www.reuters.com/article/us-usa-trump-whitaker/whitakers-friendship-with-trump-aide-reignites-recusal-debate-idUSKCN1ND2SN).

[6] Statement of the Offense, *United States v. Papadopoulos* (D.D.C. Oct. 5, 2017) (online at www.justice.gov/file/1007346/download).

[7] *Attorney General Sessions Statement on Recusal*, Department of Justice (Mar. 2, 2017) (online at www.justice.gov/opa/pr/attorney-general-sessions-statement-recusal).

Department has provided to Mr. Whitaker to date.

Sincerely,

Nancy Pelosi
Democratic Leader
U.S. House of Representatives

Charles E. Schumer
Democratic Leader
U.S. Senate

Jerrold Nadler
Ranking Member
Committee on the Judiciary
U.S. House of Representatives

Dianne Feinstein
Ranking Member
Committee on the Judiciary
U.S. Senate

Adam B. Schiff
Ranking Member
Permanent Select Committee on Intelligence
U.S. House of Representatives

Mark R. Warner
Vice Chairman
Select Committee on Intelligence
U.S. Senate

Elijah Cummings
Ranking Member
Committee on Oversight &
Government Reform
U.S. House of Representatives

O'Callaghan, Edward C. (ODAG)

From:	O'Callaghan, Edward C. (ODAG)
Sent:	Wednesday, November 28, 2018 1:29 PM
To:	Engel, Steven A. (OLC); Gannon, Curtis E. (OLC)
Subject:	FW:
Attachments:	20181128131931.pdf; (b)(3) .docx

Edward C. O'Callaghan
202-514-2105

From: AMZ
Sent: Wednesday, November 28, 2018 1:23 PM
To: O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>
Subject: FW:

Aaron Zebley
Special Counsel's Office
202.514.0512

From: (b) (6), (b) (7)(C)
Sent: Wednesday, November 28, 2018 1:22 PM
To: AMZ (b) (6), (b) (7)(C) >
Subject:

(b) (6), (b) (7)(C)
The Special Counsel's Office
(b) (6)

January 30, 1974

Honorable Richard M. Nixon
The President
The White House

My dear Mr. President:

As you know, this Grand Jury was empanelled on June 5, 1972, in the United States District Court for the District of Columbia, and has been investigating possible offenses that may have been committed against the United States arising out of the break-in and surreptitious electronic surveillance of the Democratic National Committee offices at Watergate, and attempts to preclude a successful investigation of the same. Possible offenses being investigated by this Grand Jury include, but are not limited to, obstruction of justice, conspiracy to obstruct justice, and perjury.

Evidence presented to the Grand Jury in the form of testimony and tangible evidence -- including tape recordings and documents -- indicates that you have information that is highly relevant to the Grand Jury's inquiry. In the very near future, the Grand Jury expects to receive recommendations from the Special Prosecutor, after which we will make decisions concerning major phases of our investigation.

Because the Jury is eager to have before it all relevant evidence respecting the involvement or non-involvement of any persons in the activities under investigation, and because we believe that you should be offered and would wish to have an opportunity to present to us your knowledge of these activities, I am hereby requesting you on behalf of the Grand Jury to appear before it -- at the White House or such other place as would be appropriate -- to testify as other witnesses on matters that are the subject of our investigation.

The Grand Jury understands that the Special Prosecutor, Mr. Jaworski, has already suggested this possibility to your counsel, Mr. St. Clair, and that your counsel has stated that he would not recommend to you that you make such an appearance. We further understand that Mr. St. Clair suggested that should the Grand Jury be willing to propound written questions to you in lieu of any appearance before us, counsel would recommend that you consider answering such questions in writing, under oath. As you may know, the Grand Jury has already had some experience in considering the sworn testimony of certain White House officials with important knowledge of matters under investigation which was taken outside the presence of the Jury and without the opportunity for any Jurors to question such witnesses or observe their demeanor. The very existence and scope of the Grand Jury's current, continuing investigation lends support to our belief that this procedure was less than satisfactory in discharging the Grand Jury's obligation to fully investigate this matter. Therefore, I am sure you can appreciate our concern that receipt of written answers to written questions, without an opportunity for direct questioning by any Juror or member of the Special Prosecutor's staff, would not only be unsatisfactory but might well fall short of the Grand Jury's duty to the public.

Accordingly, given this background, we believe we are justified in requesting that any testimony taken by the Grand Jury from you be taken under conditions substantially comparable to those upon which we have insisted in the case of all other witnesses during this phase of our investigation. However, should you decide to honor this request to appear, we would be happy to convene and take testimony from you at any appropriate location agreeable to counsel.

I wish to advise you that this request for your personal appearance before the Grand Jury was formally approved without dissent on this date, a quorum of the Grand Jury being present.

Of course our request for your personal appearance does not mean we would not consider material you unilaterally might wish to provide the Grand Jury through counsel or otherwise; it merely states our firm view as to the only satisfactory manner of performing our duty.

Inasmuch as we are in the closing stages of our investigation, we would appreciate an early response to this request.

Respectfully,

Vladimir N. Pregelj
Foreman
June, 1972 #1 Grand Jury

Honorable Richard M. Nixon
The President
The White House

O'Callaghan, Edward C. (ODAG)

From: O'Callaghan, Edward C. (ODAG)
Sent: Wednesday, November 28, 2018 6:07 PM
To: Engel, Steven A. (OLC); Gannon, Curtis E. (OLC)
Subject: RE:

yes

Edward C. O'Callaghan
202-514-2105

From: Engel, Steven A. (OLC)
Sent: Wednesday, November 28, 2018 2:36 PM
To: O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>; Gannon, Curtis E. (OLC) [redacted (b) (6)]
Subject: RE:

Thanks. will take a look.

I assume they plan to share the draft [redacted (b) (5)] too?

From: O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>
Sent: Wednesday, November 28, 2018 1:29 PM
To: Engel, Steven A. (OLC) <[redacted (b) (6)] Gannon, Curtis E. (OLC) [redacted (b) (6)]
Subject: FW:

Duplicative Material (Document ID: 0.7.23922.63138)

O'Callaghan, Edward C. (ODAG)

From:	O'Callaghan, Edward C. (ODAG)
Sent:	Wednesday, November 28, 2018 10:40 PM
To:	Engel, Steven A. (OLC); Gannon, Curtis E. (OLC)
Subject:	Fwd: DRAFT / DELIBERATIVE
Attachments:	Draft Letter from RSM 11-28-18 a.docx; ATT00001.htm; Raskin draft response letter 11-28-18 (002).docx; ATT00002.htm

Drafts.

Edward C. O'Callaghan
202-514-2105

Begin forwarded message:

> **From:** AMZ <(b) (6), (b) (7)(C) >
> **Date:** November 28, 2018 at 7:55:59 PM EST
> **To:** "O'Callaghan, Edward C. (ODAG)" <ecocallaghan@jmd.usdoj.gov>
> **Subject: DRAFT / DELIBERATIVE**
>
> Neither is final.
>
> Aaron Zebley
> Special Counsel's Office
> 202.514.0512
>
>

O'Callaghan, Edward C. (ODAG)

From:	O'Callaghan, Edward C. (ODAG)
Sent:	Friday, November 30, 2018 9:08 AM
To:	Engel, Steven A. (OLC); Gannon, Curtis E. (OLC); Demers, John C. (NSD)
Subject:	FW: DRAFT/DELIBERATIVE/ ATT WP
Attachments:	Raskin draft response letter mrd ebp 11-29-18 NEAR FINAL.docx; (b)(3) 11.29.18 NEAR FINAL.docx; Draft Letter from RSM 11-29-18 NEAR FINAL.docx

Edward C. O'Callaghan
202-514-2105

From: AMZ (b) (6), (b) (7)(C)
Sent: Thursday, November 29, 2018 8:07 PM
To: O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>
Subject: DRAFT/DELIBERATIVE/ ATT WP

DRAFT/DELIBERATIVE
Current drafts. We are planning to convey these on Monday.
Thanks.

Aaron Zebley
Special Counsel's Office
202.514.0512

O'Callaghan, Edward C. (ODAG)

From:	O'Callaghan, Edward C. (ODAG)
Sent:	Tuesday, December 4, 2018 8:49 AM
To:	Engel, Steven A. (OLC)
Cc:	Gannon, Curtis E. (OLC); Demers, John C. (NSD)
Subject:	Re: DRAFT/DELIBERATIVE/ ATT WP

Yes. Will forward

Edward C. O'Callaghan
202-514-2105

On Dec 4, 2018, at 8:28 AM, Engel, Steven A. (OLC) <[redacted] (b) (6)> wrote:

> Did they send on Monday?
>
> Sent from my iPhone
>
> On Nov 30, 2018, at 9:08 AM, O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov> wrote:

Duplicative Material (Document ID: 0.7.23922.66112)

O'Callaghan, Edward C. (ODAG)

From:	O'Callaghan, Edward C. (ODAG)
Sent:	Tuesday, December 4, 2018 9:27 AM
To:	Engel, Steven A. (OLC); Gannon, Curtis E. (OLC); Demers, John C. (NSD)
Subject:	FW:
Attachments:	2018-12-03 Response Letter from JLQ to Raskin.pdf; 2018-12-03 Letter from R. Mueller.pdf

I have the (b)(3) in hard copy locked in my office if you would like to see it.

Edward C. O'Callaghan
202-514-2105

From: AMZ (b) (6), (b) (7)(C)
Sent: Monday, December 3, 2018 12:42 PM
To: O'Callaghan, Edward C.(ODAG) <ecocallaghan@jmd.usdoj.gov>
Subject:

DELIBERATIVE
Delivered at approx.. 1220pm, along with (b)(3) (I can send you a hard copy of that).

Aaron Zebley
Special Counsel's Office
202.514.0512

U.S. Department of Justice

The Special Counsel's Office

Washington, D.C. 20530

December 3, 2018

Jane Serene Raskin, Esq.
Raskin & Raskin
201 Alhambra Circle, Suite 1050
Coral Gables, Florida 33134

Dear Counsel:

I wrote to you on May 16, 2018, concerning our request to interview the President. I noted at that time that it was in the interest of the Presidency and the public for an interview to take place to complete the record of events with critical information that the President possesses.

That remains true. We expect to make determinations on matters about which the President has unique personal knowledge. Our review of the President's written responses has confirmed our belief that there is no adequate substitute for an in-person interview. This is the President's opportunity to voluntarily provide us with important information for us to evaluate in the context of all the evidence we have gathered. The U.S. criminal justice system depends on cooperation of this kind, and the President's cooperation is singularly warranted. We ask that the President make a final decision on whether he will agree to a voluntary interview on the topics we have provided.

Please provide us with the President's response by December 10, 2018.

Sincerely yours,

Robert S. Mueller, III
Special Counsel

U.S. Department of Justice

The Special Counsel's Office

Washington, D.C. 20530

December 3, 2018

Jane Serene Raskin, Esq.
Raskin & Raskin
201 Alhambra Circle, Suite 1050
Coral Gables, Florida 33134

Dear Counsel:

I write in response to your letter of November 20, 2018, concerning the President's answers to the written questions we provided on September 17, 2018. Your submission for the first time objected to the form and nature of the questions, Ltr. at 1-2, and your client, without advance notice to us, declined to answer an entire section of questions concerning Russia-related issues during the transition period, Ltr. at 4. These belated objections and omissions unfortunately necessitate this response.

Need for the Information Requested

As an initial matter, we framed our questions to elicit your client's knowledge on core areas of our investigation: Russian interference in the 2016 presidential election and any links and/or coordination with your client's campaign. While your letter questions the relevance of these inquiries, as well as our basis for asking the questions and our need for the information, Ltr. at 3, the connection to our investigation is clear. Our office has brought numerous criminal charges related to Russian interference in the 2016 presidential election. *See, e.g.*, *United States v. Internet Research Agency*, 1:18-cr-32 (D.D.C.); *United States v. Netyksho*, 1:18-cr-215 (D.D.C.). We have also brought criminal charges based on false statements made to investigators by an administration official and a campaign advisor about their contacts with Russians. *United States v. Michael Flynn*, 1:17-cr-232 (D.D.C.); *United States v. George Papadopoulos*, 1:17-cr-182 (D.D.C). The completion of our investigation into the scope of these criminal activities and any links to the campaign extends to the personal knowledge of the candidate himself.

Information provided by your client has unique value. No other witness has access to his personal recollections and knowledge. While your letter suggests that the information we seek "has been available to the SCO in overwhelming measure for well over a year," Ltr. at 2, your client's testimony about his contemporaneous knowledge of the events in question is not available from any other source. As we explain below, the standard set forth in *In re Sealed Case*, 121 F.3d 729 (D.C. Cir. 1997) (*Espy*), is not applicable here because you are providing information to us in an intra-Executive Branch investigation; you are not providing information outside the Executive Branch. But even if the *Espy* standard applied, we are confident that a court would find that our

questions easily meet that standard because they seek important information on a central issue and the information is unavailable from another source.

References to Conduct of the Investigation

You state in your letter that you "reiterate" your "oft-stated concerns that this investigation has been plagued with both conflicts of interest and highly irregular conduct and that it has lacked justification from the outset." Ltr. at 4. We do not believe it worthwhile to engage in a back-and-forth on these vague and unsubstantiated allegations. We note, however, that to the extent you have or had a genuine concern about purported conflicts of interest or improper conduct by our Office, you at any time have been able to raise such matters with appropriate Department of Justice officials, so that they could be handled properly and professionally.

Form of the Questions

You raise several objections to the form of the questions, including assertions that they are "complex," "vague and ambiguous," "overbroad," and "duplicative and confusing." Ltr. at 1-2. We are puzzled by these objections. The questions are easy to understand, call for straightforward responses, and are sufficiently detailed to make clear what is being asked. Where we used comprehensive terms (such as "directly or indirectly," a phrase commonly used in the U.S. Code, *see, e.g.*, 18 U.S.C. § 201(b); 52 U.S.C. § 30121(a)(1)), we did so in an effort to prevent any ambiguity in the scope of the question, and to avoid narrowly cabined responses that would not actually provide the information sought. And to the extent you were actually confused about the meaning of one or more of the questions provided, you could have asked us for clarification at any time over the last two months. You did not.

Failure to Respond to Transition-Period Questions

Your letter states that the President declined to respond to questions V.b through V.h because of your view that transition-period events "raise issues of executive privilege on which your client would need the benefit of institutional advice." Ltr. at 4. Providing information to us, however, does not raise any potential privilege issues. The Department of Justice's longstanding position is that the sharing of information within the Executive Branch raises no issue of legal privilege. Sharing within the Executive Branch simply reflects appropriate intra-executive cooperation in a law-enforcement investigation. As we noted in our letter to you dated July 30, 2018, Attorney General Michael B. Mukasey explained to President George W. Bush a decade ago that "there is an admirable tradition, extending back through Administrations of both political parties, of full cooperation by the White House with criminal investigations," and such cooperation does not waive any applicable executive privilege vis-à-vis another branch. *Assertion of Executive Privilege Concerning the Special Counsel's Interviews of the Vice President and Senior White House Staff*, 32 O.L.C. Op. 7-11 (2008) (internal quotation marks omitted); *accord Citizens for Responsibility & Ethics in Washington v. U.S. Dep't of Justice*, 658 F. Supp. 2d 217, 236-238(D.D.C. 2009) (holding, in the context of FOIA litigation, that Vice President Cheney did not

waive the presidential communications and deliberative process privileges by providing information to a special counsel). This understanding has informed the White House's provision to us of information about White House deliberations and communications throughout this investigation, and reliance on privilege to withhold information from us would represent a significant and unwarranted shift. Accordingly, we reiterate our request that your client provide answers to these questions, either in writing or as part of an oral interview.

The Answers Submitted

In agreeing to accept written responses from your client in the first instance, we said that we would assess the responses in good faith and determine to what extent additional testimony would be necessary. We have done so. We note that your client's answers include more than 30 instances in which he says he does not "recall" or "remember" or have an "independent recollection" of certain information. Your client also provided incomplete or imprecise responses to certain of our questions. For example, your client did not answer whether he at any time directed or suggested that discussions about the Trump Moscow Project should cease (Question III.e), but has since made public comments about that topic. In our view, your client's responses demonstrate the inadequacy of the written format, as we have had no opportunity to ask follow-up questions that would ensure complete answers and potentially refresh your client's recollection or clarify the extent or nature of his lack of recollection.

We accordingly seek to ask in-person follow-up questions on three topics: his knowledge of the June 9, 2016 meeting between campaign officials and Russian individuals (the "June 9 Meeting"); his knowledge and involvement in the Trump Moscow project; and his communications with Roger Stone and others concerning WikiLeaks. We also have concluded that the written format would be plainly insufficient to obtain complete information on topics central to the obstruction-related aspects of our investigation. Those topics involve events that occurred more recently and are thus likely to involve present recollections and memories that can readily be refreshed in a live interchange. They also involve matters of your client's knowledge and intent that can only be effectively explored through the opportunity for contemporaneous follow up and clarification.

In light of that assessment, the Special Counsel has addressed in a separate letter our request for your client to make a final decision as to whether he will agree to an in-person interview on the topics listed in Attachment A.

Sincerely yours,
Robert S. Mueller, III

By: James L. Quarles III
Senior Counselor to the Special Counsel

Attachment A

Interview Topics

1. Follow-up on your client's knowledge of the June 9 Meeting; his knowledge and involvement in the Trump Moscow project; and his communications with Roger Stone and others concerning WikiLeaks.

2. Your client's view of inaccuracies or false statements in the memos written by James Comey regarding his interactions with your client, and in Comey's June 8, 2017 testimony and Statement for the Record submitted to the Senate Select Committee on Intelligence (SSCI).

3. The purpose of your client's dinner with Comey on January 27, 2017, and what your client intended when speaking to him during the dinner.

4. The purpose of your client's statements when meeting with Comey in the Oval Office on February 14, 2017.

5. Your client's efforts to prevent or reverse Attorney General Jefferson Sessions's recusal from the Russia investigation.

6. Your client's decision to fire Comey, the process that led to that decision, his role in the White House's explanations for that decision, and his own statements about it.

7. Your client's efforts to remove the Special Counsel and/or limit the scope of the Special Counsel's investigation, including by citing potential conflicts of interest.

8. Your client's involvement in decisions about whether to disclose Donald Trump Jr.'s emails concerning the June 9 Meeting, and what information to provide for stories published on July 8, 2017 by the New York Times and Circa News concerning the June 9 Meeting.

9. Your client's efforts in late January and early February 2018 to have White House Counsel Donald McGahn deny that the President had tried to remove the Special Counsel.

10. Efforts by your client or on behalf of your client to suggest to Flynn or Paul Manafort that a pardon was potentially under consideration.

O'Callaghan, Edward C. (ODAG)

From: O'Callaghan, Edward C. (ODAG)
Sent: Tuesday, December 4, 2018 9:55 AM
To: Engel, Steven A. (OLC)
Subject: Re: RE:

Slightly but not in substance.

Edward C. O'Callaghan
202-514-2105

On Dec 4, 2018, at 9:38 AM, Engel, Steven A. (OLC) <[redacted] (b) (6)> wrote:

> Cool. Is [redacted] (b)(5) per OLC, (b)(3) per OIP different from the draft we reviewed?
>
> **From:** O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>
> **Sent:** Tuesday, December 4, 2018 9:27 AM
> **To:** Engel, Steven A. (OLC) <[redacted] (b) (6)> Gannon, Curtis E. (OLC) <[redacted] (b) (6)> Demers, John C. (NSD) <jcdemers@jmd.usdoj.gov>
> **Subject:** FW:

Duplicative Material (Document ID: 0.7.23922.66805)

Engel, Steven A. (OLC)

From:	Engel, Steven A. (OLC)
Sent:	Monday, December 10, 2018 4:48 PM
To:	O'Callaghan, Edward C. (ODAG); Gannon, Curtis E. (OLC); Demers, John C. (NSD)
Subject:	RE:

thanks

From: O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>
Sent: Monday, December 10, 2018 4:47 PM
To: Engel, Steven A. (OLC) < (b) (6) Gannon, Curtis E. (OLC) < (b) (6)
Demers, John C. (NSD) <jcdemers@jmd.usdoj.gov>
Subject: RE:

The lawyers told SCO that they would respond to them in the coming days.

Edward C. O'Callaghan
202-514-2105

From: Engel, Steven A. (OLC) < (b) (6)
Sent: Monday, December 10, 2018 1:52 PM
To: O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>; Gannon, Curtis E. (OLC)
< (b) (6) Demers, John C. (NSD) <jcdemers@jmd.usdoj.gov>
Subject: RE:

Are they still expecting (b) (5) today?

From: O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>
Sent: Tuesday, December 4, 2018 9:27 AM
To: Engel, Steven A. (OLC) < (b) (6) Gannon, Curtis E. (OLC) < (b) (6)
Demers, John C. (NSD) <jcdemers@jmd.usdoj.gov>
Subject: FW:

Duplicative Material (Document ID: 0.7.23922.66805)

O'Callaghan, Edward C. (ODAG)

From:	O'Callaghan, Edward C. (ODAG)
Sent:	Thursday, December 13, 2018 8:57 AM
To:	Engel, Steven A. (OLC); Gannon, Curtis E. (OLC); Demers, John C. (NSD)
Subject:	FW: Letter
Attachments:	12-12-18 Letter to SCO.pdf

Edward C. O'Callaghan
202-514-2105

From: AMZ (b) (6), (b) (7)(C) >
Sent: Wednesday, December 12, 2018 6:42 PM
To: O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>
Subject: FW: Letter

DELIBERATIVE

Counsel to Donald J. Trump
President of the United States of America

Hon. Rudolph W. Giuliani
Jay Alan Sekulow
Jane Serene Raskin
Martin R. Raskin

December 12, 2018

Robert S. Mueller, III
James L. Quarles, III
The Special Counsel's Office
395 E. Street S.W.
Washington, D.C. 20024

Dear Counsel:

We write in response to three letters received from the Special Counsel's Office ("SCO") on December 3, 2018: Mr. Mueller's letter asking the President of the United States for a voluntary, in-person interview; Mr. Quarles' letter responding to our November 20, 2018, letter and expanding upon Mr. Mueller's interview request; and Mr. Quarles' letter and enclosed November 30, 2018, lette

Request for Follow-up Questioning

To put matters in context, on November 20, 2018, the President answered the SCO's written questions as they pertained to his knowledge of what you described as "Russia-related matters" during the 2016 presidential campaign. The President answered the questions despite the additional hardship caused by the confusing and substantial deficiencies of form we articulated to you in our transmittal letter. And he did so in spite of the fact that, as of eighteen months into the SCO's investigation, you had failed to specify any potential offense under investigation, let alone any theory of liability, as to which the President's provision of direct information regarding these various "Russia-related matters" was sufficiently important and necessary to justify the immense burden the process imposed on the President and his Office. You still have not done so. The suggestion, offered now for the first time, that the SCO's indictments of the various named individuals and entities should be sufficient to serve that purpose is unpersuasive to say the least. None of the indictments to which you refer allege any conduct involving coordination between Russian officials and individuals associated with the campaign, let alone conduct as to which the President's direct knowledge or information would be critical.

And yet, with extensive written answers to your Russia-related questions in hand, you now ask the President to sit for an in-person interview to provide you the opportunity to ask additional "follow-up questions" and to "potentially refresh [his] recollection or clarify the extent or nature of his lack of recollection" as to the written answers he has given. You have included no specific follow-up questions for our consideration. In fact, you have barely constrained your proposed additional questioning on Russia-related matters at all, limiting the proposed re-questioning only by reference to three broad topic categories. And you have not explained in any detail why you consider additional questions on these general topics warranted or why any specific follow-up requests could not be addressed, if at all, in writing. Likewise, you have articulated no reasoned basis upon which to question the nature or extent of the President's recollection as set forth in his answers to the numerous questions propounded under the three topic categories at issue, much less one that would justify an indefinite, in-person, exploratory exercise with the President of the United States designed to "potentially refresh . . . or clarify" his considered and stated recollection of matters that may have taken place two to three years ago.

When we embarked on the written question and answer procedure, we agreed to engage in a good faith assessment of any asserted need for additional questioning after you had an opportunity to consider the President's answers. Your letters have provided us no basis upon which to recommend that our client provide additional information on the Russia-related topics as to which he has already provided written answers.

Request for Questioning on Obstruction topics

Your renewed request for an in-person interview also proposes inclusion of nine additional topics for questioning beyond those topics covered in the written questions already propounded and answered. These additional topics deal with the "obstruction-related" aspects of your investigation and explicitly address the President's time in office. They concern the President's decision-making and mental processes associated with the constitutional exercise of his Article II powers. We have set forth our position on these issues in writing and during our discussions. Consistent with our earlier exchanges, your recent letters identify no theory of obstruction as to which you contend such questioning would be appropriate. Our position on these matters has not changed.

Executive Privilege

We note that you take issue with the President's decision to seek institutional advice on the potential application of executive privilege before answering questions V (b) through (h) relating to his deliberations and communications with senior staff regarding national security issues during the final days of the transition. As an initial matter, your suggestion that our position on the transition-period questions came without "advance notice" to you is inaccurate. We informed you during our meeting at the Department of Justice on the evening of November 15, 2018, that we would defer answering questions V (b) through (h) based on executive privilege concerns, and Mr. O'Callaghan indicated that the Department shares such concerns.

Second and more important, the broader suggestion advanced for the first time in your recent letter that issues of executive privilege should play no part in the intra-Executive branch sharing of information in the context of a law-enforcement investigation is distinctly at odds with our discussions to date and for good reason. The fact that intra-Executive branch sharing of information does not necessarily cause a waiver of privilege does not end the inquiry. Throughout our negotiations, you have joined us in applying the reasoning of *In re Sealed Case,* 121 F.3d 729 (D.C. Cir. 1997) (*Espy*) as a guide in assessing whether the need to procure information directly from the President is justified by the extraordinary burden the exercise is certain to impose given the unique demands of the office. Indeed, you explicitly crafted your written questions on Russia-related matters in an effort to avoid executive privilege issues.

Moreover, the important purposes underlying the executive privilege doctrines, *e.g.*, the ability of the President to engage in frank and open deliberations and communications with his advisors without concern for their later use against him in an adversarial environment, apply even in the context of proposed intra-branch sharing. Regrettably, they are all the more relevant in the instant investigation, born as it was of a calculated leak by former FBI Director James Comey of privileged conversations with the President for the expressed purpose of prompting the appointment of a Special Counsel. You quote selectively from Attorney General Mukasey's letter regarding the tradition of intra-branch sharing, but a mere two sentences later, the letter continues:

> Were future presidents, vice presidents or White House staff to perceive that such voluntary cooperation would create records that would likely be made available to congress . . . there would be an unacceptable risk that such knowledge could adversely impact their willingness to cooperate fully and candidly in a voluntary interview.

Assertion of Executive Privilege Concerning the Special Counsel's Interviews of the Vice President and Senior White House Staff, 32 O.L.C. Op. 7-11 (2008). The political implications of your investigation are undeniable, and the potential for further targeted and improper "sharing" outside the executive branch is real.

This not to say that the President does not recognize and has not embraced the "admirable tradition, extending back through Administrations of both political parties, of full cooperation by the White House with criminal investigations . . . ." *Id.* To the contrary, this White House has provided unprecedented and virtually limitless cooperation with your investigation, and the President following the precedent set by President Reagan during the Iran Contra Investigation has supplied written answers to your questions on the central subject of your mandate.

he
i

Sincerely,

JANE SERENE RASKIN

HON. RUDOLPH W. GIULIANI

MARTIN R. RASKIN

JAY ALAN SEKULOW

Counsel to the President

Gannon, Curtis E. (OLC)

From:	Gannon, Curtis E. (OLC)
Sent:	Tuesday, December 18, 2018 4:10 PM
To:	Boyd, Stephen E. (OLA); Williams, Beth A (OLP); Kupec, Kerri (OPA)
Cc:	O'Callaghan, Edward C. (ODAG); Engel, Steven A. (OLC); Rabbitt, Brian (OLP)
Bcc:	Gannon, Curtis E. (OLC)
Subject:	Barr Memo
Attachments:	June 8, 2018 Memo.pdf

Here is a PDF of the June 8 memo.

MEMORANDUM 8 June 2018

To: Deputy Attorney General Rod Rosenstein
Assistant Attorney General Steve Engel

From: Bill Barr

Re: Mueller's "Obstruction" Theory

I am writing as a former official deeply concerned with the institutions of the Presidency and the Department of Justice. I realize that I am in the dark about many facts, but I hope my views may be useful.

It appears Mueller's team is investigating a possible case of "obstruction" by the President predicated substantially on his expression of hope that the Comey could eventually "let…go" of its investigation of Flynn and his action in firing Comey. In pursuit of this obstruction theory, it appears that Mueller's team is demanding that the President submit to interrogation about these incidents, using the threat of subpoenas to coerce his submission.

Mueller should not be permitted to demand that the President submit to interrogation about alleged obstruction. Apart from whether Mueller a strong enough factual basis for doing so, Mueller's obstruction theory is fatally misconceived. As I understand it, his theory is premised on a novel and legally insupportable reading of the law. Moreover, in my view, if credited by the Department, it would have grave consequences far beyond the immediate confines of this case and would do lasting damage to the Presidency and to the administration of law within the Executive branch.

As things stand, obstruction laws do not criminalize just any act that can influence a "proceeding." Rather they are concerned with acts intended to have a *particular kind* of impact. A "proceeding" is a formalized process for finding the truth. In general, obstruction laws are meant to protect proceedings from actions designed subvert the integrity of their truth-finding function through compromising the honesty of decision-makers (*e.g.*, judge, jury) or impairing the integrity or availability of evidence – testimonial, documentary, or physical. Thus, obstruction laws prohibit a range of "bad acts" – such as tampering with a witness or juror; or destroying, altering, or falsifying evidence – all of which are inherently wrongful because, by their very nature, they are directed at depriving the proceeding of honest decision-makers or access to full and accurate evidence. In general, then, the *actus reus* of an obstruction offense is the inherently subversive "bad act" of impairing the integrity of a decision-maker or evidence. The requisite *mens rea* is simply intending the wrongful impairment that inexorably flows from the act.

Obviously, the President and any other official can commit obstruction in this classic sense of sabotaging a proceeding's truth-finding function. Thus, for example, if a President knowingly destroys or alters evidence, suborns perjury, or induces a witness to change testimony, or commits

any act deliberately impairing the integrity or availability of evidence, then he, like anyone else, commits the crime of obstruction. Indeed, the acts of obstruction alleged against Presidents Nixon and Clinton in their respective impeachments were all such "bad acts" involving the impairment of evidence. Enforcing these laws against the President in no way infringes on the President's plenary power over law enforcement because exercising this discretion – such as his complete authority to start or stop a law enforcement proceeding -- does not involve commission of any of these inherently wrongful, subversive acts.

The President, as far as I know, is not being accused of engaging in any wrongful act of evidence impairment. Instead, Mueller is proposing an unprecedented expansion of obstruction laws so as to reach facially-lawful actions taken by the President in exercising the discretion vested in him by the Constitution. It appears Mueller is relying on 18 U.S.C. §1512, which generally prohibits acts undermining the integrity of evidence or preventing its production. Section 1512 is relevant here because, unlike other obstruction statutes, it does not require that a proceeding be actually "pending" at the time of an obstruction, but only that a defendant have in mind an anticipated proceeding. Because there were seemingly no relevant proceedings pending when the President allegedly engaged in the alleged obstruction, I believe that Mueller's team is considering the "residual clause" in Section 1512 – subsection (c)(2) – as the potential basis for an obstruction case. Subsection (c) reads:

> (c) Whoever corruptly-- (1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or (2) *otherwise* obstructs, influences, or impedes any official proceeding, or attempts to do so [is guilty of the crime of obstruction]. [emphasis added].

As I understand the theory, Mueller proposes to give clause (c)(2), which previously has been *exclusively* confined to acts of evidence impairment, a new unbounded interpretation. First, by reading clause (c)(2) in isolation, and glossing over key terms, he construes the clause as a free-standing, all-encompassing provision prohibiting *any act* influencing a proceeding if done with an improper motive. Second, in a further unprecedented step, Mueller would apply this sweeping prohibition to facially-lawful acts taken by public officials exercising of their discretionary powers if those acts influence a proceeding. Thus, under this theory, simply by exercising his Constitutional discretion in a facially-lawful way – for example, by removing or appointing an official; using his prosecutorial discretion to give direction on a case; or using his pardoning power – a President can be accused of committing a crime based solely on his subjective state of mind. As a result, any discretionary act by a President that influences a proceeding can become the subject of a criminal grand jury investigation, probing whether the President acted with an improper motive.

If embraced by the Department, this theory would have potentially disastrous implications, not just for the Presidency, but for the Executive branch as a whole and for the Department in particular. While Mueller's focus is the President's discretionary actions, his theory would apply to *all exercises of prosecutorial discretion* by the President's subordinates, from the Attorney General down to the most junior line prosecutor. Simply by giving direction on a case, or class of

cases, an official opens himself to the charge that he has acted with an "improper" motive and thus becomes subject to a criminal investigation. Moreover, the challenge to Comey's removal shows that not just prosecutorial decisions are at issue. Any personnel or management decisions taken by an official charged with supervising and conducting litigation and enforcement matters in the Executive branch can become grist for the criminal mill based solely on the official's subjective state of mind. All that is needed is a claim that a supervisor is acting with an improper purpose and any act arguably constraining a case – such as removing a U.S. Attorney -- could be cast as a crime of obstruction.

It is inconceivable to me that the Department could accept Mueller's interpretation of §1512(c)(2). It is untenable as a matter of law and cannot provide a legitimate basis for interrogating the President. I know you will agree that, if a DOJ investigation is going to take down a democratically-elected President, it is imperative to the health of our system and to our national cohesion that any claim of wrongdoing is solidly based on evidence of a *real* crime – not a debatable one. It is time to travel well-worn paths; not to veer into novel, unsettled or contested areas of the law; and not to indulge the fancies by overly-zealous prosecutors.

As elaborated on below, Mueller's theory should be rejected for the following reasons:

First, the sweeping interpretation being proposed for § 1512's residual clause is contrary to the statute's plain meaning and would directly contravene the Department's longstanding and consistent position that generally-worded statutes like § 1512 cannot be applied to the President's exercise of his constitutional powers in the absence of a "clear statement" in the statute that such an application was intended.

Second, Mueller's premise that, whenever an investigation touches on the President's own conduct, it is inherently "corrupt" under § 1512 for the President to influence that matter is insupportable. In granting plenary law enforcement powers to the President, the Constitution places no such limit on the President's supervisory authority. Moreover, such a limitation cannot be reconciled with the Department's longstanding position that the "conflict of interest" laws do not, and cannot, apply to the President, since to apply them would impermissibly "disempower" the President from supervising a class of cases that the Constitution grants him the authority to supervise.

Third, defining facially-lawful exercises of Executive discretion as potential crimes, based solely on subjective motive, would violate Article II of the Constitution by impermissibly burdening the exercise of core discretionary powers within the Executive branch.

Fourth, even if one were to indulge Mueller's obstruction theory, in the particular circumstances here, the President's motive in removing Comey and commenting on Flynn could not have been "corrupt" unless the President and his campaign were actually guilty of illegal collusion. Because the obstruction claim is entirely dependent on first finding collusion, Mueller should not be permitted to interrogate the President about obstruction until has enough evidence to establish collusion.

I. The Statute's Plain Meaning, and "the Clear Statement" Rule Long Adhered To By the Department, Preclude Its Application to Facially-Lawful Exercises of the President's Constitutional Discretion.

The unbounded construction Mueller would give §1512's residual clause is contrary to the provision's text, structure, and legislative history. By its terms, §1512 focuses exclusively on actions that subvert the truth-finding function of a proceeding by impairing the availability or integrity of evidence – testimonial, documentary, or physical. Thus, §1512 proscribes a litany of specifically-defined acts of obstruction, including killing a witness, threatening a witness to prevent or alter testimony, destroying or altering documentary or physical evidence, and harassing a witness to hinder testimony. All of these enumerated acts are "obstructive" in precisely the same way – they interfere with a proceeding's ability to gather complete and reliable evidence.

The question here is whether the phrase – "or corruptly otherwise obstructs" – in clause (c)(2) is divorced from the litany of the specific prohibitions in § 1512, and is thus a free-standing, all-encompassing prohibition reaching *any* act that influences a proceeding, or whether the clause's prohibition against "otherwise" obstructing is somehow tied to, and limited by, the character of all the other forms of obstruction listed in the statute. I think it is clear that use of the word "otherwise" in the residual clause expressly links the clause to the forms of obstruction specifically defined elsewhere in the provision. Unless it serves that purpose, the word "otherwise" does no work at all and is mere surplusage. Mueller's interpretation of the residual clause as covering *any and all acts* that influence a proceeding reads the word "otherwise" out of the statute altogether. But any proper interpretation of the clause must give effect to the word "otherwise;" it must do some work.

As the Supreme Court has suggested, *Begay v. United States,* 553 U.S. 137, 142-143 (2008), when Congress enumerates various specific acts constituting a crime and then follows that enumeration with a residual clause, introduced with the words "or otherwise," then the more general action referred to immediately after the word "otherwise" is most naturally understood to cover acts that cause a *similar kind* of result as the preceding listed examples, but cause those results in a *different manner*. In other words, the specific examples enumerated prior to the residual clause are typically read as refining or limiting in some way the broader catch-all term used in the residual clause. *See also Yates v. United States*, 135 S.Ct. 1074, 1085-87 (2015). As the *Begay* Court observed, if Congress meant the residual clause to be so all-encompassing that it subsumes all the preceding enumerated examples, "it is hard to see why it would have needed to include the examples at all." 553 U.S. at 142; *see McDonnell v. United States*, 136 S.Ct. 2355, 2369 (2016). An example suffices to make the point: If a statute prohibits "slapping, punching, kicking, biting, gouging eyes, or otherwise hurting" another person, the word "hurting" in the residual clause would naturally be understood as referring to the same *kind* of physical injury inflicted by the enumerated acts, but inflicted in a different way – *i.e.,* pulling hair. It normally would not be understood as referring to any kind of "hurting," such as hurting another's feelings, or hurting another's economic interests.

Consequently, under the statute's plain language and structure, the most natural and plausible reading of 1512(c)(2) is that it covers acts that have the *same kind of obstructive impact* as the listed forms of obstruction – *i.e.,* impairing the availability or integrity of evidence – but cause this impairment in a different way than the enumerated actions do. Under this construction,

then, the "catch all" language in clause (c)(2) encompasses any conduct, even if not specifically described in 1512, that is directed at undermining a proceeding's truth-finding function through actions impairing the integrity and availability of evidence. Indeed, this is how the residual clause has been applied. From a quick review of the cases, it appears all the cases have involved attempts to interfere with, or render false, the evidence that would become available to a proceeding. Even the more esoteric applications of clause (c)(2) have been directed against attempts to prevent the flow of evidence to a proceeding. *E.g., United States v. Volpendesto*, 746 F.3d 273 (7th Cir. 2014)(soliciting tips from corrupt cops to evade surveillance); *United States v. Phillips*, 583 F.3d 1261 (10th Cir. 2009)(disclosing identity of undercover agent to subject of grand jury drug investigation). As far as I can tell, no case has ever treated as an "obstruction" an official's exercise of prosecutorial discretion or an official's management or personnel actions collaterally affecting a proceeding.

Further, reading the residual clause as an all-encompassing proscription cannot be reconciled either with the other subsections of § 1512, or with the other obstruction provisions in Title 18 that must be read *in pari passu* with those in § 1512. Given Mueller's sweeping interpretation, clause (c)(2) would render all the specific terms in clause (c)(1) surplusage; moreover, it would swallow up all the specific prohibitions in the remainder of § 1512 -- subsections (a), (b), and (d). More than that, it would subsume virtually all other obstruction provisions in Title 18. For example, it would supervene the omnibus clause in § 1503, applicable to pending judicial proceedings, as well as the omnibus clause in § 1505, applicable to pending proceedings before agencies and Congress. Construing the residual clause in § 1512(c)(2) as supplanting these provisions would eliminate the restrictions Congress built into those provisions -- *i.e.*, the requirement that a proceeding be "pending" -- and would supplant the lower penalties in those provisions with the substantially higher penalties in § 1512(c). It is not too much of an exaggeration to say that, if § 1512(c)(2) can be read as broadly as being proposed, then virtually all Federal obstruction law could be reduced to this single clause.

Needless to say, it is highly implausible that such a revolution in obstruction law was intended, or would have gone uncommented upon, when (c)(2) was enacted. On the contrary, the legislative history makes plain that Congress had a more focused purpose when it enacted (c)(2). That subsection was enacted in 2002 as part of the Sarbanes-Oxley Act. That statute was prompted by Enron's massive accounting fraud and revelations that the company's outside auditor, Arthur Andersen, had systematically destroyed potentially incriminating documents. Subsection (c) was added to Section 1512 explicitly as a "loophole" closer meant to address the fact that the existing section 1512(b) covers document destruction only where a defendant has induced another person to do it and does not address document destruction carried out by a defendant directly.

As reported to the Senate, the Corporate Fraud Accountability Act was expressly designed to "clarify and close loopholes in the existing criminal laws relating to the destruction or fabrication of evidence and the preservation of financial and audit records." S. Rep. No. 107-146, at 14-15. Section 1512(c) did not exist as part of the original proposal. See S. 2010, 107th Cong. (2002). Instead, it was later introduced as an amendment by Senator Trent Lott in July 2002. 148 Cong. Rec. S6542 (daily ed. July 10, 2002). Senator Lott explained that, by adding newt§ 1512(c), his proposed amendment:

> would enact stronger laws against *document shredding*. Current law prohibits obstruction of justice by a defendant acting alone, but only if a proceeding is pending and a subpoena has been issued for the evidence that has been destroyed or altered .... [T]his section would allow the Government to charge obstruction against individuals who acted alone, even if the tampering took place prior to the issuance of a grand jury subpoena. I think this is something we need to make clear so we do not have a repeat of what we saw with the Enron matter earlier this year.

Id. at S6545 (statement of Sen. Lott) (emphasis supplied). Senator Orrin Hatch, in support of Senator Lott's amendment, explained that it would "close [] [the] loophole" created by the available obstruction statutes and hold criminally liable a person who, acting alone, destroys documents. Id. at S6550 (statement of Sen. Hatch). The legislative history thus confirms that § 1512(c) was not intended as a sweeping provision supplanting wide swathes of obstruction law, but rather as a targeted gap-filler designed to strengthen prohibitions on the impairment of evidence.

Not only is an all-encompassing reading oft§ 1512(c)(2) contrary to the language and manifest purpose of the statute, but it is precluded by a fundamental canon of statutory construction applicable to statutes of this sort. Statutes must be construed with reference to the constitutional framework within which they operate. *E.g., Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991). Reading § 1512(c)(2) broadly to criminalize the President's facially-lawful exercises of his removal authority and his prosecutorial discretion, based on probing his subjective state of mind for evidence of an "improper" motive, would obviously intrude deeply into core areas of the President's constitutional powers. It is well-settled that statutes that do not *expressly* apply to the President must be construed as not applying to the President if such application would involve a possible conflict with the President's constitutional prerogatives. *See, e.g., Franklin v. Massachusetts*, 505 U.S. 788, 801 (1992). OLC has long rigorously enforced this "clear statement" rule to limit the reach of broadly worded statutes so as to prevent undue intrusion into the President's exercise of his Constitutional discretion.

As OLC has explained, the "clear statement" rule has two sources. First, it arises from the long-recognized "cardinal principle" of statutory interpretation that statutes be construed to avoid raising serious constitutional questions. Second, the rule exists to protect the "usual constitutional balance" between the branches contemplated by the Framers by "requir[ing] an express statement by Congress before assuming it intended" to impinge upon Presidential authority. *Franklin*, 505 U.S. at 801; *see, e.g., Application of 28 U.S.C. §458 to Presidential Appointments of Federal Judges,* 19 Op. O.L.C. 350 (1995).

This clear statement rule has been applied frequently by the Supreme Court as well as the Executive branch with respect to statutes that might otherwise, if one were to ignore the constitutional context, be susceptible of an application that would affect the President's constitutional prerogatives. For instance, in *Franklin* the Court was called upon to determine whether the Administrative Procedure Act ("APA"), 5 U.S.C §§ 701-706, authorized "abuse of discretion" review of final actions by the President. Even though the statute defined reviewable action in a way that facially could include the President, and did not list the President among the express exceptions to the APA, Justice O'Connor wrote for the Court:

> [t]he President is not [expressly] excluded from the APA's purview, but he is not explicitly included, either. Out of respect for the separation of powers and the unique constitutional position of the President, we find that textual silence is not enough to subject the President to the provisions of the APA. We would require an express statement by Congress before assuming it intended the President's performance of his statutory duties to be reviewed for abuse of discretion.

505 U.S. at 800-01. To amplify, she continued, "[a]s the APA does not expressly allow review of the President's actions, we must presume that his actions are not subject to its requirements." *Id.* at 801.

Similarly, in *Public Citizen v. United States Dep't of Justice*, 491 U.S. 440 (1989), the Court held that the Federal Advisory Committee Act ("FACA"), 5 U.S.C. app. § 2, does not apply to the judicial recommendation panels of the American Bar Association because interpreting the statute as applying to them would raise serious constitutional questions relating to the President's constitutional appointment power. By its terms, FACA applied to any advisory committee used by an agency "in the interest of obtaining advice or recommendations for the President." 5 U.S.C. app. § 3(2(c). While acknowledging that a "straightforward reading" of the statute's language would seem to require its application to the ABA committee, *Public Citizen*, 491 U.S. at 453, the Court held that such a reading was precluded by the "cardinal principle" that a statute be interpreted to avoid serious constitutional question." *Id.* at 465-67. Notably, the majority stated, "[o]ur reluctance to decide constitutional issues is especially great where, as here, they concern the relative powers of coordinate branches of government," and "[t]hat construing FACA to apply to the Justice Department's consultations with the ABA Committee would present formidable constitutional difficulties is undeniable." *Id.* at 466.

> The Office of Legal Counsel has consistently "adhered to a plain statement rule: statutes that do not expressly apply to the President must be construed as not applying to the President, where applying the statute to the President would pose a significant question regarding the President's constitutional prerogatives." *E.g, The Constitutional Separation of Powers Between the President and Congress*, __ Op. O.L.C. 124, 178 (1996); *Application of 28 U.S.C. §458 to Presidential Appointments of Federal Judges,* 19 Op. O.L.C. 350 (1995).

The Department has applied this principle to broadly-worded criminal statutes, like the one at issue here. Thus, in a closely analogous context, the Department has long held that the conflict-of-interest statute, 18 U.S.C § 208, does not apply to the President. That statute prohibits any "officer or employee of the executive branch" from "participat[ing] personally and substantially" in any particular matter in which he or she has a personal financial interest. *Id.* In the leading opinion on the matter, then-Deputy Attorney General Laurence Silberman determined that the legislative history disclosed no intention to cover the President and doing so would raise "serious questions as to the constitutionality" of the statute, because the effect of applying the statute to the President would "disempower" the President from performing his constitutionally-prescribed functions as to certain matters . See *Memorandum for Richard T. Burress, Office of the President,*

from Laurence H. Silberman, Deputy Attorney General, Re: Conflict of Interest Problems Arising out of the President's Nomination of Nelson A. Rockefeller to be Vice President under the Twenty-Fifth Amendment to the Constitution at 2, 5 (Aug. 28, 1974).

Similarly, OLC opined that the Anti-Lobbying Act, 18 U.S.C. § 1913, does not apply fully against the President. *See Constraints Imposed by 18 U.S.C. § 1913 on Lobbying Efforts*, 13 Op. O.L.C. 300, 304-06 (1989). The Anti-Lobbying Act prohibits any appropriated funds from being "used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress." 18 U.S.C. § 1913. The statute provided an exception for communications by executive branch officers and employees if the communication was made pursuant to a request by a member of Congress or was a request to Congress for legislation or appropriations. OLC concluded that applying the Act as broadly as its terms would otherwise allow would raise serious constitutional questions as an infringement of the President's Recommendations Clause power.

In addition to the "clear statement" rule, other canons of statutory construction preclude giving the residual clause in §1512(c)(2) the unbounded scope proposed by Mueller's obstruction theory. As elaborated on in the ensuing section, to read the residual clause as extending beyond evidence impairment, and to apply it to any that "corruptly" affects a proceeding, would raise serious Due Process issues. Once divorced from the concrete standard of evidence impairment, the residual clause defines neither the crime's *actus reus* (what conduct amounts to obstruction) nor its *mens rea* (what state of mind is "corrupt") "with sufficient definiteness that ordinary people can understand what conduct is prohibited," or "in a manner that does not encourage arbitrary and discriminatory enforcement." *See e.g. McDonnell v. United States*, 136 S.Ct. at 2373. This vagueness defect becomes even more pronounced when the statute is applied to a wide range of public officials whose normal duties involve the exercise of prosecutorial discretion and the conduct and management of official proceedings. The "cardinal rule" that a statute be interpreted to avoid serious constitutional questions mandates rejection of the sweeping interpretation of the residual clause proposed by Mueller.

Even if the statute's plain meaning, fortified by the "clear statement" rule, were not dispositive, the fact that § 1512 is a criminal statute dictates a narrower reading than Mueller's all-encompassing interpretation. Even if the scope of § 1512(c)(2) were ambiguous, under the "rule of lenity," that ambiguity must be resolved against the Government's broader reading. *See, e.g., United States v. Granderson*, 511 U.S. 39, 54 (1994) ("In these circumstances -- where text, structure, and history fail to establish that the Government's position is unambiguously correct -- we apply the rule of lenity and resolve the ambiguity in [the defendant's] favor.")

In sum, the sweeping construction of§ 1512(c)'s residual clause posited by Mueller's obstruction theory is novel and extravagant. It is contrary to the statute's plain language, structure, and legislative history. Such a broad reading would contravene the "clear statement" rule of statutory construction, which the Department has rigorously adhered to in interpreting statutes, like this one, that would otherwise intrude on Executive authority. By it terms,t§ 1512 is intended to protect the truth-finding function of a proceeding by prohibiting acts that would impair the availability or integrity of evidence. The cases applying the "residual clause" have fallen within this scope. The clause has never before been applied to facially-lawful discretionary acts of

Executive branch official. Mueller's overly-aggressive use of the obstruction laws should not be embraced by the Department and cannot support interrogation of the President to evaluate his subjective state of mind.

II. Applying §1512(c)(2) to Review Facially-Lawful Exercises of the President's Removal Authority and Prosecutorial Discretion Would Impermissibly Infringe on the President's Constitutional Authority and the Functioning of the Executive Branch.

This case implicates at least two broad discretionary powers vested by the Constitution exclusively in the President. First, in removing Comey as director of the FBI there is no question that the President was exercising one of his core authorities under the Constitution. Because the President has Constitutional responsibility for seeing that the laws are faithfully executed, it is settled that he has "illimitable" discretion to remove principal officers carrying out his Executive functions. *See Free Enterprise Fund v. Public Company Accounting Oversight Board*, 130 S.Ct. 3138, 3152 (2010); *Myers v. United States*, 272 U.S. 52 (1926). Similarly, in commenting to Comey about Flynn's situation– to the extent it is taken as the President having placed his thumb on the scale in favor of lenity – the President was plainly within his plenary discretion over the prosecution function. The Constitution vests *all Federal law enforcement power*, and hence prosecutorial discretion, in the President. The President's discretion in these areas has long been considered "absolute," and his decisions exercising this discretion are presumed to be regular and are generally deemed non-reviewable. *See, e.g., United States v. Armstrong,* 517 U.S. 456, 464 (1996); *United States v. Nixon*, 418 U.S. 683, 693 (1974); *see generally* S. Prakash, The Chief Prosecutor, 73 Geo. Wash. L. Rev. 521 (2005)

The central problem with Mueller's interpretation of §1512(c)(2) is that, instead of applying the statute to inherently wrongful acts of evidence impairment, he would now define the *actus reus* of obstruction as *any act,* including facially lawful acts, that influence a proceeding. However, the Constitution vests plenary authority over law enforcement proceedings in the President, and therefore one of the President's core constitutional authorities is precisely to make decisions "influencing" proceedings. In addition, the Constitution vests other discretionary powers in the President that can have a collateral influence on proceedings – including the power of appointment, removal, and pardon. The crux of Mueller's position is that, whenever the President exercises any of these discretionary powers and thereby "influences" a proceeding, he has completed the *actus reus* of the crime of obstruction. To establish guilt, all that remains is evaluation of the President's state of mind to divine whether he acted with a "corrupt" motive.

Construed in this manner, §1512(c)(2) would violate Article II of the Constitution in at least two respects:

First, Mueller's premise appears to be that, when a proceeding is looking into the President's own conduct, it would be "corrupt" within the meaning of §1512(c)(2) for the President to attempt to influence that proceeding. In other words, Mueller seems to be claiming that the obstruction statute effectively walls off the President from exercising Constitutional powers over cases in which his own conduct is being scrutinized. This premise is clearly wrong constitutionally. Nor can it be

reconciled with the Department's longstanding position that the "conflict of interest" laws do not, and cannot, apply to the President, since to apply them would impermissibly "disempower" the President from supervising a class of cases that the Constitution grants him the authority to supervise. Under the Constitution, the President's authority over law enforcement matters is necessarily all-encompassing, and Congress may not exscind certain matters from the scope of his responsibilities. The Framers' plan contemplates that the President's law enforcement powers extend to all matters, including those in which he had a personal stake, and that the proper mechanism for policing the President's faithful exercise of that discretion is the political process – that is, the People, acting either directly, or through their elected representatives in Congress.

Second, quite apart from this misbegotten effort to "disempower" the President from acting on matters in which he has an interest, defining facially-lawful exercises of Executive discretion as potential crimes, based solely on the President's subjective motive, would violate Article II of the Constitution by impermissibly burdening the exercise of core discretionary powers within the Executive branch. The prospect of criminal liability based solely on the official's state of mind, coupled with the indefinite standards of "improper motive" and "obstruction," would cast a pall over a wide range of Executive decision-making, chill the exercise of discretion, and expose to intrusive and free-ranging examination of the President's (and his subordinate's) subjective state of mind in exercising that discretion.

A. Section 1512(c)(2) May Not "Disempower" the President from Exercising His Law Enforcement Authority Over a Particular Class of Matters.

As discussed further below, a fatal flaw in Mueller's interpretation of §1512(c)(2) is that, while defining obstruction solely as acting "corruptly," Mueller offers no definition of what "corruptly" means. It appears, however, that Mueller has in mind particular circumstances that he feels may give rise to possible "corruptness" in the current matter. His tacit premise appears to be that, when an investigation is looking into the President's own conduct, it would be "corrupt" for the President to attempt to influence that investigation.

On a superficial level, this outlook is unsurprising: at first blush it accords with the old Roman maxim that a man should not be the judge in his own case and, because "conflict-of-interest" laws apply to all the President's subordinates, DOJ prosecutors are steeped in the notion that it is illegal for an official to touch a case in which he has a personal stake. But constitutionally, as applied to the President, this mindset is entirely misconceived: there is no *legal* prohibition – as opposed a political constraint -- against the President's acting on a matter in which he has a personal stake.

The Constitution itself places no limit on the President's authority to act on matters which concern him or his own conduct. On the contrary, the Constitution's grant of law enforcement power to the President is plenary. Constitutionally, it is wrong to conceive of the President as simply the highest officer within the Executive branch hierarchy. He alone *is* the Executive branch. As such, he is the sole repository of *all Executive powers* conferred by the Constitution. Thus, the full measure of law enforcement authority is placed in the President's hands, and no limit is placed on the kinds of cases subject to his control and supervision. While the President has subordinates --the Attorney General and DOJ lawyers -- who exercise prosecutorial discretion on

his behalf, they are merely "his hand," *Ponzi v. Fessenden*, 258 U.S. 254, 262 (1922) – the discretion they exercise is the President's discretion, and their decisions are legitimate precisely because they remain under his supervision, and he is still responsible and politically accountable for them.

Nor does any statute purport to restrict the President's authority over matters in which he has an interest. On the contrary, in 1974, the Department concluded that the conflict-of interest-laws cannot be construed as applying to the President, expressing "serious doubt as to the constitutionality" of a statute that sought "to disempower" the President from acting over particular matters. *Letter to Honorable Howard W. Cannon from Acting Attorney General Laurence H. Silberman*, dated September 20, 1974; and *Memorandum for Richard T. Burress, Office of the President, from Laurence H. Silberman, Deputy Attorney General, Re: Conflict of Interest Problems Arising out of the President's Nomination of Nelson A. Rockefeller to be Vice President under the Twenty-Fifth Amendment to the Constitution* at 2, 5 (Aug. 28, 1974). As far as I am aware, this is the only instance in which it has previously been suggested that a statute places a class of law enforcement cases "off limits" to the President's supervision based on his personal interest in the matters. The Department rejected that suggestion on the ground that Congress could not "disempower" the President from exercising his supervisory authority over such matters. For all the same reasons, Congress could not make it a crime for the President to exercise supervisory authority over cases in which his own conduct might be at issue.

The illimitable nature of the President's law enforcement discretion stems not just from the Constitution's plenary grant of those powers to the President, but also from the "unitary" character of the Executive branch itself. Because the President alone constitutes the Executive branch, the President cannot "recuse" himself. Just as Congress could not *en masse* recuse itself, leaving no source of the Legislative power, the President cannot take a holiday from his responsibilities. It is in the very nature of discretionary power that ultimate authority for making the choice must be vested in some final decision-maker. At the end of the day, there truly must be a desk at which "the buck stops." In the Executive, final responsibility must rest with the President. Thus, the President, "though able to delegate duties to others, cannot delegate ultimate responsibility or *the active obligation to supervise that goes with it*." *Free Enterprise Fund v. Public Co. Acctg. Oversight Bd.*, 130 S. Ct. 3138, 3154 (2010) (*quoting Clinton v. Jones,* 520 U.S. 681, 712-713 (1997) (Breyer, J., concurring in judgment)) (emphasis added).

In framing a Constitution that entrusts broad discretion to the President, the Framers chose the means they thought best to police the exercise of that discretion. The Framers' idea was that, by placing all discretionary law enforcement authority in the hands of a single "Chief Magistrate" elected by all the People, and by making him politically accountable for all exercises of that discretion by himself or his agents, they were providing the best way of ensuring the "faithful exercise" of these powers. Every four years the people as a whole make a solemn national decision as to the person whom they trust to make these prudential judgments. In the interim, the people's representatives stand watch and have the tools to oversee, discipline, and, if they deem appropriate, remove the President from office. Thus, under the Framers' plan, the determination whether the President is making decisions based on "improper" motives or whether he is "faithfully" discharging his responsibilities is left to the People, through the election process, and the Congress, through the Impeachment process.

The Framers' idea of political accountability has proven remarkably successful, far more so than the disastrous experimentation with an "independent" counsel statute, which both parties agreed to purge from our system. By and large, fear of political retribution has ensured that, when confronted with serious allegations of misconduct within an Administration, Presidents have felt it necessary to take practical steps to assure the people that matters will be pursued with integrity. But the measures that Presidents have adopted are voluntary, dictated by political prudence, and adapted to the situation; they are not legally compelled. Moreover, Congress has usually been quick to respond to allegations of wrongdoing in the Executive and has shown itself more than willing to conduct investigations into such allegations. The fact that President is answerable for any abuses of discretion and is ultimately subject to the judgment of Congress through the impeachment process means that the President is *not* the judge in his own cause. *See Nixon v. Harlow*, 457 U.S. 731, 757-58 n.41 (1982)(" The remedy of impeachment demonstrates that the President remains accountable under law for his misdeeds in office.")

Mueller's core premise -- that the President acts "corruptly" if he attempts to influence a proceeding in which his own conduct is being scrutinized – is untenable. Because the Constitution, and the Department's own rulings, envision that the President may exercise his supervisory authority over cases dealing with his own interests, the President transgresses no legal limitation when he does so. For that reason, the President's exercise of supervisory authority over such a case does not amount to "corruption." It may be in some cases politically unwise; but it is not a crime. Moreover, it cannot be presumed that any decision the President reaches in a case in which he is interested is "improperly" affected by that personal interest. Implicit in the Constitution's grant of authority over such cases, and in the Department's position that the President cannot be "disempowered" from acting in such cases, is the recognition that Presidents have the capacity to decide such matters based on the public's long-term interest.

In today's world, Presidents are frequently accused of wrongdoing. Let us say that an outgoing administration – say, an incumbent U.S. Attorney -- launches a "investigation" of an incoming President. The new President knows it is bogus, is being conducted by political opponents, and is damaging his ability to establish his new Administration and to address urgent matters on behalf of the Nation. It would neither be "corrupt" nor a crime for the new President to terminate the matter and leave any further investigation to Congress. There is no legal principle that would insulate the matter from the President's supervisory authority and mandate that he passively submit while a bogus investigation runs its course.

At the end of the day, I believe Mueller's team would have to concede that a President does not act "corruptly" simply by acting on – even terminating – a matter that relates to his own conduct. But I suspect they would take the only logical fallback position from thatt– namely, that it would be "corrupt" if the President had actually engaged in unlawful conduct and then blocked an investigation to "cover up" the wrongdoing. In other words, the notion would be that, if an investigation was bogus, the President ultimately had legitimate grounds for exercising his supervisory powers to stop the matter. Conversely, if the President had really engaged in wrongdoing, a decision to stop the case would have been a corrupt cover up. But, in the latter case, the predicate for finding any corruption would be first finding that the President had engaged in the wrongdoing he was allegedly trying to cover up. Under the particular circumstances here, the

issue of obstruction only becomes ripe after the alleged collusion by the President or his campaign is established first. While the distinct crime of obstruction can frequently be committed even if the underlying crime under investigation is never established, that is true only where the obstruction is an act that is wrongful in itself -- such as threatening a witness, or destroying evidence. But here, the only basis for ascribing "wrongfulness" (*i.e.,* an improper motive) to the President's actions is the claim that he was attempting to block the uncovering of wrongdoing by himself or his campaign. Until Mueller can show that there was unlawful collusion, he cannot show that the President had an improper "cover up" motive.

For reasons discussed below, I do not subscribe to this notion. But here it is largely an academic question. Either the President and his campaign engaged in illegal collusion or they did not. If they did, then the issue of "obstruction" is a sideshow. However, if they did not, then the cover up theory is untenable. And, at a practical level, in the absence of some wrongful act of evidence destruction, the Department would have no business pursuing the President where it cannot show any collusion. Mueller should get on with the task at hand and reach a conclusion on collusion. In the meantime, pursuing a novel obstruction theory against the President is not only premature but – because it forces resolution of numerous constitutional issues – grossly irresponsible.

B. Using Obstruction Laws to Review the President's Motives for Making Facially-Lawful Discretionary Decisions Impermissibly Infringes on the President's Constitutional Powers.

The crux of Mueller's claim here is that, when the President performs a facially-lawful discretionary action that influences a proceeding, he may be criminally investigated to determine whether he acted with an improper motive. It is hard to imagine a more invasive encroachment on Executive authority.

1. The Constitution Vests Discretion in the President To Decide Whether To Prosecute Cases or To Remove Principal Executive Officers, and Those Decisions are Not Reviewable.

The authority to decide whether or not to bring prosecutions, as well as the authority to appoint and remove principal Executive officers, and to grant pardons, are quintessentially Executive in character and among the discretionary powers vested exclusively in the President by the Constitution. When the President exercises these discretionary powers, it is presumed he does so lawfully, and his decisions are generally non-reviewable.

The principle of non-reviewability inheres in the very reason for vesting these powers in the President in the first place. In governing any society certain choices must be made that cannot be determined by tidy legal standards but require prudential judgment. The imperative is that there must be some ultimate decision-maker who has the final, authoritative say -- at whose desk the "buck" truly does stop. Any system whereby other officials, not empowered to make the decision themselves, are permitted to review the "final" decision for "improper motives" is antithetical both to the exercise of discretion and its finality. And, even if review can censor a particular choice, it leaves unaddressed the fact that a choice still remains to be made, and the reviewers have no power to make it. The prospect of review itself undermines discretion. *Wayte v. United States,* 470 U. S.

598, 607- 608 (1985); *cf. Franklin v. Massachusetts*, 505 U.S. at 801. But any regime that proposes to review and *punish* decision-makers for "improper motives" ends up doing more harm than good by chilling the exercise of discretion, "dampen[ing] the ardor of all but the most resolute …in the unflinching discharge of their duties." *Gregoire* v. *Biddle,* 177 F. 2d 579, 581 (2d Cir. 1949)(Learned Hand). In the end, the prospect of punishment chills the exercise of discretion over a far broader range of decisions than the supposedly improper decision being remedied. *McDonnell,* 136 S.Ct. at 2373.

For these reasons, the law has erected an array of protections designed to prevent, or strictly limit, review of the exercise of the Executive discretionary powers. *See, e.g., Nixon v. Fitzgerald*, 457 US 731,749 (1982) (the President's unique discretionary powers require that he have absolute immunity from civil suit for his official acts). An especially strong set of rules has been put in place to insulate those who exercise prosecutorial discretion from second-guessing and the possibility of punishment. *See. e.g., Imbler v. Pachtman*, 424 U.tS. 409 (1976); *Yaselli v. Goff*, 275 U. S. 503 (1927), *aff'g* 12 F. 2d 396 (2d Cir. 1926). Thus, "it is entirely clear that the refusal to prosecute cannot be the subject of judicial review." *See, e.g., ICC v. Brotherhood of Locomotive Engineers*, 482 U.S. 270, 283 (1987); *United States v. Cox*, 342 F.2d 167, 171-72 (5th Cir. 1965) (The U.S. Attorney's decision not to prosecute even where there is probable cause is "a matter of executive discretion which cannot be coerced or reviewed by the courts."); *see also Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

Even when there is a prosecutorial decision to proceed with a case, the law generally precludes review or, in the narrow circumstances where review is permitted, limits the extent to which the decision-makers' subjective motivations may be examined. Thus, a prosecutor's decision to bring a case is generally protected from civil liability by absolute immunity, even if the prosecutor had a malicious motive. *Yaselli v. Goff*, 275 U.tS. 503 (1927), *aff'g* 12 F. 2d 396 (2d Cir. 1926). Even where some review is permitted, absent a claim of selective prosecution based on an impermissible classification, a court ordinarily will not look into the prosecutor's real motivations for bringing the case as long as probable cause existed to support prosecution. *See Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978). Further, even when there is a claim of selective prosecution based on an impermissible classification, courts do not permit the probing of the prosecutor's subjective state of mind until the plaintiff has first produced objective evidence that the policy under which he has been prosecuted had a discriminatory effect. *United States v. Armstrong*, 517 U.S. 456 (1996). The same considerations undergird the Department's current position in *Hawaii v. Trump*, where the Solicitor General is arguing that, in reviewing the President's travel ban, a court may not look into the President's subjective motivations when the government has stated a facially legitimate basis for the decision. (*SG's Merits Brief* at 61).

In short, the President's exercise of its Constitutional discretion is not subject to review for "improper motivations" by lesser officials or by the courts. The judiciary has no authority "to enquire how the executive, or executive officers, perform duties in which they have a discretion. Questions, in their nature political, or which are, by the constitution and laws, submitted to the executive, can never be made" in the courts. *Marbury v. Madison, 1 Cranch (5 U.S.) 137, 170 (1803).*

2. Threatening criminal liability for facially-lawful exercises of discretion, based solely on the subjective motive, would impermissibly burden the exercise of core Constitutional powers within the Executive branch..

Mueller is effectively proposing to use the criminal obstruction law as a means of reviewing discretionary acts taken by the President when those acts influence a proceeding. Mueller gets to this point in three steps. First, instead of confining §1512(c)(2) to inherently wrongful acts of evidence impairment, he would now define the *actus reus* of obstruction as *any act* that influences a proceeding. Second, he would include within that category the official discretionary actions taken by the President or other public officials carrying out their Constitutional duties, including their authority to control all law enforcement matters. The net effect of this is that, once the President or any subordinate takes any action that influences a proceeding, he has completed the *actus reus* of the crime of obstruction. To establish guilt, all that remains is evaluation of the President's or official's subjective state of mind to divine whether he acted with an improper motive.

Wielding §1512(c)(2) in this way preempts the Framers' plan of political accountability and violate Article II of the Constitution by impermissibly burdening the exercise of the core discretionary powers within the Executive branch. The prospect of criminal prosecution based solely on the President's state of mind, coupled with the indefinite standards of "improper motive" and "obstruction," would cast a pall over a wide range of Executive decision-making, chill the exercise of discretion, and expose to intrusive and free-ranging examination the President's (or his subordinate's) subjective state of mind in exercising that discretion

Any system that threatens to punish discretionary actions based on subjective motivation naturally has a substantial chilling effect on the exercise of discretion. But Mueller's proposed regime would mount an especially onerous and unprecedented intrusion on Executive authority. The sanction that is being threatened for improperly-motivated actions is the most severe possible – personal criminal liability. Inevitably, the prospect of being accused of criminal conduct, and possibly being investigated for such, would cause officials "to shrink" from making potentially controversial decisions and sap the vigor with which they perform their duties. *McDonnell v. United States*, 136 S.Ct. at 2372-73.

Further, the chilling effect is especially powerful where, as here, liability turns solely on the official's subjective state of mind. Because charges of official misconduct based on improper motive are "easy to allege and hard to disprove," *Hartman v. Moore*, 547 U.S. 250, 257-58 (2006), Mueller's regime substantially increases the likelihood of meritless claims, accompanied by the all the risks of defending against them. Moreover, the review contemplated here would be far more intrusive since it does not turn on an objective standard – such as the presence in the record of a reasonable basis for the decision – but rather requires probing to determine the President's actual subjective state of mind in reaching a decision. As the Supreme Court has observed, *Harlow v. Fitzgerald*, 457 U.S. 800, 816-17 (1982), even when faced only with civil liability, such an inquiry is especially disruptive:

> [I]t now is clear that substantial costs attend the litigation of the subjective good faith of government officials. Not only are there the general costs of

> subjecting officials to the risks of trial — distraction of officials from their governmental duties, inhibition of discretionary action, and deterrence of able people from public service. There are special costs to "subjective" inquiries of this kind. ...[T]he judgments surrounding discretionary action almost inevitably are influenced by the decisionmaker's experiences, values, and emotions. These variables ...frame a background in which there often is no clear end to the relevant evidence. Judicial inquiry into subjective motivation therefore may entail broad-ranging discovery .... Inquiries of this kind can be peculiarly disruptive of effective government.

Moreover, the encroachment on the Executive function is especially broad due to the wide range of actors and actions potentially covered. Because Mueller defines the *actus reus* of obstruction as any act that influences a proceeding, he is including not just exercises of prosecutorial discretion directly deciding whether a case will proceed or not, but also exercises of any other Presidential power that might collaterally affect a proceeding, such as a removal, appointment, or grant of pardon. And, while Mueller's immediate target is the President's exercise of his discretionary powers, his obstruction theory reaches all exercises of prosecutorial discretion by the President's subordinates, from the Attorney General, down the most junior line prosecutor. It also necessarily applies to all personnel, management, and operational decision by those who are responsible for supervising and conducting litigation and enforcement matters -- civil, criminal or administrative -- on the President's behalf.

A fatal flaw with Mueller's regime – and one that greatly exacerbates its chilling effect -- is that, while Mueller would criminalize any act "corruptly" influencing a proceeding, Mueller can offer no definition of "corruptly." What is the circumstance that would make an attempt by the President to influence a proceeding "corrupt?" Mueller would construe "corruptly" as referring to one's purpose in seeking to influence a proceeding. But Mueller provides no standard for determining what motives are legal and what motives are illegal. Is an attempt to influence a proceeding based on political motivations "corrupt?" Is an attempt based on self-interest? Based on personal career considerations? Based on partisan considerations? On friendship or personal affinity? Due process requires that the elements of a crime be defined "with sufficient definiteness that ordinary people can understand what conduct is prohibited," or "in a manner that does not encourage arbitrary and discriminatory enforcement." *See McDonnell*, 136 S.Ct. at 2373. This, Mueller's construction of §1512(c)(2) utterly fails to do.

It is worth pausing on the word "corruptly," because courts have evinced a lot of confusion over it. It is an adverb, modifying the verbs "influence," "impede," etc. But few courts have deigned to analyze its precise adverbial mission. Does it refer to "how" the influence is accomplished– *i.e.*, the means used to influence? Or does it refer to the ultimate purpose behind the attempt to influence? As an original matter, I think it was clearly used to described the means used to influence. As the D.C. Circuit persuasively suggested, the word was likely used in its 19th century transitive sense, connoting the turning (or corrupting) of something from good and fit for its purpose into something bad and unfit for its purpose – hence, "corrupting" a magistrate; or "corrupting" evidence. *United States v. Poindexter*, 951 F.2d 369 (D.C. Cir. 1991). Understood this way, the ideas behind the obstruction laws come more clearly into focus. The thing that is

corrupt is the means being used to influence the proceeding. They are inherently wrong because they involve the corruption of decision-makers or evidence. The culpable intent does not relate to the actor's ultimate motive for using the corrupt means. The culpable state of mind is merely the intent that the corrupt means bring about their immediate purpose, which is to sabotage the proceeding's truth-finding function. The actor's ultimate purpose is irrelevant because the means, and their immediate purpose, are dishonest and malign. Further, if the actor uses lawful means of influencing a proceeding – such as asserting an evidentiary privilege, or bringing public opinion pressure to bear on the prosecutors – then his ultimate motives are likewise irrelevant. *See Arthur Anderson*, 544 U.S. at 703-707. Even if the actor is guilty of a crime and his only reason for acting is to escape justice, his use of lawful means to impede or influence a proceeding are perfectly legitimate.

Courts have gotten themselves into a box whenever they have suggested that "corruptly" is not confined to the use of wrongful means, but can also refer to someone's ultimate motive for using lawful means to influence a proceeding. The problem, however, is that, as the courts have consistently recognized, there is nothing inherently wrong with attempting to influence or impede a proceeding. Both the guilty and innocent have the right to use lawful means to do that. What is the motive that would make the use of lawful means to influence a proceeding "corrupt?" Courts have been thrown back on listing "synonyms" like "depraved, wicked, or bad." But that begs the question. What is depraved – the means or the motive? If the latter, what makes the motive depraved if the means are within one's legal rights? Fortunately for the courts, the cases invariably involve evidence impairment, and so, after stumbling around, they get to a workable conclusion. Congress has also taken this route. *Poindexter* struck down the omnibus clause of §1505 on the grounds that, as the sole definition of obstruction, the word "corruptly" was unconstitutionally vague. 951 F.2d at 377-86. Tellingly, when Congress sought to "clarify" the meaning of "corruptly" in the wake of *Poindexter*, it settled on even more vague language – "acting with an improper motive" – and then proceeded to qualify this definition further by adding, "including making a false or misleading statement, or withholding, concealing, altering, or destroying a document or other information." 18 U.S.C. §1515(b). The fact that Congress could not define "corruptly" except through a laundry list of acts of evidence impairment strongly confirms that, in the obstruction context, the word has no intrinsic meaning apart from its transitive sense of compromising the honesty of a decision-maker or impairing evidence.

At the end of the day then, as long as §1512 is read as it was intended to be readt– *i.e.,* as prohibiting actions designed to sabotage a proceeding's access to complete and accurate evidence -- the term "corruptly" derives meaning from that context. But once the word "corruptly" is deracinated from that context, it becomes essentially meaningless as a standard. While Mueller's failure to define "corruptly" would be a Due Process violation in itself, his application of that "shapeless" prohibition on public officials engaged in the discharge of their duties impermissibly encroach on the Executive function by "cast[ing] the pall of potential prosecution" over a broad range of lawful exercises of Executive discretion. *McDonnell*, 136 S.Ct. at 2373-74.

The chilling effect is magnified still further because Mueller's approach fails to define the kind of impact an action must have to be considered an "obstruction." As long as the concept of obstruction is tied to evidence impairment, the nature of the actions being prohibited is discernable. But once taken out of this context, how does one differentiate between an unobjectionable

"influence" and an illegal "obstruction?" The actions being alleged as obstructions in this case illustrate the point. Assuming arguendo that the President had motives such that, under Mueller's theory, any direct order by him to terminate the investigation would be considered an obstruction, what action short of that would be impermissible? The removal of Comey is presumably being investigated as "obstructive" due to some *collateral* impact it could have on a proceeding. But removing an agency head does not have the natural and foreseeable consequence of obstructing any proceeding being handled by that agency. How does one gauge whether the collateral effects of one's actions could impermissibly affect a proceeding?

The same problem exists regarding the President's comments about Flynn. Even if the President's motives were such that, under Mueller's theory, he could not have ordered termination of an investigation, to what extent do comments short of that constitute obstruction? On their face, the President's comments to Comey about Flynn seem unobjectionable. He made the accurate observation that Flynn's call with the Russian Ambassador was perfectly proper and made the point that Flynn, who had now suffered public humiliation from losing his job, was a good man. Based on this, he expressed the "hope" that Comey could "see his way clear" to let the matter go. The formulation that Comey "see his way clear," explicitly leaves the decision with Comey. Most normal subordinates would not have found these comments obstructive. Would a superior's questioning the legal merit of a case be obstructive? Would pointing out some consequences of the subordinate's position be obstructive? Is something really an "obstruction" if it merely is pressure acting upon a prosecutor's psyche? Is the obstructiveness of pressure gauged objectively or by how a subordinate subjectively apprehends it?

The practical implications of Mueller's approach, especially in light of its "shapeless" concept of obstruction, are astounding. DOJ lawyers are always making decisions that invite the allegation that they are improperly concluding or constraining an investigation. And these allegations are frequently accompanied by a claim that the official is acting based on some nefarious motive. Under the theory now being advanced, any claim that an exercise of prosecutorial discretion was improperly motived could legitimately be presented as a potential criminal obstruction. The claim would be made that, unless the subjective motivations of the decision maker are thoroughly explored through a grand jury investigation, the putative "improper motive" could not be ruled out.

In an increasingly partisan environment, these concerns are by no means trivial. For decades, the Department has been routinely attacked both for its failure to pursue certain matters and for its decisions to move forward on others. Especially when a house of Congress is held by an opposing party, the Department is almost constantly being accused of deliberately scuttling enforcement in a particular class of cases, usually involving the environmental laws. There are claims that cases are not being brought, or are being brought, to appease an Administration's political constituency, or that the Department is failing to investigate a matter in order to cover up its own wrongdoing, or to protect the Administration. Department is bombarded with requests to name a special counsel to pursue this or that matter, and it is frequently claimed that his reluctance to do so is based on an improper motive. When a supervisor intervenes in a case, directing a course of action different from the one preferred by the subordinate, not infrequently there is a tendency for the subordinate to ascribe some nefarious motive. And when personnel changes are made – as

for example, removing a U.S. Attorney – there are sometimes claims that the move was intended to truncate some investigation.

While these controversies have heretofore been waged largely on the field of political combat, Mueller's sweeping obstruction theory would now open the way for the "criminalization" of these disputes. Predictably, challenges to the Department's decisions will be accompanied by claims that the Attorney General, or other supervisory officials, are "obstructing" justice because their directions are improperly motivated. Whenever the slightest colorable claim of a possible "improper motive" is advanced, there will be calls for a criminal investigation into possible "obstruction." The prospect of being accused of criminal conduct, and possibly being investigated for such, would inevitably cause officials "to shrink" from making potentially controversial decisions.

O'Callaghan, Edward C. (ODAG)

From:	O'Callaghan, Edward C. (ODAG)
Sent:	Tuesday, December 18, 2018 5:19 PM
To:	Gannon, Curtis E. (OLC)
Cc:	Rabbitt, Brian (OLP); Boyd, Stephen E. (OLA); Williams, Beth A (OLP); Kupec, Kerri (OPA); Engel, Steven A. (OLC)
Subject:	Re: Barr Memo

Yes for reasons that Brad explained to me and the department standard that (b) (5) [redacted]

Edward C. O'Callaghan
202-514-2105

On Dec 18, 2018, at 5:12 PM, Gannon, Curtis E. (OLC) [redacted] (b) (6) [redacted] wrote:

(b) (5) [redacted] ?

From: Rabbitt, Brian (OLP) <brabbitt@jmd.usdoj.gov>
Sent: Tuesday, December 18, 2018 5:11 PM
To: O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>; Gannon, Curtis E. (OLC) [redacted] (b) (6) [redacted] Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>; Williams, Beth A (OLP) <bawilliams@jmd.usdoj.gov>; Kupec, Kerri (OPA) <kkupec@jmd.usdoj.gov>
Cc: Engel, Steven A. (OLC) <[redacted] (b) (6) [redacted] Rabbitt, Brian (OLP) <brabbitt@jmd.usdoj.gov>
Subject: RE: Barr Memo

The below reflects our discussions just now with Ed. If anyone objects to the below, please advise by 5:30:

(b) (5) [redacted]

(b) (5)

From: O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>
Sent: Tuesday, December 18, 2018 4:45 PM
To: Rabbitt, Brian (OLP) <brabbitt@jmd.usdoj.gov>; Gannon, Curtis E. (OLC) (b) (6) Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>; Williams, Beth A (OLP) <bawilliams@jmd.usdoj.gov>; Kupec, Kerri (OPA) <kkupec@jmd.usdoj.gov>
Cc: Engel, Steven A. (OLC) <(b) (6)>; brian.rabbit@usdoj.gov
Subject: RE: Barr Memo

(b) (5)

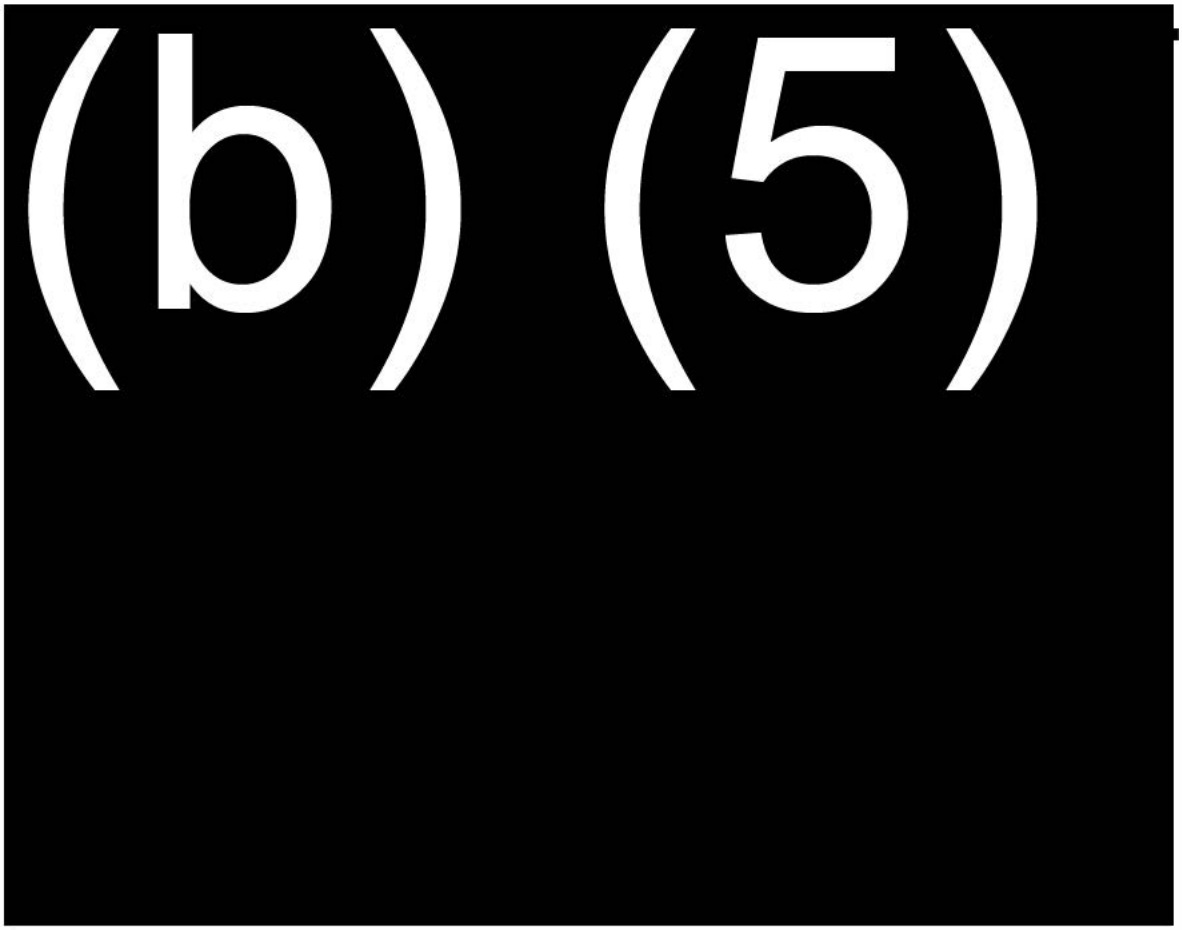
I will forward DAG's statement when completed.

Edward C. O'Callaghan
202-514-2105

From: Rabbitt, Brian (OLP) <brabbitt@jmd.usdoj.gov>
Sent: Tuesday, December 18, 2018 4:18 PM
To: Gannon, Curtis E. (OLC) <(b) (6)> Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>; Williams, Beth A (OLP) <bawilliams@jmd.usdoj.gov>; Kupec, Kerri (OPA) <kkupec@jmd.usdoj.gov>
Cc: O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>; Engel, Steven A. (OLC) <(b) (6)> brian.rabbit@usdoj.gov
Subject: RE: Barr Memo

Below is a slightly revised statement (see highlighted portion) reflecting an edit suggested by Ed:

(b) (5)



From: Gannon, Curtis E. (OLC) [redacted](b)(6)
Sent: Tuesday, December 18, 2018 4:10 PM
To: Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>; Williams, Beth A (OLP) <bawilliams@jmd.usdoj.gov>; Kupec, Kerri (OPA) <kkupec@jmd.usdoj.gov>
Cc: O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>; Engel, Steven A. (OLC) [redacted](b)(6) Rabbitt, Brian (OLP) <brabbitt@jmd.usdoj.gov>
Subject: Barr Memo

Duplicative Material (Document ID: 0.7.23922.52448)

O'Callaghan, Edward C. (ODAG)

From:	O'Callaghan, Edward C. (ODAG)
Sent:	Tuesday, December 18, 2018 8:42 PM
To:	Rabbitt, Brian (OLP)
Cc:	Engel, Steven A. (OLC); Gannon, Curtis E. (OLC); Boyd, Stephen E. (OLA); Williams, Beth A (OLP); Kupec, Kerri (OPA)
Subject:	Re: Barr Memo

Great. We'll finalize in am. Thanks.

Edward C. O'Callaghan
202-514-2105

On Dec 18, 2018, at 8:40 PM, Rabbitt, Brian (OLP) <brabbitt@jmd.usdoj.gov> wrote:

> I think that is correct on timing.
>
> Brian C. Rabbitt
> (202) 598-6652
> Brian.Rabbitt@usdoj.gov
>
> On Dec 18, 2018, at 8:36 PM, Engel, Steven A. (OLC) [redacted] (b) (6) [redacted] wrote:
>
> > That makes sense. Sounds like we can discuss further in the am, as needed, given that the documents are not going to the Hill tonight?
> >
> > **From:** O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>
> > **Sent:** Tuesday, December 18, 2018 7:00 PM
> > **To:** Rabbitt, Brian (OLP) <brabbitt@jmd.usdoj.gov>
> > **Cc:** Gannon, Curtis E. (OLC) [redacted] (b) (6) [redacted] Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>; Williams, Beth A (OLP) <bawilliams@jmd.usdoj.gov>; Kupec, Kerri (OPA) <kkupec@jmd.usdoj.gov>; Engel, Steven A. (OLC) [redacted] (b) (6) [redacted]
> > **Subject:** Re: Barr Memo
> >
> > I am happy to discuss this further and would want to agree on a final before anything is sent out in the morning.
> >
> > Edward C. O'Callaghan
> > 202-514-2105
> >
> > On Dec 18, 2018, at 6:57 PM, O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov> wrote:
> >
> > [redacted] (b) (5) [redacted]

(b)(5) [redacted]

(b) (5) [redacted]

[redacted]

[redacted]

Edward C. O'Callaghan
202-514-2105

On Dec 18, 2018, at 5:35 PM, Rabbitt, Brian (OLP) <brabbitt@jmd.usdoj.gov> wrote:

> How about the below (b) (5) [redacted])?
>
> (b) (5) [redacted]
>
> **From:** O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>
> **Sent:** Tuesday, December 18, 2018 5:08 PM
> **To:** Rabbitt, Brian (OLP) <brabbitt@jmd.usdoj.gov>; Gannon, Curtis E. (OLC) <[redacted] (b) (6) [redacted]; Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>; Williams, Beth A (OLP) <bawilliams@jmd.usdoj.gov>; Kupec, Kerri (OPA) <kkupec@jmd.usdoj.gov>
> **Cc:** Engel, Steven A. (OLC) <[redacted] (b)(6) [redacted]; brian.rabbit@usdoj.gov
> **Subject:** RE: Barr Memo
>
> DAG statement:
>
> (b) (5) [redacted]

(b) (5) [redacted]:

[redacted]

Edward C. O'Callaghan
202-514-2105

From: Rabbitt, Brian (OLP) <brabbitt@jmd.usdoj.gov>
Sent: Tuesday, December 18, 2018 4:18 PM
To: Gannon, Curtis E. (OLC) [redacted] (b) (6)
Boyd; Stephen E. (OLA) <seboyd@jmd.usdoj.gov>;
Williams, Beth A (OLP) <bawilliams@jmd.usdoj.gov>;
Kupec, Kerri (OPA) <kkupec@jmd.usdoj.gov>
Cc: O'Callaghan; Edward C. (ODAG)
<ecocallaghan@jmd.usdoj.gov>; Engel, Steven A. (OLC)
[redacted] (b) (6) brian.rabbit@usdoj.gov
Subject: RE: Barr Memo

Duplicative Material (Document ID: 0.7.23922.52460)

Williams, Beth A (OLP)

From:	Williams, Beth A (OLP)
Sent:	Wednesday, December 19, 2018 11:08 AM
To:	O'Callaghan, Edward C. (ODAG)
Cc:	Rabbitt, Brian (OLP); Engel, Steven A. (OLC); Gannon, Curtis E. (OLC); Boyd, Stephen E. (OLA); Kupec, Kerri (OPA)
Subject:	Re: Barr Memo

This looks good to me. I might change (b) (5) [redacted]

The former formulation (b) (5) [redacted]

Sent from my iPhone

On Dec 19, 2018, at 10:54 AM, O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov> wrote:

> How about this? DAG is at a meeting at WH so I would need to get final approval from him on whatever this group agrees to. Thanks.
> (b) (5) [redacted]
>
> Edward C. O'Callaghan
> 202-514-2105
>
> **From:** Rabbitt, Brian (OLP) <brabbitt@jmd.usdoj.gov>
> **Sent:** Tuesday, December 18, 2018 8:41 PM
> **To:** Engel, Steven A. (OLC) [redacted] (b) (6) [redacted]
> **Cc:** O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>; Gannon, Curtis E. (OLC) [redacted] (b) (6) [redacted] Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>; Williams, Beth A (OLP) <bawilliams@jmd.usdoj.gov>; Kupec, Kerri (OPA) <kkupec@jmd.usdoj.gov>
> **Subject:** Re: Barr Memo

Duplicative Material (Document ID: 0.7.23922.52475)

O'Callaghan, Edward C. (ODAG)

From:	O'Callaghan, Edward C. (ODAG)
Sent:	Wednesday, December 19, 2018 11:11 AM
To:	Kupec, Kerri (OPA); Rabbitt, Brian (OLP)
Cc:	Engel, Steven A. (OLC); Gannon, Curtis E. (OLC); Boyd, Stephen E. (OLA); Williams, Beth A (OLP)
Subject:	RE: Barr Memo

Ok. Will work to getthis cleared.

Edward C. O'Callaghan
202-514-2105

From: Kupec, Kerri (OPA) <kkupec@jmd.usdoj.gov>
Sent: Wednesday, December 19, 2018 11:09 AM
To: Rabbitt, Brian (OLP) <brabbitt@jmd.usdoj.gov>; O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>
Cc: Engel, Steven A. (OLC) <(b) (6) Gannon, Curtis E. (OLC) <(b) (6)
Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>; Williams, Beth A (OLP) <bawilliams@jmd.usdoj.gov>
Subject: RE: Barr Memo

I like that. Works forme.

From: Rabbitt, Brian (OLP) <brabbitt@jmd.usdoj.gov>
Sent: Wednesday, December 19, 2018 11:08 AM
To: O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>
Cc: Engel, Steven A. (OLC) <(b) (6) Gannon, Curtis E. (OLC) <(b) (6)
Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>; Williams, Beth A (OLP) <bawilliams@jmd.usdoj.gov>; Kupec, Kerri (OPA) <kkupec@jmd.usdoj.gov>
Subject: Re: Barr Memo

We're generally good with the statement but would suggest slightrevisions to (b) (5) :

(b) (5)

Brian C. Rabbitt
(202) 598-6652
Brian.Rabbitt@usdoj.gov

On Dec 19, 2018, at 10:54 AM, O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov> wrote:

Duplicative Material (Document ID: 0.7.23922.52516)

Engel, Steven A. (OLC)

From:	Engel, Steven A. (OLC)
Sent:	Wednesday, December 19, 2018 2:09 PM
To:	Fragoso, Michael (OLP); Williams, Beth A (OLP)
Cc:	Kupec, Kerri (OPA); O'Callaghan, Edward C. (ODAG); Rabbitt, Brian (OLP); Gannon, Curtis E. (OLC); Boyd, Stephen E. (OLA)
Subject:	RE: Barr Memo

What's a VHS tape? ;-)

From: Fragoso, Michael (OLP) <mfragoso@jmd.usdoj.gov>
Sent: Wednesday, December 19, 2018 2:04 PM
To: Williams, Beth A (OLP) <bawilliams@jmd.usdoj.gov>
Cc: Engel, Steven A. (OLC) <[redacted] (b) (6)> Kupec, Kerri (OPA) <kkupec@jmd.usdoj.gov>; O'Callaghan, Edward C.(ODAG) <ecocallaghan@jmd.usdoj.gov>; Rabbitt, Brian (OLP) <brabbitt@jmd.usdoj.gov>; Gannon, Curtis E. (OLC) <[redacted] (b) (6)> Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>
Subject: Re: Barr Memo

We're aiming for 9. The VHS tapes we have might push it a little beyond that, but we're still waiting on the FBI there.

Sent from my iPhone

On Dec 19, 2018, at 1:59 PM, Williams, Beth A (OLP) <bawilliams@jmd.usdoj.gov> wrote:

> + Mike. The latest I've heard is 9pm.
>
> Sent from my iPhone
>
> On Dec 19, 2018, at 1:45 PM, Engel, Steven A. (OLC) <[redacted] (b) (6)> wrote:
>
> > Do we have a planned release time yet?
> >
> > Sent from my iPhone
> >
> > On Dec 19, 2018, at 12:27 PM, Kupec, Kerri (OPA) <kkupec@jmd.usdoj.gov> wrote:
> >
> > > (And then will likely be in every story thereafter)
> > >
> > > ---
> > >
> > > **From:** O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>
> > > **Sent:** Wednesday, December 19, 2018 12:27 PM
> > > **To:** Kupec, Kerri (OPA) <kkupec@jmd.usdoj.gov>; Engel, Steven A. (OLC) <[redacted] (b) (6)> Rabbitt, Brian (OLP) <brabbitt@jmd.usdoj.gov>
> > > **Cc:** Gannon, Curtis E. (OLC) <[redacted] (b) (6)> Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>; Williams, Beth A (OLP) <bawilliams@jmd.usdoj.gov>
> > > **Subject:** RE: Barr Memo

Subject: RE: Barr Memo

Ok. Thanks.

Edward C. O'Callaghan
202-514-2105

From: Kupec, Kerri (OPA) <kkupec@jmd.usdoj.gov>
Sent: Wednesday, December 19, 2018 12:25 PM
To: O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>; Engel, Steven A. (OLC) [redacted] (b) (6) Rabbitt, Brian (OLP) <brabbitt@jmd.usdoj.gov>
Cc: Gannon, Curtis E. (OLC) [redacted] (b) (6) Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>; Williams, Beth A (OLP) <bawilliams@jmd.usdoj.gov>
Subject: RE: Barr Memo

It will be part of the WSJ story that will break when the docs are submitted to the SJC tonight.

From: O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>
Sent: Wednesday, December 19, 2018 12:24 PM
To: Engel, Steven A. (OLC) [redacted] (b) (6) Kupec, Kerri (OPA) <kkupec@jmd.usdoj.gov>; Rabbitt, Brian (OLP) <brabbitt@jmd.usdoj.gov>
Cc: Gannon, Curtis E. (OLC) [redacted] (b) (6) Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>; Williams, Beth A (OLP) <bawilliams@jmd.usdoj.gov>
Subject: RE: Barr Memo

DAG cleared the following. When will this go out?

I have admired Bill Barr for decades, and I believe that he will be an outstanding Attorney General.
Many people offer unsolicited advice, directly or through the news media, about legal issues they believe are pending before the Department of Justice. At no time did former Attorney General Barr seek or receive from me any non-public information regarding any ongoing investigation, including the Special Counsel investigation."

Edward C. O'Callaghan
202-514-2105

From: Engel, Steven A. (OLC) [redacted] (b) (6)
Sent: Wednesday, December 19, 2018 11:11 AM
To: Kupec, Kerri (OPA) <kkupec@jmd.usdoj.gov>; Rabbitt, Brian (OLP) <brabbitt@jmd.usdoj.gov>; O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>
Cc: Gannon, Curtis E. (OLC) [redacted] (b) (6) Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>; Williams, Beth A (OLP) <bawilliams@jmd.usdoj.gov>
Subject: RE: Barr Memo

Subject: RE: Barr Memo

This looks good to OLC too.

From: Kupec, Kerri (OPA) <kkupec@jmd.usdoj.gov>
Sent: Wednesday, December 19, 2018 11:09 AM
To: Rabbitt, Brian (OLP) <brabbitt@jmd.usdoj.gov>; O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>
Cc: Engel, Steven A. (OLC) <[redacted] (b) (6)> Gannon, Curtis E. (OLC) <[redacted] (b) (6)> Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>; Williams, Beth A (OLP) <bawilliams@jmd.usdoj.gov>
Subject: RE: Barr Memo

Duplicative Material (Document ID: 0.7.23922.52519)

O'Callaghan, Edward C. (ODAG)

From:	O'Callaghan, Edward C. (ODAG)
Sent:	Friday, December 21, 2018 6:45 PM
To:	Engel, Steven A. (OLC)
Subject:	FW: Letter from Ranking Member Feinstein to DAG Rosenstein
Attachments:	12.21.18 DF Letter to Rosenstein.pdf; ATT00001.htm

Edward C. O'Callaghan
202-514-2105

From: Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>
Sent: Friday, December 21, 2018 5:39 PM
To: Weinsheimer, Bradley (ODAG) <bradweinsheimer@jmd.usdoj.gov>; O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>; Ellis, Corey F. (ODAG) <cfellis@jmd.usdoj.gov>
Subject: FW: Letter from Ranking Member Feinstein to DAG Rosenstein

From: Owens, Annie (Judiciary-Dem) (b) (6)
Sent: Friday, December 21, 2018 4:39 PM
To: Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>
Cc: Duck, Jennifer (Judiciary-Dem) <(b) (6) Brest, Phillip (Judiciary-Dem) <(b) (6) >; Davis, Mike (Judiciary-Rep) (b) (6) Holmes, Lee (Judiciary-Rep) <(b) (6) DOJ Correspondence (SMO) <Ex DOJCorrespondence@jmd.usdoj.gov>; Sawyer, Heather (Judiciary-Dem) (b) (6) >
Subject: Letter from Ranking Member Feinstein to DAG Rosenstein

Dear Mr. Boyd:

Attached please find a letter from Ranking Member Feinstein to Deputy Attorney General Rosenstein. Please confirm receipt.

Thank you.

Annie

Annie L. Owens
Senior Counsel
Senator Dianne Feinstein, Ranking Member
U.S. Senate Committee on the Judiciary
(b) (6)
(b) (6)

DIANNE FEINSTEIN
CALIFORNIA

COMMITTEE ON THE JUDICIARY - RANKING MEMBER
SELECT COMMITTEE ON INTELLIGENCE
COMMITTEE ON APPROPRIATIONS
COMMITTEE ON RULES AND ADMINISTRATION

United States Senate
WASHINGTON, DC 20510-0504
http://feinstein.senate.gov

December 21, 2018

The Honorable Rod J. Rosenstein
Deputy Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Deputy Attorney General Rosenstein:

As part of the Senate Judiciary Committee's due diligence on the nomination of William P. Barr to be Attorney General, I recently reviewed a legal memorandum written by Mr. Barr on June 8, 2018, and addressed to you. In that memorandum, Mr. Barr—at the time, an attorney in private practice—extensively analyzes a possible legal theory behind Special Counsel Robert Mueller's investigation into whether the President has obstructed justice. Mr. Barr concludes that the Special Counsel's obstruction investigation is "fatally misconceived" and that, in effect, the President is above the law.

I have several questions about the circumstances surrounding this memorandum. In particular, did you or anyone else at the Department of Justice request that Mr. Barr write this memorandum? What actions were taken when it was received? Was it shared with anyone? Was there any follow up?

Please provide a written response to these questions by December 27, 2018. Thank you in advance for your assistance on this matter.

Sincerely,

Dianne Feinstein
Ranking Member
Committee on the Judiciary

cc: Charles E. Grassley, Chairman, U.S. Senate Committee on the Judiciary
Lindsey Graham, U.S. Senate Committee on the Judiciary

O'Callaghan, Edward C. (ODAG)

From:	O'Callaghan, Edward C. (ODAG)
Sent:	Thursday, July 12, 2018 9:40 AM
To:	Engel, Steven A. (OLC)
Subject:	May 29 ltr
Attachments:	2018-05-29 - Flood - Ltr to JLQ re pending and future SCO requests.pdf

Attached.

Edward C. O'Callaghan
Principal Associate Deputy Attorney General
United States Department of Justice
(o) 202-514-2105
(e (b) (6))

THE WHITE HOUSE

WASHINGTON

May 29, 2018

Via Hand Delivery

James L. Quarles
Special Counsel's Office
395 E Street S.W.
Washington, D.C. 20024

Dear Jim:

I write as Special Counsel to the President of the United States and on behalf of the Office of the President. My purpose is to set out certain fundamental considerations informing my office's approach to pending and future requests from the Special Counsel's Office (SCO), established May 17, 2017.

We are responding to the pending requests in a separate letter of today's date. Before discussing these important considerations, I wish first to thank the SCO team for the courtesy shown me as I have assumed this role in the last few weeks.

Limitation on Use Within the Executive Branch

Before my arrival, your office and ours agreed that materials produced by this office to the SCO will remain, and be used exclusively, within the Executive Branch. That agreement reflects a shared understanding that both our offices belong to the Executive Branch and that, although we are unmistakably adverse in limited respects, that adverseness must not be the last word on the relationship. For our part, we are mindful of the President's duty to take care that the laws be faithfully executed and of the operation of that duty in present circumstances. But we are also attuned to the many ways in which the special-counsel mechanism has historically operated to impair the full functioning of the Presidential office. The burdens of an investigation like the present one on a sitting President are truly immense, and, as discussed below, those burdens must be considered in our future communications and in the process of this office's continued cooperation with the SCO. With that said, I do understand that relationships between our offices to date have been cooperative, and that this office's work with yours has been performed with a view to shared Article II interests transcending any single Presidency. We remain committed to those interests and therefore to the path of cooperation. But going forward I anticipate greater attention on this office's part to the burden imposed by the investigation, and to the toll – institutional, functional and emotional – it continues to take on the Office of the President.

Unique Presidential Vulnerabilities

To say that the White House has important Article II interests in cooperating with the SCO is not to say that the President must make White House information broadly available

within the Executive Branch (including to the SCO) or make all its employees available for questioning on topics that may include subject matters not specified in the Deputy Attorney General's Order of May 17, 2017. The Constitution says that the "executive power shall be vested in a President," U.S. Const. Art. II, § 1, making him unique in our constitutional order. In Justice Breyer's words: "Article II makes a single President responsible for the actions of the Executive Branch in much the same way that the entire Congress is responsible for the actions of the legislative Branch, or the entire Judiciary for those of the Judicial Branch." *Clinton v. Jones*, 520 U.S. 681, 712 (1997)(concurring). The President is therefore the one "constitutionally indispensable, individual" in our government. *Id.* He is the nation's most visible figure and even his most routine actions may affect millions of people. In addition, the post-Watergate media-investigatory culture has exposed Presidents to "increased . . . vulnerability." *In re Lindsey*, 158 F.3d 1263, 1287 (1998). For these reasons and more, especially in the present context, sitting Presidents are "easily identifiable target[s]." *Nixon v. Fitzgerald*, 457 U.S. 731, 753 (1982). Among this office's obligations is a duty to be mindful of the Presidency's structural vulnerabilities and to take all appropriate measures to prevent further aggravation or injury to the Office of the President.

Obligation to Interpret the Constitution

The President has his own constitutional obligation to interpret the Constitution for the Executive Branch, and that obligation extends to questions presented by intra-branch differences, including differences that may arise between our offices. I earnestly hope that intractable differences will not arise. I cannot imagine that referral of such differences to the Judicial Branch (bracketing the question whether Article III has jurisdiction to enter any given Article II dispute) will result in a constitutionally strengthened Executive Branch. But the above principle will guide this office in our future discussions with yours.

The Over-Investigation Problem

It is a regrettable fact – but a fact nevertheless – that previous special/independent counsel investigations, including investigations involving prior White Houses, have sometimes been excessive in length, breadth and intrusiveness, with resulting injury to the Office of the President. No need to recite examples. The Department of Justice itself recognized this problem in 1999 when it promulgated the regulations under which the SCO operates. By its nature, such inquiries have a tendency to "over-investigate." 28 C.F.R. § 600.8(c) (discussion). That tendency is theoretically mitigated by final-reporting changes inserted in the 1999 regulations. But the over-investigation problem endures because it is structural, inherent in the special counsel mechanism itself. Experience teaches that when a single person or incident (especially when it involves a figure of the President's stature) is made the focus of such an investigation, the propensity to expand, and thereby to over-investigate, is irresistible.

Certain characteristics, articulated at length in Justice Scalia's *Morrison v. Olson* dissent, distinguish a single-focus special counsel investigation (and the decision-making that goes with it) from the ordinary array of matters confronting a typical federal prosecutor. That the present

matter is a special counsel investigation, rather than the species of independent counsel investigation at issue in *Morrison*, mitigates the *Morrison* dissent's *constitutional* concern, but it scarcely touches the "list of horribles" articulated there: the problem of a self-selecting staff, "the danger of too narrow a focus, of the loss of perspective, [and] of preoccupation with the pursuit of one alleged suspect to the exclusion of other interests." 487 U.S. 654, 731 (1988) (internal citation and quotation omitted). To which may be added the distinctive effects of collapsing the (ordinarily sequential) investigation and prosecution phases of the criminal justice process. What the *Morrison* dissent calls the "occupational hazards of the dedicated prosecutor" are especially acute in the special counsel mechanism precisely because, rather than situating those hazards among the tempering influences present in ordinary investigators'/prosecutors' offices, with their ordinary workloads/dockets, the special counsel regulations actually enshrine their "occupational" character in law.

To which, the following must be considered in addition: the investigator's venerable truism – "follow the facts wherever they lead" – applied to a person of power, visibility or influence, is a mighty inducement to over-investigate, to leave no stone, no pebble, unturned. The search for cooperating witnesses and efforts to obtain cooperation through plea agreements and grants of immunity have additional, well-known, expanding – and converging – effects of their own. The impact on the investigated is well summarized by the dissent in *Morrison*:

> How frightening it must be to have your own independent counsel and staff appointed, with nothing else to do but investigate you until investigation is no longer worthwhile, with whether it is worthwhile not depending upon what such judgments usually hinge on, competing responsibilities.

487 U.S. 654, 732 (1988) (Scalia, J.) If concentrating all these practices in pursuit of a single identified individual may fairly be called "frightening," it is not hyperbole to say that concentrating them on a President of the United States, "the single head in whose choice the whole nation has a part," *Youngstown Sheet & Tube v. Sawyer*, 343 U.S. 579,s653 (1952) (Jackson, J., concurring) poses an acute threat to the health of the Republic. "Interference with a President's ability to carry out his public responsibilities is constitutionally equivalent to interference with the ability of the entirety of Congress, or the Judicial Branch, to carry out their public obligations." *Clinton v. Jones*, 520 U.S. at 713 (Breyer, J., concurring).

The point is not to place Presidents above the law, or to assume by fiat a non-existent immunity from all inquiry, or to propose a standard of cooperation too demanding ever to be fairly met. It is to say rather this: That in present circumstances a certain vigilance is required in responding to special counsel inquiries and that consideration of larger Article II interests will play a part in this office's responses going forward.

Initiation of this Investigation

The structural concerns identified above are worsened by the manner in which this investigation was begun. The Special Counsel was appointed, and the SCO stood up, in response to a leak made by the then-recently-terminated FBI Director (through a surrogate) to the New

York Times. *Your office's existence was not an incidental consequence of that leak; it was the leak's specific and intended effect.* Considering the fact that a counter-intelligence investigation was at that time already underway, the inarguable intent of that leak was to prompt a criminal investigation focused on the President of the United States.

As you are no doubt aware, the Department of Justice and FBI have established mechanisms for authorizing and conducting criminal investigations. I have reviewed with care the permitted methods set out in the Attorney General's Guidelines for Domestic FBI Operations, the FBI Domestic Investigations and Operations Guide, and the U.S. Attorneys' Manual. It turns out that "leaks to the New York Times" are not among them. (The former Director's protestations – that the leak was justified by his status as a private citizen, or that the leaked materials were the equivalent of diary entries – would be just risible, if only his conduct were not also such a damaging precedent.) The information leaked was based on conversations directly with the President, from memoranda protected by the privilege for communications between Presidents and their senior advisors. This privilege was not the former Director's to waive. His action was, in short, a staggering breach of trust. It was certainly a breach of the FBI Employment Agreement and perhaps a violation of law(s) as well. Add in a book and publicity campaign (with your investigation ongoing), and a President just might be forgiven for wondering at the fairness of the whole thing. Those breaches have had, and continue to have, profoundly negative consequences for the institution of the Presidency.

It may be that as a prosecuting body your office is indifferent to these realities, that you are concerned only with the matter of the investigation and not at all the circumstances of its genesis or its larger implications. It may be that they carry no weight in the exercise of investigative judgment or that the view from your office is that such considerations must be left to the Deputy Attorney General or the judgment of history. But in weighing the question of reasonable cooperation with your investigation, and in striking the balance among competing concerns, this office, for itself and for future Presidents, must reckon with Article II interests transcending any specific investigation. Which means that this office cannot cooperate in this or any special counsel process begun in such a way without serious, and seriously justified, reservations. It is a grave matter to subject the President, any President, to a special counsel investigation initiated in this manner. Whatever the degree of cooperation shown to date, Article II values do not obligate the President of the United States to sit idly and forego assertion of all privileges, objections, reservations and concerns while this process takes its uncertain course. The idea that a law enforcement official might provide confidential information to the press for the openly proclaimed purpose of prompting a criminal investigation of an American citizen is profoundly troubling. That the head of the nation's top law enforcement agency has actually done so to the President of the United States should be called what it is: *an abuse of power*. The Director's example, combined with your office's appointment, has terrifying implications.

The Scope of the Investigation

There is a second troubling feature of your investigation's beginnings. The combination of the May 17, 2017 appointing order, the federal statutes identified in that order (28 U.S.C. §§ 509, 510 & 515), and the selected special counsel regulations identified in the Order (28 C.F.R §§ 600.4 – 600.10) (collectively, the Appointing Provisions), taken together, fail to state "the Special Counsel's jurisdiction . . . as an investigation of specific facts." 28 C.F.R. § 600.4 (discussion). Nor do the Appointing Provisions anywhere set out "an appropriate description of the boundaries of the investigation." *Id.* Perhaps the Deputy Attorney General's August 2, 2017 order, "The Scope of Investigation and Definition of Authority" (and, for all we know, other such orders), contains the statement of facts and description of jurisdictional boundaries required by the regulation. But, if such limitations do exist, their undisclosed character defeats the intended, limiting, purpose of the regulation, and it leaves persons caught up in the investigation with no fixed idea of "the matter to be investigated." 28 C.F.R. § 600.4(a). This secrecy may be thought an investigative imperative. It's hard to evaluate that from here. But what is not hard to see is that the absence of any identified subject-matter-scope or jurisdictional boundaries makes it very difficult to balance the Article II obligation to provide the SCO with reasonable cooperation with the Article II obligation to advance the effective functioning of the White House, including the need to address legitimate concerns of the White House staff who make that happen.

Effects of the Investigation

This office must also be mindful, as yours need not, of the varied and uniformly negative effects of your investigation on the White House's work of governing and the well-being of individual White House staffers. Investigations of this sort "are profoundly damaging to the good order and proper functioning of a working White House."[1] As multiple accounts from the administrations of Presidents Clinton and George W. Bush attest, such investigations are distracting, disruptive and frequently disorienting to White House staff. Regular duties are neglected or performed without appropriate focus. Ordinary decision-makers are forced to consider investigation-effects alongside of (or instead of) policy objectives. Individual staffers, worried about personal legal vulnerability, may pull back or withdraw from complete engagement in their ordinary duties. Staff who are also interviewees (or potential interviewees) must worry about the integrity of their memories and the destabilizing consequences of remembering events inconsistently with their colleagues. They may even worry about the consequences of an honest error on their careers, or on their personal liberty. To say nothing of the financially ruinous legal fees that can accompany even "witness" status, a burden particularly unfair for the young and for those among the not-so-young who have given their lives, in some cases their entire lives, to public service.

[1] Russell Riley, *The Punishing Reality of White House Investigations*, The Atlantic (May 22, 2017).

The prospect of these harms is, of course, no reason for a President to refuse all cooperation with such an investigation. Which goes a long way toward explaining why the White House's cooperation to date has been essentially unlimited. But as an investigation becomes more and more protracted, and the connection between its announced purpose ("links and/or coordination between the Russian government and individuals associated with the campaign of President Donald Trump") and the information or interviews sought becomes less and less discernible, our readiness to provide unquestioned assistance cannot help but diminish. For these reasons, this office expects to engage directly with yours going forward on questions affecting the balance of Article II interests presented by your inquiry, including questions bearing on the need for additional information and interviews.

* * * * * *

I have two final thoughts. The President enjoys certain legal protections/privileges as the holder of the Executive Office. Because our office's sharing of information with yours (document productions and witness interviews) has been confined within the Executive Branch, there has been no need to assert those privileges or protections. It may be unnecessary, but I reaffirm that what has been done to date is without waiver of any protection or privilege attaching to the Office of the President.

The second thought is this: For the reasons sketched above, there is substantial cause to believe that independent and special counsel investigations are destructive; that on balance they work far more harm than they accomplish good; and that the process, inherently dangerous in structure, fosters many ills in application. To point this out is not to impugn the motives of the SCO or the individual counsel investigating the White House. Defects in the special counsel mechanism's structure, and the originating-circumstances problems discussed above, are not the fault of the SCO; you inherited them. And the fairness question plaguing the special counsel process is in the end a structural problem and not an incident of the individual prosecutor's psyche. And so that process must be viewed, and is viewed here, on the basis of how it works *in toto*, in practical fact and in what it allows to occur – especially its effects on the Executive Branch as a whole, which effects make up our office's chief concern.

So, at the risk of appearing to play schoolmaster to distinguished law enforcement professionals, I close with a reflection borrowed from a familiar source, Attorney General Robert Jackson's 1940 speech on "The Federal Prosecutor." When he said in that speech that the prosecutor's most dangerous power is that he can choose his defendants, he might have been speaking of the special counsel function *avant la lettre*. I need not equivocate. We are all here now because the former FBI Director's leak singled out a specific defendant, and the Deputy Attorney General authorized your office to investigate him. What has happened is the very thing Robert Jackson warned against: they "pick[ed] the man . . . and put[] investigators to work."

As this office cooperates with yours going forward, we intend at all times to bear that fact in mind.

Sincerely,

Emmet T. Flood

Special Counsel to the President

O'Callaghan, Edward C. (ODAG)

From:	O'Callaghan, Edward C. (ODAG)
Sent:	Thursday, July 19, 2018 7:59 PM
To:	Engel, Steven A. (OLC); Gannon, Curtis E. (OLC)
Subject:	SCO letter
Attachments:	2018-07-18 - Flood - Letter from JLQ re 5.29.18 & 7.2.18 Letters.pdf

As sent.

Edward C. O'Callaghan
Principal Associate Deputy Attorney General
United States Department of Justice
(o) 202 514-2105
(c [redacted]

U.S. Department of Justice

The Special Counsel's Office

Washington, D.C. 20530

July 18, 2018

Emmet T. Flood
Special Counsel to the President
The White House
Washington, D.C.

Dear Mr. Flood:

I write in response to your letters of May 29, 2018, and July 2, 2018, concerning our supplemental request for documents for use in our investigation and our request that the White House make Chief of Staff John Kelly available for an interview.

Because you have described considerations informing your approach to our investigatory requests, we thought it useful to set out our viewpoint on these matters. We appreciate the cooperation that the White House has shown in the past and we hope that we can continue our working relationship on that basis. We also agree that the sharing of information within the Executive Branch raises no issues of legal privilege. Before your arrival, our offices agreed that any such sharing does not waive the President's ability to assert appropriate claims of privilege in court or vis-à-vis Congress and that the SCO would engage in further discussion or seek legal process before the SCO made use of the information outside the Executive Branch. Because you are now limiting the information that the White House is willing to provide on matters vital to our investigation by reference to the law of privilege, however, we will explain our perspective on the qualified privilege for presidential communications in the context of our investigation.

You have also set forth your views on the manner in which the decision to appoint a Special Counsel was made and the mandate the Special Counsel was given. We disagree with those views, but little would be gained by engaging in a debate about those issues. Nor is it necessary to correct any misimpressions you may have about the course of our investigation. Instead, it is, for our purposes, sufficient to note two things. First, the Acting Attorney General determined based on the unique circumstances of this matter that the public interest required him to appoint a Special Counsel to ensure that the American people would have full confidence in the outcome of the investigation. Second, that investigation was validly predicated based on the known facts, and our requests for information from the White House have been designed to further the investigation we have been appointed to conduct. We intend to complete our assigned mandate. Our requests for information and the positions expressed in this letter should be understood in that light.

Since the Special Counsel was appointed, our office has proceeded with certain key principles in mind. The Special Counsel respects the President's need to be able to perform his constitutionally assigned duties on behalf of the nation. Accordingly, our investigation has been and will be conducted with careful attention to its impact on the President, White House staff, and others. We have moved as swiftly as possible to complete our work in a responsible manner. We have sought testimony and documents from the White House only when necessary to the investigation. We have also protected the confidentiality of our activities to preserve the investigation's integrity and to respect the interests of individuals involved.

The scope of our investigation includes Russian interference in the presidential election and any links and/or coordination between the Russian government and individuals associated with the campaign of President Trump. Our jurisdiction also includes "matters within the scope of 28 C.F.R. § 600.4(a)," which covers "federal crimes committed in the course of, and with intent to interfere with, the Special Counsel's investigation." A factual basis exists to investigate both of these areas. Moreover, the Acting Attorney General has confirmed in congressional testimony that we are operating within our proper scope. While the details of the matters within our jurisdiction cannot be discussed publicly or in detail with witnesses or subjects in our investigation without compromising the investigation's integrity, the regulatory Special Counsel framework is designed to, and does, ensure accountability and adherence to Department of Justice policy. Two United States District Courts have now reaffirmed the lawfulness of the Special Counsel's investigation.

The Department of Justice has statutory responsibility to enforce criminal laws enacted by Congress to protect the administration of justice. Among the statutes protecting the integrity of grand jury and judicial proceedings are 18 U.S.C. § 1512(c)(2), which makes it a crime for any person to "corruptly— * * * obstruct[], influence[], or impede[] any official proceeding, or attempt[] to do so"; and 18 U.S.C. § 1512(b)(3), which makes it a crime to "knowingly use[] intimidation * * * or corruptly persuade another person" with the intent to "hinder, delay, or prevent the communication to a law enforcement officer * * * of information relating to the commission or possible commission of a Federal offense." Those statutes, among others, are at issue in our investigation.

The Constitution does not grant the President blanket immunity from such laws. The separation of powers takes into account the powers and responsibilities of all three branches of government. See *Nixon* v. *Administrator of General Services*, 433 U.S. 425, 443 (1977). Congress has Article I power to regulate and protect Article III courts and grand juries, and the obstruction-of-justice statutes serve that important purpose. The application of those statutes to presidential conduct does not prevent a President from accomplishing his constitutionally assigned role under Article II or undermine the Executive Branch. Rather, it ensures the proper operation of all three branches, and thus serves the interests of the United States and its people.

We have not reached conclusions about the facts and conduct we are investigating. To complete our investigation in a responsible manner, however, we seek access to additional

information that, in our judgment, bears significantly on whether any conduct in violation of the criminal laws cited above has occurred. We of course cannot provide you with a detailed factual description of the evidence we have gathered in the course of our investigation without jeopardizing the investigation's integrity. During our discussions, however, we referred you to relevant information in the public domain on the matters we are investigating. If we were required to make a factual showing to a court, *in camera*, we are confident that we would meet the applicable thresholds to overcome any claim of executive privilege.

We recognize that you have not asserted executive privilege at this point. But your reliance on the case law addressing executive privilege requires a response. We fully accept the importance of confidentiality to the effective performance of the President's weighty responsibilities. Yet the privilege that protects that interest is qualified by the competing needs of the criminal justice system and the truthseeking process. In *United States* v. *Nixon*, 418 U.S. 688, 707 (1974), a unanimous Supreme Court held that a claim of presidential communications privilege based on the generalized interest in confidentiality "must yield to the demonstrated, specific need for evidence in a pending criminal trial." *Id.* at 713. In *In re Sealed Case*, 121 F.3d 729, 754, 756-757 (D.C. Cir. 1997) (*Espy*), the D.C. Circuit applied *Nixon* in the contexts of a grand jury subpoena, holding that when the President asserts presidential communications privilege in opposition to a grand jury subpoena seeking evidence from senior White House advisors, the government will overcome the assertion when it demonstrates that the information sought "likely contains important evidence" and that "this evidence is not available with due diligence elsewhere." *Espy*, 121 F.3d at 754, 756-757. If the government makes the required showings, the presumptive privilege gives way and the materials must be submitted *in camera* to the court, which will release to the grand jury "any evidence that might reasonably be relevant to the grand jury's investigation." *Id.* at 759. The *Espy* standard equally applies to spoken and written communications. See *Nixon*, 418 U.S. at 686 (tape recorded conversations); *Espy*, 121 F.3d at 735 (written materials). There is no reason for a different approach to testimony.

You have suggested that communications involving the White House Chief of Staff merit a heightened degree of protection. That suggestion, to our knowledge, has no basis in the law of executive privilege. In articulating the test for overcoming privilege, the *Nixon* Court drew no distinction among titles or types of presidential advisors. That is significant because the subpoenaed tapes involved communications between the President and H.R. Haldeman, the President's Chief of Staff, as well as other senior White House officials. Yet all of the tapes—including those involving highly sensitive communications—were ordered to be produced. 418 U.S. at 713-714. Similarly, *Espy* involved documents "authored by the White House Counsel, Deputy White House Counsel, Chief of Staff and Press Secretary," 121 F.3d at 758, concerning matters "intimately connected to presidential decisonmaking" about "appointment and removal," *id.* at 753. Yet the court did not require any special showings to overcome an assertion of executive privilege for those advisors other than the standard articulated in the decision itself. Nor have you clarified what sort of more demanding standard you think might apply.

Beyond its lack of support in precedent, the suggestion that a heightened showing is necessary for communications involving the Chief of Staff would be in tension with the D.C. Circuit's holding that "the privilege should apply only to communications authored or solicited and received by those members of the White House adviser's staff who have broad and significant responsibility for investigating and formulating the advice to be given the President on the particular matter to which the communications relate." *Espy*, 121 F.3d at 752. Thus, the *Espy* standard already accounts for the fact that senior advisors have broad and significant responsibilities. And any attempt to formulate a more stringent standard for particular advisors would run counter to the Supreme Court's recognition that "[executive] privilege claims that shield information from a grand jury proceeding or a criminal trial are not to be expansively construed, for they are in derogation of the search for truth." *Cheney* v. *U.S. Dist. Court for the Dist. of Columbia*, 542 U.S. 367, 384 (2004) (internal quotation marks omitted).

You have also suggested that, on the "unavailability" prong of the *Espy* test, the fact that we have had access to one participant's recollections about a conversation means that we cannot satisfy *Espy* for information from other participants. That suggestion is unsupported and unsound. As the D.C. Circuit has explained, "if one of the crimes that the grand jury is investigating relates to the content of certain communications, the grand jury's need for the most precise evidence, the exact text of oral statements, is undeniable." *Espy*, 121 F.3d at 761 (internal quotation marks and ellipses omitted). This need justifies our asking about recollections from more than one participant in a conversation. Each participant may have differing or competing recollections about what was said. One participant may have forgotten words that another participant recalls. And if more than one participant recalls the same statements, that agreement may be critical to corroborating what happened. Thus, the happenstance that a particular participant was interviewed first should not mean that all others should be unavailable. Any such arbitrary rule would be an obstacle to the search for truth and yield minimal if any benefits to the quality of official decisionmaking that executive privilege is designed to protect.

Turning to the specific requests at issue, we have asked to interview General Kelly on a small set of specifically identified topics, which your letter describes. An interview on those topics can reasonably be expected to provide important evidence on central issues in our investigation. The events on which we have focused raise critical questions under the statutes we have identified above. General Kelly's testimonial evidence is also unavailable from another source. His participation in key conversations involving few participants makes him a unique source of evidence. Under the terms of your response, however, we would be allowed to ask General Kelly about conversations he had with the President only if no one else was present or if no third party who was present is available to be questioned. It is of course valuable to be able to ask about General Kelly's one-on-one conversations with the President. But we do not find it acceptable to be limited to such communications. Having only one participant's recollection of a conversation would prevent us from corroborating, contradicting, or supplementing that information, and would thus preclude us from gaining the most accurate understanding of the event. Because the meetings at the center of our inquiry include conversations involving only a small number of participants,

and the particular words, intonations, and reactions of those participants may be critical, there is no substitute for interviewing General Kelly about his own recollections.[1]

As to documents, we cannot accept your proposal to make General Kelly's notes available to us only when General Kelly and the President were the sole participants in a conversation. That limitation is unacceptable for the same reasons discussed above. If two White House officials participated in a single meeting with the President and both took notes, it would not be reasonable to limit us to examining only a single set of notes. Accordingly, the fact that we may have interviewed or obtained notes from one participant in a meeting does not justify withholding General Kelly's notes if he participated in the same meeting.

In sum, we continue to believe that the needs of our investigation justify pursuit of our requests as described to you. In the interest of obtaining continued cooperation from the White House, we substantially narrowed our outstanding document requests, which have been pending since March 20, 2018.[2] If necessary, we are prepared to ask the grand jury to issue appropriate process to obtain the testimony and documents we have sought. Should we be compelled to seek these documents and related testimony through grand jury subpoenas, we are confident that a federal court would agree with our legal positions and would enforce the subpoenas. We share your view, however, that invoking judicial assistance to enforce a grand jury subpoena should be

[1] As for your reservation of questions pertaining to legal strategy, it is not clear to us whether General Kelly participated in any conversations on the topics we have identified that could be characterized as pertaining to White House legal strategy. To the extent that any such communications occurred, however, they would receive no greater protection under the law of executive privilege than any other executive communications. See *In re Lindsey*, 158 F.3d 1263, 1278 (D.C. Cir. 1998) (per curiam) (rejecting any suggestion that "the advice lawyers render [to the White House as governmental attorneys] is more crucial to the functioning of the Presidency than the advice coming from all other quarters" and holding that a governmental attorney-client privilege does not entitle a White House attorney to withhold information about a possible criminal violation from a federal grand jury), *cert. denied*, 525 U.S. 996 (1998); *accord In re Grand Jury Subpoena Duces Tecum*, 112 F.3d 910, 921 (8th Cir.), *cert. denied*, 521 U.S. 1105 (1997).

[2] Following the transition from your predecessor, we first met with you on May 15, 2018, and we have had numerous discussions with you since then about our outstanding document requests and our request to interview General Kelly. We did not make these requests lightly; we did so only after obtaining substantial credible evidence in the course of our investigation that created a need for the requested information. On May 24, 2018, you indicated for the first time that the White House did not intend to provide us with several categories of documents, and you confirmed that position in writing by letter dated May 29, 2018. Since then, through several discussions by phone and an in-person meeting on June 19, 2018, we have attempted to reach an acceptable resolution. To that end, we provided you with additional information about our requests concerning the status of the Special Counsel and the scope of an interview with General Kelly, and we agreed to set aside our requests at this time for documents concerning the status of the Attorney General, the Vacancies Reform Act, and recess appointments (despite our having a factual predicate for each request).

a last resort. I would appreciate it if you would let us know by July 25, 2018, whether the White House will provide us with the requested information.

Sincerely yours,
Robert S. Mueller, III

By: _____
James L. Quarles III
Senior Counselor to the Special Counsel

Engel, Steven A. (OLC)

From: Engel, Steven A. (OLC)
Sent: Thursday, July 19, 2018 8:28 PM
To: O'Callaghan, Edward C. (ODAG)
Cc: Gannon, Curtis E. (OLC)
Subject: Re: SCO letter

Thanks

Sent from my iPad

> On Jul 19, 2018, at 7:58 PM, O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov> wrote:

Duplicative Material (Document ID: 0.7.23922.44694)

O'Callaghan, Edward C. (ODAG)

From:	O'Callaghan, Edward C. (ODAG)
Sent:	Thursday, July 26, 2018 7:29 PM
To:	Engel, Steven A. (OLC); Gannon, Curtis E. (OLC); Demers, John C. (NSD)
Subject:	FW: DRAFT / DELIBERATIVE
Attachments:	2018-07-09 - Raskin - Email from Raskin to JLQ.pdf; Letter to J Raskin Team 600 draft ver 4 07262018.docx; Raskin letter attachments 07262018.docx

Attached is a letter that SCO proposes to send to the Raskins related to a possible interview of the President. I would appreciate it if you can review and we will find a convenient time to discuss. Thank you all for your help.

Edward C. O'Callaghan
202-514-2105

From: AMZ
Sent: Thursday, July 26, 2018 6:53 PM
To: O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>
Subject: DRAFT / DELIBERATIVE

DRAFT / DELIBERATIVE

The letter responds to Jane's email dated July 9, which is also attached.

Thanks.
Aaron

Aaron Zebley
Special Counsel's Office
202.514.0512

From: Jane Raskin <jraskin@raskinlaw.com>
Sent: Monday, July 9, 2018 7:37 PM
To: JLQ
Cc: ADG ; Jay Sekulow >; Marty Raskin <mraskin@raskinlaw.com>
Subject: Follow-up on June 29 conversation

Dear Jim,
I'm writing in response to the question you and Andrew posed when Marty and I spoke with you on June 29.
To put things in context, on June 15, Jay, Marty and I met with you and Andrew to present a possible approach for moving forward in our ongoing discussions regarding the Special Counsel's request to interview the President. We reiterated what we and former counsel have expressed over the past months concerning the suggested interview topics related to the obstruction of justice investigation: The acts at issue fall squarely within the President's Article II discretionary authority and, therefore, cannot constitute obstruction of justice; the acts at issue do not otherwise satisfy the requirements of the federal obstruction statutes; and you have not demonstrated that the President's testimony is necessary to your investigation and is otherwise unavailable, particularly in light of the extensive witness interviews and documents that have been provided by the White House without assertion of executive privilege. So, we explained, absent further information or convincing to the contrary, we could not recommend that the President agree to an interview on the obstruction topics you suggested. We did repeat our willingness to discuss the possibility of an attorney's proffer on certain matters as to which you have expressed interest, although you have rejected that concept in the past.
We then asked whether you would consider limiting a potential Presidential interview to topics relating to possible links or coordination between the Russian government and the Trump campaign the matter the Special Counsel was appointed to investigate. We told you that we would consider recommending such a course if you would provide us the information we have long been requesting on this score, to wit, the nature and context of any potential unlawful activity at issue, evidence of the President's relationship to that activity (whether as a

witness or participant), and a convincing explanation why his testimony is necessary to the resolution of your investigation of these matters. You told us you would consider our proposal and get back to us.

Two weeks later, on June 28, you wrote to schedule a call, and the morning of June 29, you, Andrew, Marty, and I spoke. You accurately summarized our proposal of June 15 and explained that you were not willing to proceed as we had suggested because of your continued belief that the President's testimony is vital to resolving the obstruction of justice aspects of the investigation. You offered to limit the topics of the interview on obstruction issues and to accept some answers in writing. You also told us you would be willing to provide further information and context for the Russia questions but, suggesting a "chicken and egg" dilemma, asked us to agree to consider answering some questions on obstruction before receiving additional information on the Russia piece of the investigation.

I think the better metaphor for the current impasse is "placing the cart before the horse." Even putting aside our view, repeated above, as to the fundamental flaws underlying your obstruction theory, any suggestion that the President acted to impede the Russia probe logically depends on the existence of some known, unlawful collusion between Russia and individuals associated with the 2016 campaign. The President steadfastly denies knowledge of any such activity, neither he nor we have reason to believe any exists, and the Special Counsel has, to date, provided us no evidence to the contrary. Accordingly, we believe a reverse proffer as to whether there is evidence of unlawful coordination between the campaign and Russia and, if so, whether the President has any meaningful, relevant information regarding it should precede rather than follow further consideration of our client answering any questions on the topic of supposed obstruction.

That said, and to answer the question you posed on June 29, we remain willing, albeit reluctantly, to consider discussing some specific, limited questions on the obstruction investigation if you are willing to provide us the requested information regarding purported coordination between the Russian government and the Trump campaign so we can appropriately address your request for an interview on this singular substantive subject of the Special Counsel's appointment. We make this proposal in order to facilitate the prompt resolution of the Special Counsel's investigation and to avoid the prospect of lengthy constitutional litigation which we believe would not be in the interest of the public nor, more particularly, the Executive branch for which you work and of which our client is the chief steward.

Please let me know whether this provides a basis for further discussion.

-Jane

Jane Serene Raskin
jraskin@raskinlaw.com

RASKIN & RASKIN, PA
Miami
Suite 1050
201 Alhambra Circle
Coral Gables, Florida 33134
Tel: (305) 444-3400
Web: www.raskinlaw.com

Naples
7400 Tamiami Trail North
Suite 101
Naples, Florida 34108

Tel: (239) 431-6041
Fax: (239) 431-6028

Jane Serene Raskin
jraskin@raskinlaw.com

RASKIN & RASKIN, PA
Miami
Suite 1050
201 Alhambra Circle
Coral Gables, Florida 33134
Tel: (305) 444-3400
Web: www.raskinlaw.com

Naples
7400 Tamiami Trail North
Suite 101
Naples, Florida 34108
Tel: (239) 431-6041
Fax: (239) 431-6028

This message or any attachment may contain information that is protected by the attorney-client privilege or that is otherwise confidential. If you receive this message in error or it is otherwise evident that it was not intended to be sent to you, please delete the message in its entirety. Inadvertent transmission of confidential information to a person not entitled to receive the information is not intended as a waiver of any applicable privilege or confidential status. If you have any questions, please call us collect at the above number.

Demers, John C. (NSD)

From:	Demers, John C. (NSD)
Sent:	Thursday, July 26, 2018 10:14 PM
To:	O'Callaghan, Edward C. (ODAG)
Cc:	Engel, Steven A. (OLC); Gannon, Curtis E. (OLC)
Subject:	Re: DRAFT / DELIBERATIVE

I can make 3 work.

On Jul 26, 2018, at 8:03 PM, O'Callaghan, Edward C.(ODAG) <ecocallaghan@jmd.usdoj.gov> wrote:

> I can do 3:00 if others are available.
>
> Edward C. O'Callaghan
> 202-514-2105
>
> ---
>
> **From:** Engel, Steven A. (OLC)
> **Sent:** Thursday, July 26, 2018 7:43 PM
> **To:** O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>; Gannon, Curtis E. (OLC) <(b)(6) per OLC Demers, John C. (NSD) <jcdemers@jmd.usdoj.gov>
> **Subject:** RE: DRAFT / DELIBERATIVE
>
> Sure. I'm free tomorrow until 1 pm. And then from 1:45 pm to 3:30 pm.
>
> ---
>
> **From:** O'Callaghan, Edward C. (ODAG)
> **Sent:** Thursday, July 26, 2018 7:29 PM
> **To:** Engel, Steven A. (OLC) <(b)(6) per OLC >; Gannon, Curtis E. (OLC) (b)(6) per OLC ; Demers, John C. (NSD) <jcdemers@jmd.usdoj.gov>
> **Subject:** FW: DRAFT / DELIBERATIVE

Duplicative Material (Document ID: 0.7.23922.50246)

O'Callaghan, Edward C. (ODAG)

From:	O'Callaghan, Edward C. (ODAG)
Sent:	Friday, July 27, 2018 2:50 PM
To:	Demers, John C. (NSD); Engel, Steven A. (OLC); Gannon, Curtis E. (OLC)
Subject:	FW:
Attachments:	White House letter dtd 7.27.2018.pdf

Justin.

Edward C. O'Callaghan
202-514-2105

From: AMZ
Sent: Friday, July 27, 2018 2:47 PM
To: O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>
Subject:

THE WHITE HOUSE

WASHINGTON

July 27, 2018

Via Hand Delivery

James L. Quarles
Special Counsel's Office
395 E Street S.W.
Washington, D.C. 20024

Re: Interview of Chief of Staff John Kelly

Dear Jim:

I write in response to your letter dated July 18, 2018, which we received on July 19.

Having reflected on your letter and other pertinent considerations, this office has concluded that under the conditions set forth below, the White House will permit the SCO to conduct an interview of White House Chief of Staff General John Kelly on the following topics identified to us by the SCO:

(1) COS Kelly's background and his role and responsibilities as White House Chief of Staff;

(2) COS Kelly's discussions regarding the termination of Mr. Comey;

(3) COS Kelly's participation in any meeting(s) at which both the President and any witness in the Special Counsel's investigation were present and at which the President asked an SCO witness about the witness's interactions with the SCO;

(4) COS Kelly's involvement in any discussion or meeting in which the topic was the events described in certain identified news articles from (i) January 25, (ii) January 26, and (iii) March 7, 2018;

(5) COS Kelly's involvement in any discussion or meeting regarding an effort to terminate the Special Counsel, limit the Special Counsel's authority, or otherwise constrain or influence the Special Counsel; and

(6) COS Kelly's knowledge of or involvement in the issuance of public statements (*e.g.*, the statement made on August 10, 2017) denying that the President wanted to terminate the Special Counsel or had even considered doing so.

Our agreement to allow COS Kelly to be interviewed is premised on (i) the SCO's commitment to limit its questions to these specific topics; and (ii) the July 18 Letter's statement that the information sought "bears . . . on whether any conduct in violation of [18 U.S.C. §

1512(c)(2) and/or 18 U.S.C. § 1512(b)(3)] has occurred." July 18 Letter at 3. I add that this agreement represents no concession to, or agreement with, the points made in your July 18 letter.

In view of the limited topics, and considering the always-on-duty nature (and unparalleled importance) of COS Kelly's job, his interview should be able to be completed in two hours. As discussed in my letter dated July 2, 2018, COS Kelly is no ordinary White House staff member—he is the President's single closest and most important advisor. Absence from the White House for any meaningful time must therefore be avoided. We will work with your office to resolve interview-time questions that may arise, but this office reserves the right to terminate the interview if it extends materially beyond two hours.

As I have noted in past correspondence and phone conversations, COS Kelly – after almost 47 years of public service – is not in a position to retain private counsel to represent him at the SCO interview. Accordingly, and consistent with prior practice concerning special counsel investigations involving the White House, a member of this office will be present during COS Kelly's interview.

With regard to outstanding document requests, the White House is making available to the SCO responsive documents created by COS Kelly relating to the status of Special Counsel Mueller. These documents are enclosed with this letter and bear Bates numbers WH0000017682 through WH0000017685.

There are logistical challenges associated with conducting COS Kelly's interview in the most confidential and least intrusive manner possible. I will discuss those with you orally.

Finally, this office is agreeing to make COS Kelly available for an interview in the expectation that the SCO is nearing the completion of its investigation, or at least that portion of the investigation touching the White House. After the SCO has completed its interview of COS Kelly, the White House will have made available for interviews every member of the White House staff requested by the SCO, including two Chiefs of Staff. That cooperation has come at substantial cost to White House functioning and I again note the disruptive and distracting effects this investigation has had, and continues to have, on the President and his staff.

Please telephone me if you have any questions about the foregoing.

Sincerely,

Emmet T. Flood
Special Counsel to the President

Encls.

O'Callaghan, Edward C. (ODAG)

From:	O'Callaghan, Edward C. (ODAG)
Sent:	Wednesday, August 8, 2018 6:53 PM
To:	Engel, Steven A. (OLC); Gannon, Curtis E. (OLC); Demers, John C. (NSD)
Subject:	FW: Letter
Attachments:	LT JL Quarles 8.8.18.pdf

FYI, letter from Raskins in response to SCO's letter.

Edward C. O'Callaghan
202-514-2105

From: AMZ
Sent: Wednesday, August 8, 2018 6:20 PM
To: O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>
Subject: FW: Letter

RASKIN & RASKIN
Attorneys at law

MARTIN R. RASKIN
mraskin@raskinlaw.com
JANE SERENE RASKIN
jraskin@raskinlaw.com

August 8, 2018

James L. Quarles III
Senior Counsel to the Special Counsel
The Special Counsel's Office
395 E Street, S.W.
Washington, D.C. 20530

Dear Jim:

I write in response to your letter of July 30, 2018 regarding your request to interview the President.

First, let me address your characterization of my July 9, 2018 letter – the letter to which your July 30, 2018 letter responds. Contrary to your suggestion, my July 9 letter advanced no new legal arguments, nor did it impose any new preconditions on continued discussions regarding an interview with the President. Rather, it conveyed our willingness to reconsider discussing limited questioning on topics related to your obstruction-of-justice investigation in order to facilitate resolution of the global issue of a presidential interview. We did so in response to what we understood as an offer of compromise delivered by you and Andrew to Marty and me during our June 29 telephone conversation: If we would agree to reconsider answering some questions on what you describe as obstruction-of-justice topics (which we earlier had informed you we were disinclined to do), you would provide additional information and context for the proposed topics relating to the investigation into links or coordination between the 2016 campaign and the Russian government. You also offered to narrow the list of proposed topics and accept some answers in writing.

Since the beginning of our involvement in this matter, we have requested a reverse proffer of information sufficient for us to assess and advise our client regarding the basis for and reasonableness of your request to interview him concerning the numerous and diverse Russia-related topics you have identified.[1] To be sure, my July 9 letter questioned the logic of your most

[1] On May 21, 2018 I wrote in follow-up to my earlier request for information on the nature and status of your investigation of so-called Russian collusion with the campaign: "The fact that the proposed interview topics you furnished to counsel cover matters related to Russia and the campaign is . . . unenlightening given the benign nature of these matters absent some evidence that they were part of any purported illicit scheme. We are aware of no such evidence and you have not identified any. *Would you be willing to provide a reverse proffer to help us move forward?*" By email of May 31, 2018, you responded in the negative. During our June 15, 2018 meeting, we again raised the subject in connection with our request that you consider the possibility of an interview limited to topics relating to possible links or coordination between the Russian government and the Trump campaign. I memorialized that discussion in my July 9 letter: "We told you [on June 15] we would recommend such a course *if you would provide us the information we have long been requesting on this score, to wit, the nature and context of any potential unlawful activity at issue, evidence of the President's relationship to that activity (whether as a witness or participant), and a*

recent proposal. You had suggested a chicken and egg dilemma and I countered that, from my perspective, you were putting the cart before the horse by continuing to focus so singularly on the supposed obstruction of an investigation into possible coordination between the 2016 campaign and the Russian government that, to our knowledge, has produced no evidence implicating our client or requiring his testimony. But, as my letter concluded:

> That said, and to answer the question you posed on June 29, we remain willing, albeit reluctantly, to consider discussing some specific, limited questions on the obstruction investigation if you are willing to provide us the requested information regarding purported coordination between the Russian government and the Trump campaign so we can appropriately address your request for an interview on this singular substantive subject of the Special Counsel's appointment.

Three weeks passed before you replied to my letter, muddled its message, and, regrettably, walked back your offer to provide further information regarding the context of your request to question the President regarding potential coordination between the 2016 campaign and the Russian government.

We remain mystified by your suggestion, offered now for the second time, that to provide us this information would somehow be an imprudent novelty "detrimental to the integrity of your investigation." You have asked the President of the United States, whom you have identified as a subject of your investigation, to sit for a voluntary interview covering a raft of topics spanning a five-year time period and involving a diverse array of seemingly unconnected individuals and events. Under comparable circumstances in an ordinary investigation, counsel typically would request information of the sort we have sought and customarily would be provided, if not a full-blown proffer, sufficient information for counsel to make an informed decision on behalf of the client. As this is not an ordinary investigation, the refusal to accommodate our reasonable request is all the more cause for concern.

You submit that providing this type of information would undermine your goal "to obtain the President's independent recollection and knowledge of important events in [y]our investigation." But at this advanced stage of your investigation, with the fact-finding near completion and faced with your reluctance to provide so much as a theory of liability as to which the President's testimony would be important (whether as a witness or subject), we are left to ponder whether your proposed scrutiny of the President's recollection and knowledge of events – as measured

convincing explanation why his testimony is necessary to the resolution of your investigation of these matters." You took our proposal under advisement and, when we next spoke on June 29, you relayed your offer to provide more information on the Russia piece of your investigation if we agreed to reconsider answering questions on obstruction.

against those of the multitude of witnesses already interviewed and seemingly untethered to underlying misconduct – might itself be the goal.

Recently reported events have not eased our concerns. On July 13, 2018, your colleagues at the Special Counsel's Office returned an indictment against twelve Russian nationals. *U.S. v. Viktor Borisovich Netyksho, et al.*, Case No. 1:18-cr-00215 (D.D.C. 2018). That indictment, like the SCO's February 2018 indictment of thirteen Russian nationals and three Russian companies, *U.S. v. Internet Research Agency LLC, et al.*, Case No. 1:18-cr-00032 (D.D.C. 2018), is notable in that it alleges no knowing participation in the alleged unlawful activity by Americans, let alone anyone associated with the 2016 Trump campaign. As you know, the *Netyksho* indictment was immediately transferred out of the SCO to DOJ's National Security Division.

Then, on July 21, 2018, the FBI released hundreds of pages of documents related to the FISA surveillance of Carter Page — confirming that the Special Counsel's investigation of the President of the United States was ignited and fueled by unverified opposition research paid for by the Clinton Campaign and the Democratic Party, compiled by a former British agent who "was desperate that Donald Trump not get elected," and consisting in the main of uncorroborated hearsay, much of it multiple, from unidentified Russian sources. This of course, follows on the heels of the DOJ Inspector General's Report documenting remarkable bias against our client by original members of the Special Counsel's staff, including Special Agent Strozk who initiated and led the FBI's highly irregular Trump-Russia counterintelligence investigation and carried its fruits with him to the Special Counsel's Office. I could go on, but the point is made.

Even so, throughout the month of July the White House continued its cooperation with your investigation, including by making available for interview the President's most senior advisors. We understand the interviews of White House employees are now complete. At this juncture, it is difficult for us to understand how an interview with our client is necessary or appropriate to any of the general topic areas you have articulated. It is near impossible to reconcile the current state of cooperation with your latest proposal which, as far as we can see, simply telescopes earlier proposed specific topics into more general ones, adds new topics, and reserves wholesale the right to amend the list of topics going forward.

Therefore, we cannot recommend a voluntary interview on these terms. Still, we remain willing to continue our dialogue in an effort to facilitate the swift conclusion of the Special Counsel's investigation. In furtherance of that goal, we offer two observations regarding your recent proposal.

Topics implicating the President's purposes and decision-making process

First, a number of your proposed topics, on their face, suggest questioning the President regarding his purposes and decision-making process in connection with certain events. In the main, these topics appear on your List B which you describe as addressing the President's "knowledge and purposes," in contrast to the topics on List A which you describe as addressing "predominantly fact-based issues."

You are aware of our position, articulated repeatedly over the past months, regarding your desire to ask the President to describe his state of mind as he made certain decisions or undertook certain actions. Such an inquiry is not, as you have suggested, "vital" to an evaluation of the intent element of the obstruction-of-justice statutes. Surely, even the most ordinary obstruction-of-justice investigation passing through the federal system typically is concluded, one way or another, without direct testimonial evidence from the subject as to his intent. And, this is not the ordinary case, involving as it does a request for information from the President of the United States and, accordingly, informed by the familiar *Espy* standard requiring a demonstration both that the evidence is important and that it or its equivalent is unavailable from another source. *See In re Sealed Case (Espy)*, 121 F.3d at 756. Here, the voluminous evidence provided by the White House in the form of witness interviews, relevant documents, and the President's own words is more than sufficient to satisfy your purpose and obviates any need for questioning on these topics.

We have also expressed our view that the obstruction-of-justice statutes cannot be read so expansively as to create potential liability based on facially lawful acts undertaken by the President in furtherance of his core Article II discretionary authority to remove principal officers or carry out the prosecution function. Questioning the President based on such a novel and expansive theory would be improper. In fact, there remains outstanding the question whether a President should ever be subjected to inquiry regarding his subjective decision-making process while undertaking the duties of his office. *See Simplex Time Recorder Co. v. Secretary of Labor*, 766 F.2d 575, 586 (D.C. Cir. 1985) (recognizing "the rule enunciated by the Supreme Court in *United States v. Morgan*, 313 U.S. 409, 422 (1941), that top executive department officials should not, absent extraordinary circumstances, be called to testify regarding their reasons for taking official actions.")

For the above reasons, we believe the Special Counsel's continued insistence on questions implicating the President's subjective mental state and decision-making process warrants reconsideration.

Availability of written questions and answers

Second, you appeal to Executive Branch tradition in support of your request that the President speak with you. Of course, to the extent such a "tradition" exists in circumstances remotely similar

to those present here, it is informed by the "high respect that is owed to the office of the Chief Executive" throughout the process and the "special caution [that] is appropriate if the materials or testimony sought relate to a President's official activities." *Clinton v. Jones*, 520 U.S. 681, 707, and 704, n 39 (1997). Simply put, "[w]hat is reasonable to expect of an ordinary client may not be reasonable to expect of the President of the United States." *In re Bruce R. Lindsey (Grand Jury Testimony),* 158 F.3d 1263, 1280 (D.C. Cir. 1997).

Not surprisingly then, historical practice and case law recognize the efficacy of written questions and answers when balancing legitimate requests for information against the unique position of the President in the constitutional scheme. *See, e.g.,* Memorandum to the Attorney General from Robert G. Dixon, Jr., Assistant Attorney General, Office of Legal Counsel, *Re: Presidential Amenability to Judicial Subpoena* at 8 (June 25, 1973) and cases cited therein; *Clinton v. Jones*, 520 U.S. at 704, citing Rotunda, *Presidents and Ex-Presidents as Witnesses: A Brief Historical Footnote*, 1975 U. Ill. L. Forum 1, 5-6 ("President Monroe responded to written interrogatories"). And, as we have noted before, Judge Walsh successfully used voluntary responses to written questions when seeking answers from President Reagan in the Iran-contra investigation.

Significantly, you yourselves have come to acknowledge the value of written questions and answers, at least with respect to certain of the topics you have identified. As we have made clear from the outset, we are confident that written questions and answers could adequately address any appropriate concerns and we remain willing to consider such an approach. We suggest you provide for our consideration the specific questions to which you request written answers together with the specific documents you earlier indicated you would produce in advance of any questioning.

We believe this approach would provide a solid foundation for further discussions and look forward to your response.

Sincerely,

JANE SERENE RASKIN

Engel, Steven A. (OLC)

From:	Engel, Steven A. (OLC)
Sent:	Wednesday, August 8, 2018 6:54 PM
To:	O'Callaghan, Edward C. (ODAG); Gannon, Curtis E. (OLC); Demers, John C. (NSD)
Subject:	RE: Letter

Thanks.

From: O'Callaghan, Edward C. (ODAG)
Sent: Wednesday, August 8, 2018 6:53 PM
To: Engel, Steven A. (OLC) (b)(6) per OLC ; Gannon, Curtis E. (OLC) (b)(6) per OLC
Demers, John C. (NSD) <jcdemers@jmd.usdoj.gov>
Subject: FW: Letter

Duplicative Material (Document ID: 0.7.23922.52581)

Engel, Steven A. (OLC)

From:	Engel, Steven A. (OLC)
Sent:	Thursday, August 16, 2018 1:15 PM
To:	O'Callaghan, Edward C. (ODAG)
Subject:	Re: your call

Ok great.

Sent from my iPhone

On Aug 16, 2018, at 1:07 PM, O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov> wrote:

> Thanks. We'll call your cell.
>
> Edward C. O'Callaghan
> 202-514-2105
>
> On Aug 15, 2018, at 8:01 PM, Engel, Steven A. (OLC) (b)(6) per OLC wrote:
>
> > Sure. Just let me know a number to call or you guys can call my cell.
> >
> > Sent from my iPhone
> >
> > On Aug 15, 2018, at 7:33 PM, O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov> wrote:
> >
> > > I blocked off 4-5 on DAG's calendar and thought Demers would be able to join. He has to take care of (b) (6) tomorrow afternoon now, so he won't be able to join. If you and Curtis can do that time, however, I think it will be worthwhile. I did speak with John at length about it today and he is in general agreement with our thoughts on it. I am meeting with SCO again tomorrow at 5 so would be helpful for me to clarify thoughts on it.
> > >
> > > Edward C. O'Callaghan
> > > 202-514-2105
> > >
> > > ---
> > >
> > > **From:** Engel, Steven A. (OLC)
> > > **Sent:** Wednesday, August 15, 2018 11:47 AM
> > > **To:** O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>
> > > **Subject:** Re: your call
> > >
> > > Yes. Just let me know what time would work.
> > >
> > > Sent from my iPhone
> > >
> > > On Aug 15, 2018, at 11:33 AM, O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov> wrote:

<ecocallaghan@jmd.usdoj.gov> wrote:

Any possibility you could do a call with the DAG tomorrow late afternoon? Demers is back and would like to get some with you two and DAG. DAG is out Friday and in NC for speeches until tomorrow midday.

Edward C. O'Callaghan
202-514-2105

From: Engel, Steven A. (OLC)
Sent: Tuesday, August 14, 2018 10:19 AM
To: O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>
Subject: RE: your call

Let me know when you want to continue the conversation. I (b)(6) per OLC for Wed through Friday. But could do a call, if we don't connect today.

From: O'Callaghan, Edward C. (ODAG)
Sent: Monday, August 13, 2018 12:37 PM
To: Engel, Steven A. (OLC) <(b)(6) per OLC>
Subject: RE: your call

Sure. I have a 1:00 so will be brief and we can continue but worth the chat.

Edward C. O'Callaghan
202-514-2105

From: Engel, Steven A. (OLC)
Sent: Monday, August 13, 2018 12:36 PM
To: O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>
Subject: Re: your call

Out now. Meet downstairs?

Sent from my iPhone

On Aug 13, 2018, at 12:02 PM, O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov> wrote:

ok

Edward C. O'Callaghan
202-514-2105

From: Engel, Steven A. (OLC)
Sent: Monday, August 13, 2018 12:02 PM
To: O'Callaghan, Edward C. (ODAG)

To: O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>
Subject: RE: your call

AG just called me in. will shoot you an email when I get back.

From: O'Callaghan, Edward C. (ODAG)
Sent: Monday, August 13, 2018 11:31 AM
To: Engel, Steven A. (OLC) (b)(6) per OLC
Subject: RE: your call

Can you grab lunch in cafeteria and chat? Around 12:15?

Edward C. O'Callaghan
202-514-2105

From: Engel, Steven A. (OLC)
Sent: Monday, August 13, 2018 11:25 AM
To: O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>
Subject: RE: your call

Let me know when you want to connect.

From: O'Callaghan, Edward C. (ODAG)
Sent: Sunday, August 12, 2018 1:50 PM
To: Engel, Steven A. (OLC) (b)(6) per OLC
Subject: Re: your call

Are you in office tomorrow? If so, let's just connect in morning. Hope your enjoying the weekend.

Edward C. O'Callaghan
202-514-2105

On Aug 10, 2018, at 3:40 PM, Engel, Steven A. (OLC) (b)(6) per OLC wrote:

> Sure. My cell is (b)(6) per OLC
>
> ---
>
> **From:** O'Callaghan, Edward C. (ODAG)
> **Sent:** Friday, August 10, 2018 3:40 PM
> **To:** Engel, Steven A. (OLC)

(b)(6) per OLC
Subject: Re: your call

Great. Thanks. If not too much an inconvenience I may reach out over weekend.

Edward C. O'Callaghan
202-514-2105

On Aug 10, 2018, at 3:38 PM, Engel, Steven A. (OLC) (b)(6) per OLC wrote:

> Returned your call earlier. I'm (b)(6) per OLC shortly. Happy to talk from the road, this weekend, or Monday, at your convenience.
>
> **Steven A. Engel**
> Assistant Attorney General
> Office of Legal Counsel
> U.S. Department of Justice
> 950 Pennsylvania Ave., N.W.
> Washington, D.C. 20530
> Office (b)(6) per OLC
> (b)(6) per OLC

O'Callaghan, Edward C. (ODAG)

From:	O'Callaghan, Edward C. (ODAG)
Sent:	Thursday, August 16, 2018 3:58 PM
To:	Engel, Steven A. (OLC)
Cc:	Gannon, Curtis E. (OLC)
Subject:	Re: your call

Ok

Edward C. O'Callaghan
202-514-2105

On Aug 16, 2018, at 3:57 PM, Engel, Steven A. (OLC) [(b)(6) per OLC] > wrote:

I'm at (b)(6) per OLC

Should work, but if not, my personal cell is (b)(6) per OLC

From: O'Callaghan, Edward C. (ODAG)
Sent: Thursday, August 16, 2018 1:07 PM
To: Engel, Steven A. (OLC) [(b)(6) per OLC]
Subject: Re: your call

Duplicative Material (Document ID: 0.7.23922.55156)

O'Callaghan, Edward C. (ODAG)

From:	O'Callaghan, Edward C. (ODAG)
Sent:	Wednesday, August 22, 2018 7:44 PM
To:	Engel, Steven A. (OLC); Demers, John C. (NSD); Gannon, Curtis E. (OLC); Gauhar, Tashina (ODAG)
Subject:	FW: Raskin draft response letter 8.20.18.docx
Attachments:	Raskin draft response letter 8.20.18.docx

Attached is SCO's proposed response to the Raskins on their letter regarding possible interview. (b) (5) [redacted] Do you have time tomorrow morning to discuss? DAG and I have time between 10:30-11:30 if that works. Thanks for your help.

Edward C. O'Callaghan
202-514-2105

From: AMZ
Sent: Tuesday, August 21, 2018 9:54 AM
To: O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>
Subject: FW: Raskin draft response letter 8.20.18.docx

DRAFT// DELIBERATIVE// ATT WORK PRODUCT

Ed, Attached is the letter we prepared before my last conversation with you. If you have time later this week (tomorrow or Thursday, if convenient), I was hoping to follow up from our last conversation.

Thanks.
Aaron

Aaron Zebley
Special Counsel's Office
202.514.0512

Engel, Steven A. (OLC)

From:	Engel, Steven A. (OLC)
Sent:	Wednesday, August 22, 2018 7:49 PM
To:	O'Callaghan, Edward C. (ODAG)
Subject:	Re: Raskin draft response letter 8.20.18.docx

I can be available. But will have to call-in again. (b)(6) per OLC for Thursday and Friday.

Sent from my iPad

On Aug 22, 2018, at 7:43 PM, O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov> wrote:

Duplicative Material (Document ID: 0.7.23922.55164)

O'Callaghan, Edward C. (ODAG)

From: O'Callaghan, Edward C. (ODAG)
Sent: Wednesday, August 22, 2018 11:00 PM
To: Gannon, Curtis E. (OLC)
Subject: Re: Raskin draft response letter 8.20.18.docx

Thanks. Yep.

Edward C. O'Callaghan
202-514-2105

On Aug 22, 2018, at 10:55 PM, Gannon, Curtis E. (OLC) [redacted] wrote:

> That works for me, too. I assume Steve has already told you that he is able to call in.
>
> On Aug 22, 2018, at 22:26, O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov> wrote:
>
> > Thanks
> >
> > Edward C. O'Callaghan
> > 202-514-2105
> >
> > On Aug 22, 2018, at 8:24 PM, Demers, John C. (NSD) <jcdemers@jmd.usdoj.gov> wrote:
> >
> > > That time works for me. Thanks, Ed.
> > >
> > > John
> > >
> > > On Aug 22, 2018, at 7:43 PM, O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov> wrote:

Duplicative Material (Document ID: 0.7.23922.55164)

Engel, Steven A. (OLC)

From:	Engel, Steven A. (OLC)
Sent:	Thursday, August 23, 2018 9:40 AM
To:	O'Callaghan, Edward C. (ODAG)
Subject:	Re: Raskin draft response letter 8.20.18.docx

Yes.

Sent from my iPhone

On Aug 23, 2018, at 9:27 AM, O'Callaghan, Edward C.(ODAG)<ecocallaghan@jmd.usdoj.gov> wrote:

> Can we call your cell at 10:30?
>
> Edward C. O'Callaghan
> 202-514-2105
>
> ---
>
> **From:** Engel, Steven A. (OLC)
> **Sent:** Wednesday, August 22, 2018 8:03 PM
> **To:** O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>
> **Subject:** Re: Raskin draft response letter 8.20.18.docx
>
> (b)(5) per OLC.
>
> Sent from my iPhone
>
> On Aug 22, 2018, at 8:01 PM, O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov> wrote:
>
> > (b) (5)
> >
> > Edward C. O'Callaghan
> > 202-514-2105
> >
> > On Aug 22, 2018, at 7:51 PM, Engel, Steven A. (OLC) (b)(6) per OLC wrote:
> >
> > > (b)(5) per OLC
> > >
> > > Sent from my iPad
> > >
> > > On Aug 22, 2018, at 7:43 PM, O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov> wrote:

Duplicative Material (Document ID: 0.7.23922.55164)

Engel, Steven A. (OLC)

From: Engel, Steven A. (OLC)
Sent: Thursday, August 23, 2018 10:31 AM
To: O'Callaghan, Edward C. (ODAG)
Subject: Re: Raskin draft response letter 8.20.18.docx

(b)(6) per OLC

Sent from my iPhone

On Aug 23, 2018, at 9:27 AM, O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov> wrote:

Engel, Steven A. (OLC)

From:	Engel, Steven A. (OLC)
Sent:	Thursday, August 23, 2018 7:59 PM
To:	O'Callaghan, Edward C. (ODAG)
Cc:	Gannon, Curtis E. (OLC)
Subject:	Re: Meet with SCO

No prob. Thx!

Sent from my iPhone

On Aug 23, 2018, at 7:58 PM, O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov> wrote:

> Set for 1:15 to 2:15 Tuesday. Sorry for moving target.
>
> Edward C. O'Callaghan
> 202-514-2105
>
> ---
>
> **From:** Engel, Steven A. (OLC)
> **Sent:** Thursday, August 23, 2018 6:26 PM
> **To:** O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>
> **Cc:** Gannon, Curtis E. (OLC) [redacted]
> **Subject:** Re: Meet with SCO
>
> Ok. Please let me know when we have it set, because I'll need to adjust other scheduling matters accordingly.
>
> Sent from my iPhone
>
> On Aug 23, 2018, at 6:14 PM, O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov> wrote:
>
> > DAG just got noticed for possible WH meeting Tuesday 2:15-4. Let's try for 1:25-2:15.
> >
> > Edward C. O'Callaghan
> > 202-514-2105
> >
> > On Aug 23, 2018, at 5:44 PM, Engel, Steven A. (OLC) [redacted] wrote:
> >
> > > Ok.
> > >
> > > Sent from my iPhone
> > >
> > > On Aug 23, 2018, at 5:41 PM, Gannon, Curtis E. (OLC) [redacted] wrote:
> > >
> > > These times would work for me

Those times would work for me.

From: O'Callaghan, Edward C. (ODAG)
Sent: Thursday, August 23, 2018 5:26 PM
To: Engel, Steven A. (OLC) (b)(6) per OLC
Gannon, Curtis E. (OLC) (b)(6) per OLC
Subject: RE: Meet with SCO

Actually, Tuesday 2-3 or 4-5?

Edward C. O'Callaghan
202-514-2105

From: O'Callaghan, Edward C. (ODAG)
Sent: Thursday, August 23, 2018 5:23 PM
To: Engel, Steven A. (OLC) <(b)(6) per OLC>;
Gannon, Curtis E. (OLC) <(b)(6) per OLC>
Subject: Meet with SCO

Are you available for a meeting with DAG, me and SCO reps on Monday from 2-3? If not convenient, is there another time that works? Thanks.

Edward C. O'Callaghan
Principal Associate Deputy Attorney General
United States Department of Justice
(o) 202-514-2105
(c) (b)(6)

O'Callaghan, Edward C. (ODAG)

From:	O'Callaghan, Edward C. (ODAG)
Sent:	Wednesday, August 29, 2018 7:40 PM
To:	Engel, Steven A. (OLC); Gannon, Curtis E. (OLC); Demers, John C. (NSD); Gauhar, Tashina (ODAG)
Subject:	Fwd: Raskin draft response letter 8.29.18.docx
Attachments:	Raskin draft response letter 8.29.18.docx; ATT00001.htm

Proposed edited letter.

Edward C. O'Callaghan
202-514-2105

Begin forwarded message:

From: AMZ (b) (6), (b) (7)(C)
Date: August 29, 2018 at 5:36:17 PM EDT
To: "O'Callaghan, Edward C. (ODAG)" <ecocallaghan@jmd.usdoj.gov>
Subject: FW: Raskin draft response letter 8.29.18.docx

DRAFT / DELIBERATIVE / ATT WP

Aaron Zebley
Special Counsel's Office
202.514.0512

O'Callaghan, Edward C. (ODAG)

From:	O'Callaghan, Edward C. (ODAG)
Sent:	Thursday, August 30, 2018 12:53 AM
To:	Gannon, Curtis E. (OLC)
Cc:	Demers, John C. (NSD); Gauhar, Tashina (ODAG); Engel, Steven A. (OLC)
Subject:	Re: Raskin draft response letter 8.29.18.docx

Thanks. I'll discuss with DAG in morning. As always appreciate your help.

Edward C. O'Callaghan
202-514-2105

On Aug 29, 2018, at 11:33 PM, Gannon, Curtis E. (OLC) [redacted] (b)(6) per OLC wrote:

This version (in Word and PDF) adds one minor suggestion on top of Steve's document.

From: Engel, Steven A. (OLC)
Sent: Wednesday, August 29, 2018 10:47 PM
To: O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>; Gannon, Curtis E. (OLC) [redacted] (b)(6) per OLC Demers, John C. (NSD) <jcdemers@jmd.usdoj.gov>; Gauhar, Tashina (ODAG) <tagauhar@jmd.usdoj.gov>
Subject: RE: Raskin draft response letter 8.29.18.docx

[redacted] (b)(5) per OLC

Separate from that issue, I attach a few small edits, subject to the comments of this group.

From: O'Callaghan, Edward C. (ODAG)
Sent: Wednesday, August 29, 2018 7:40 PM
To: Engel, Steven A. (OLC) [redacted] (b)(6) per OLC; Gannon, Curtis E. (OLC) [redacted] (b)(6) per OLC; Demers, John C. (NSD) <jcdemers@jmd.usdoj.gov>; Gauhar, Tashina (ODAG) <tagauhar@jmd.usdoj.gov>
Subject: Fwd: Raskin draft response letter 8.29.18.docx

[redacted] Duplicative Material (Document ID: 0.7.23922.53936)

O'Callaghan, Edward C. (ODAG)

From:	O'Callaghan, Edward C. (ODAG)
Sent:	Thursday, August 30, 2018 2:21 PM
To:	Engel, Steven A. (OLC); Gannon, Curtis E. (OLC); Demers, John C. (NSD); Gauhar, Tashina (ODAG)
Subject:	FW: As discussed
Attachments:	Raskin draft response letter 8.30.18.docx; Raskin draft response letter 8.30.18.pdf

As per discussion with Steve and Curtis. I explained our reasoning and arguments in a call to Aaron earlier. Will let you know their response. Thanks.

Edward C. O'Callaghan
202-514-2105

From: O'Callaghan, Edward C. (ODAG)
Sent: Thursday, August 30, 2018 2:19 PM
To: AMZ [redacted] (b) (6), (b) (7)(C) >
Subject: As discussed

DRAFT/DELIBERATIVE/ATTORNEY WORK-PRODUCT

Attached.

Edward C. O'Callaghan
Principal Associate Deputy Attorney General
United States Department of Justice
(o) 202-514-2105
(c) [redacted] (b) (6)

O'Callaghan, Edward C. (ODAG)

From:	O'Callaghan, Edward C. (ODAG)
Sent:	Thursday, August 30, 2018 4:42 PM
To:	Engel, Steven A. (OLC); Gannon, Curtis E. (OLC); Demers, John C. (NSD); Gauhar, Tashina (ODAG)
Subject:	Fwd:
Attachments:	Raskin draft response letter 8.30.18 e a2.docx; ATT00001.htm

(b) (5) but I'm in a meeting and can't tell without a redline review.

Edward C. O'Callaghan
202-514-2105

Begin forwarded message:

From: AMZ (b) (6), (b) (7)(C)
Date: August 30, 2018 at 4:28:15 PM EDT
To: "O'Callaghan, Edward C. (ODAG)" <ecocallaghan@jmd.usdoj.gov>

DRAFT/ DELIBERATIVE

Aaron Zebley
Special Counsel's Office
202.514.0512

Gannon, Curtis E. (OLC)

From:	Gannon, Curtis E. (OLC)
Sent:	Thursday, August 30, 2018 4:46 PM
To:	O'Callaghan, Edward C. (ODAG); Engel, Steven A. (OLC); Demers, John C. (NSD); Gauhar, Tashina (ODAG)
Subject:	RE:
Attachments:	Raskin response (Thurs redline).docx; Raskin response (Thurs redline).pdf

(b)(5) per OLC Here's a redline. In this formulation, (b)(5) per OLC

From: O'Callaghan, Edward C. (ODAG)
Sent: Thursday, August 30, 2018 4:42 PM
To: Engel, Steven A. (OLC) <(b)(6) per OLC>; Gannon, Curtis E. (OLC) (b)(6) per OLC
Demers, John C. (NSD) <jcdemers@jmd.usdoj.gov>; Gauhar, Tashina (ODAG) <tagauhar@jmd.usdoj.gov>
Subject: Fwd:

Duplicative Material (Document ID: 0.7.23922.54339)

O'Callaghan, Edward C. (ODAG)

From: O'Callaghan, Edward C. (ODAG)
Sent: Thursday, August 30, 2018 10:10 PM
To: Engel, Steven A. (OLC)
Subject: Re: RE:

Thanks

Edward C. O'Callaghan
202-514-2105

On Aug 30, 2018, at 9:19 PM, Engel, Steven A. (OLC) (b)(6) per OLC wrote:

(b)(6) per OLC. Will review this evening, if that's ok.

Sent from my iPhone

On Aug 30, 2018, at 7:51 PM, O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov> wrote:

Agreed. Do you think attached edits suffice to address these concerns? Additional suggestions?

Edward C. O'Callaghan
202-514-2105

From: Engel, Steven A. (OLC)
Sent: Thursday, August 30, 2018 5:30 PM
To: Gannon, Curtis E. (OLC) (b)(6) per OLC O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>; Demers, John C. (NSD) <jcdemers@jmd.usdoj.gov>; Gauhar, Tashina (ODAG) <tagauhar@jmd.usdoj.gov>
Subject: RE:

(b)(5) per OLC

From: Gannon, Curtis E. (OLC)
Sent: Thursday, August 30, 2018 5:12 PM
To: O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>; Engel, Steven A. (OLC) (b)(6) per OLC; Demers, John C. (NSD) <jcdemers@jmd.usdoj.gov>; Gauhar, Tashina (ODAG) <tagauhar@jmd.usdoj.gov>
Subject: RE:

Subject: RE:

And, in this formulation, [redacted] (b)(5) per OLC

From: Gannon, Curtis E. (OLC)
Sent: Thursday, August 30, 2018 4:46 PM
To: O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>; Engel, Steven A. (OLC) [redacted] (b)(6) per OLC >; Demers, John C. (NSD) <jcdemers@jmd.usdoj.gov>; Gauhar, Tashina (ODAG) <tagauhar@jmd.usdoj.gov>
Subject: RE:

[redacted] Duplicative Material (Document ID: 0.7.23922.54342)

Gannon, Curtis E. (OLC)

From:	Gannon, Curtis E. (OLC)
Sent:	Friday, August 31, 2018 12:11 AM
To:	Engel, Steven A. (OLC); O'Callaghan, Edward C. (ODAG); Demers, John C. (NSD); Gauhar, Tashina (ODAG)
Subject:	RE:
Attachments:	Raskin draft response letter 8.30.18 3 + edits.docx; Raskin draft response letter 8.30.18 3 + edits.pdf

For the curious on devices, here's a corresponding PDF. Steve's additions are (b)(5) per OLC [redacted].

From: Engel, Steven A. (OLC)
Sent: Friday, August 31, 2018 12:07 AM
To: O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>; Gannon, Curtis E. (OLC) <[redacted] (b)(6) per OLC>; Demers, John C. (NSD) <jcdemers@jmd.usdoj.gov>; Gauhar, Tashina (ODAG) <tagauhar@jmd.usdoj.gov>
Subject: RE:

I think these edits look good. attached are a couple suggested additions.

From: O'Callaghan, Edward C. (ODAG)
Sent: Thursday, August 30, 2018 7:51 PM
To: Engel, Steven A. (OLC) <[redacted] (b) (6)>; Gannon, Curtis E. (OLC) <[redacted] (b)(6) per OLC>; Demers, John C. (NSD) <jcdemers@jmd.usdoj.gov>; Gauhar, Tashina (ODAG) <tagauhar@jmd.usdoj.gov>
Subject: RE:

Duplicative Material (Document ID: 0.7.23922.38963)

Engel, Steven A. (OLC)

From:	Engel, Steven A. (OLC)
Sent:	Friday, August 31, 2018 1:21 PM
To:	O'Callaghan, Edward C. (ODAG)
Cc:	Gannon, Curtis E. (OLC); Demers, John C. (NSD); Gauhar, Tashina (ODAG)
Subject:	Re: RE: RE:

Great. That's progress.

Sent from my iPhone

On Aug 31, 2018, at 1:20 PM, O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov> wrote:

> Thanks, Steve. DAG ok'd moving forward with the clause. Letter likely going out today.
>
> Edward C. O'Callaghan
> 202-514-2105
>
> **From:** Engel, Steven A. (OLC)
> **Sent:** Friday, August 31, 2018 1:19 PM
> **To:** O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>
> **Cc:** Gannon, Curtis E. (OLC) (b)(6) per OLC; Demers, John C. (NSD) <jcdemers@jmd.usdoj.gov>; Gauhar, Tashina (ODAG) <tagauhar@jmd.usdoj.gov>
> **Subject:** Re: RE:
>
> Ok.
>
> Sent from my iPhone
>
> On Aug 31, 2018, at 1:13 PM, O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov> wrote:
>
> > Understood (b) (5) [redacted]
> >
> > Edward C. O'Callaghan
> > 202-514-2105
> >
> > **From:** Engel, Steven A. (OLC)
> > **Sent:** Friday, August 31, 2018 12:43 PM
> > **To:** O'Callaghan, Edward C.(ODAG) <ecocallaghan@jmd.usdoj.gov>; Gannon, Curtis E. (OLC) (b)(6) per OLC >; Demers, John C. (NSD) <jcdemers@jmd.usdoj.gov>; Gauhar, Tashina (ODAG) <tagauhar@jmd.usdoj.gov>
> > **Subject:** RE:

(b)(5) per OLC

That said, I agree that it's not a huge deal, given the cross reference.

From: O'Callaghan, Edward C. (ODAG)
Sent: Friday, August 31, 2018 12:00 PM
To: Gannon, Curtis E. (OLC) (b)(6) per OLC; Engel, Steven A. (OLC) (b)(6) per OLC; Demers, John C. (NSD) <jcdemers@jmd.usdoj.gov>; Gauhar, Tashina (ODAG) <tagauhar@jmd.usdoj.gov>
Subject: RE:

(b) (5)
. Please let me know your thoughts.

Edward C. O'Callaghan
202-514-2105

From: Gannon, Curtis E. (OLC)
Sent: Friday, August 31, 2018 12:11 AM
To: Engel, Steven A. (OLC) <(b)(6) per OLC; O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>; Demers, John C. (NSD) <jcdemers@jmd.usdoj.gov>; Gauhar, Tashina (ODAG) <tagauhar@jmd.usdoj.gov>
Subject: RE:

Duplicative Material (Document ID: 0.7.23922.54373)

O'Callaghan, Edward C. (ODAG)

From:	O'Callaghan, Edward C. (ODAG)
Sent:	Friday, August 31, 2018 4:59 PM
To:	Engel, Steven A. (OLC); Gannon, Curtis E. (OLC); Demers, John C. (NSD); Gaudhar, Tashina (ODAG)
Subject:	Fwd: Letter
Attachments:	8.31.2018 letter.pdf; ATT00001.htm

Edward C. O'Callaghan
202-514-2105

Begin forwarded message:

From: AMZ (b) (6), (b) (7)(C) >
Date: August 31, 2018 at 3:34:23 PM EDT
To: "O'Callaghan, Edward C. (ODAG)" <ecocallaghan@jmd.usdoj.gov>
Subject: FW: Letter

U.S. Department of Justice

The Special Counsel's Office

Washington, D.C. 20530

August 31, 2018

Jane Serene Raskin, Esq.
Raskin & Raskin
201 Alhambra Circle, Suite 1050
Coral Gables, Florida 33134

Dear Counsel:

I write in response to your letter of August 8, 2018, which addressed our July 30, 2018 letter concerning our request to interview the President. As the culmination of our discussions over the past nine months, we proposed a two-stage process to accommodate concerns you have raised about an interview of your client. First, we proposed to submit a set of written questions to your client. Second, we proposed to interview your client to conduct any needed follow-up on those topics and to address additional topics for which we believe an in-person interview is necessary. We provided detailed lists of the topics we proposed for written questions and an in-person interview.

Your August 8 letter states that you "cannot recommend a voluntary interview on the terms" we have proposed. Ltr. at 3. You ask us to agree to forgo asking your client questions that "implicat[e] [his] subjective mental state and decision-making process." Ltr. at 4. You also indicate that your client will consider answering specific written questions and suggest that we submit them, but evince no similar willingness to consider an in-person interview. Ltr. at 5.

We are unable to move forward on that basis. The suggestion that questions about your client's state of mind are unnecessary does not accord with our view of our investigatory needs or the state of the law. As to your invocation of *In re Sealed Case*, 121 F.3d 729 (D.C. Cir. 1997) (*Espy*), the President has unique access to his knowledge of certain matters and the reasons for his actions, and those issues are central to elements of our investigation. There can also be no doubt that we have sought information from other available sources before seeking to interview the President, but his personal knowledge is not available elsewhere. The *Espy* standard is therefore satisfied. *Id.* at 754. And the suggestion that the line of cases stemming from *United States v. Morgan*, 313 U.S. 409, 422 (1941), makes such inquiry inappropriate is unfounded. *Morgan* deals with questioning about subjective decisionmaking in civil challenges by private parties to official action. In that setting, subjective intent is generally irrelevant as a matter of law. Here, in contrast, we are conducting a criminal investigation into matters in which an actor's subjective purpose is of central legal relevance to personal liability. *Morgan*'s principles have no application to this situation.

Your suggestion that we rely solely on written questions and answers is equally unfounded. We recognize, again, your client's unique position and responsibilities, and we are prepared to extend multiple accommodations. We have proposed segregating out certain topics in which written questions, with live follow up, could be effective. But we reject the suggestion that we rely on that method to the exclusion

of the time-honored means of obtaining information from a witness. In the context of our investigation, our current assessment is that securing your client's independent recollections and knowledge will require some oral examination. The fact that in certain instances in the past, in different contexts, written questions have been employed does not undercut the advantages of and necessity for oral examination here. For example, your reference to President Reagan's provision of written answers to Independent Counsel Walsh in the Iran-Contra investigation omits to mention that President Reagan had already participated twice in in-person interviews with the Special Review Board, headed by former Senator Tower, to investigate the Iran-Contra events. And ample historical precedent supports the amenability of the President to oral questioning. President Ford, for example, "complied with an order to give a deposition in a criminal trial." *Clinton v. Jones*, 520 U.S. 681, 705 (1997) (citing other examples). And President Clinton provided testimony to a grand jury after a subpoena was issued and withdrawn.

We continue to believe that the needs of our investigation justify our request to interview your client under the terms proposed in our July 30 letter. In the interest of moving our investigation forward, however, we propose the following: we will provide your client with a set of written questions exclusively on Russia-related topics, in an effort to avoid executive privilege issues. We expect that the written answers to these questions could narrow or eliminate certain topics for the subsequent interview. After we receive these answers from your client, we would conduct an in-person interview to ask follow-up questions on those subjects, as necessary. We would provide you with any documents that we intend to show your client before the interview. In these written questions and interview, we would forgo asking questions pertaining to your client's actions while in office. We will seek answers to such questions at a later time, as necessary to our investigation.

Logistically, our proposal would work as follows: we would provide you with written questions by or before September 7, 2018. We would expect written answers by or before September 28, and we would expect to arrange an in-person interview to be conducted at a convenient time soon thereafter. Unless we can reach agreement to proceed on this basis before September 7, including agreeing on an in-person interview as described herein, we will have no choice but to (b)(3) [redacted] in order to obtain your client's answers (b)(3) [redacted]

Sincerely yours,
Robert S. Mueller, III

By: James L. Quarles III
Senior Counselor to the Special Counsel

O'Callaghan, Edward C. (ODAG)

From:	O'Callaghan, Edward C. (ODAG)
Sent:	Wednesday, September 5, 2018 1:35 PM
To:	Engel, Steven A. (OLC); Demers, John C. (NSD); Gauhar, Tashina (ODAG); Gannon, Curtis E. (OLC)
Subject:	Fwd:
Attachments:	Ltr Quarles Sept 5 2018.pdf; ATT00001.htm

Edward C. O'Callaghan
202-514-2105

Begin forwarded message:

From: AMZ (b) (6), (b) (7)(C)
Date: September 5, 2018 at 1:29:52 PM EDT
To: "O'Callaghan, Edward C. (ODAG)" <ecocallaghan@jmd.usdoj.gov>

Deliberative.
Justin.

Aaron Zebley
Special Counsel's Office
202.514.0512

RASKIN & RASKIN
Attorneys at law

MARTIN R. RASKIN
mraskin@raskinlaw.com
JANE SERENE RASKIN
jraskin@raskinlaw.com

September 5, 2018

James L. Quarles III
Senior Counselor to the Special Counsel
The Special Counsel's Office
395 E Street, S.W.
Washington, D.C. 20530

Dear Jim:

I write in response to your letter of August 31, 2018, which replied to my letter of August 8, 2018.

We have considered your most recent proposal. We remain unconvinced that your investigation requires any additional information directly from our client, particularly given his "unique position and responsibilities" as recognized in your letter. Nevertheless, to move matters forward toward a swift conclusion, please forward your list of written questions and the documents as referenced in your letter. After review of your questions, assuming we find them to be reasonable and consistent with the description in your letter, and without waiving any rights or privileges, we will provide responses as promptly as possible.

With respect to the other two issues addressed in your letter, we have set forth our positions regarding both of these issues during our discussions and in writing. Your letter raises the prospect of an in-person interview of the President as a next step, grounding that request in a "current assessment of your investigatory needs." We believe that the best course – a course we are prepared to follow – is for any "current assessment of investigatory needs" to be performed on maximum information. That is, after responses to written questions have been provided, a current assessment conducted at that time is likely to offer the strongest basis for reaching the best and fairest resolution of any remaining issue of an in-person interview. Your letter also references the possibility of asking questions relating to our client's actions while in office "as necessary." Our position as to that issue is set forth in our prior correspondence.

In any event, our differences with respect to future contingencies that may never come to pass ought not delay implementation of a reasonable written question and answer procedure. This would allow us to move the process forward quickly, at no disadvantage to your perceived investigatory needs, while fully reserving all rights and positions. After a reasonable question and answer process, it will be possible for all of us to make a then-current, good faith assessment of the next step, if indeed a next step is even necessary, taking into account the additional information that has been provided.

Please provide us with your written questions and all relevant documents as soon as possible so we may move ahead.

Sincerely,

JANE SERENE RASKIN

Engel, Steven A. (OLC)

From: Engel, Steven A. (OLC)
Sent: Wednesday, September 5, 2018 1:53 PM
To: O'Callaghan, Edward C. (ODAG)
Subject: RE:

(b)(5) per OLC

From: O'Callaghan, Edward C. (ODAG)
Sent: Wednesday, September 5, 2018 1:35 PM
To: Engel, Steven A. (OLC) (b)(6) per OLC Demers, John C. (NSD) <jcdemers@jmd.usdoj.gov>; Gauhar, Tashina (ODAG) <tagauhar@jmd.usdoj.gov>; Gannon, Curtis E. (OLC) (b)(6) per OLC
Subject: Fwd:

Duplicative Material (Document ID: 0.7.23922.55170)

O'Callaghan, Edward C. (ODAG)

From:	O'Callaghan, Edward C. (ODAG)
Sent:	Thursday, September 6, 2018 4:33 PM
To:	Rosenstein, Rod (ODAG); Engel, Steven A. (OLC); Gannon, Curtis E. (OLC); Demers, John C. (NSD); Gauhar, Tashina (ODAG)
Subject:	FW: Giuliani Interview

https://www.bloomberg.com/news/articles/2018-09-06/mueller-offered-a-formula-for-trump-interview-giuliani-says

O'Callaghan, Edward C. (ODAG)

From:	O'Callaghan, Edward C. (ODAG)
Sent:	Tuesday, September 11, 2018 2:33 PM
To:	Engel, Steven A. (OLC); Gannon, Curtis E. (OLC); Demers, John C. (NSD); Gauhar, Tashina (ODAG)
Subject:	FW:
Attachments:	Letter to J. Raskin.9-11-18 a4.docx

For consideration.

Edward C. O'Callaghan
202-514-2105

From: AMZ
Sent: Tuesday, September 11, 2018 2:30 PM
To: O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>
Subject:

DRAFT/DELIBERATIVE

Aaron Zebley
Special Counsel's Office
202.514.0512

Engel, Steven A. (OLC)

From:	Engel, Steven A. (OLC)
Sent:	Friday, September 14, 2018 10:52 AM
To:	O'Callaghan, Edward C. (ODAG)
Subject:	Re: RE:

Ok. Thanks.

Sent from my iPhone

On Sep 14, 2018, at 10:49 AM, O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov> wrote:

> Not yet. They are going to do it Monday. Manafort pleading out today. Will forward when I receive it.
>
> Edward C. O'Callaghan
> 202-514-2105
>
> **From:** Engel, Steven A. (OLC)
> **Sent:** Friday, September 14, 2018 10:00 AM
> **To:** O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>
> **Subject:** RE:
>
> I assume they sent out the letter. Can you forward the final letter?
>
> **From:** O'Callaghan, Edward C. (ODAG)
> **Sent:** Tuesday, September 11, 2018 2:33 PM
> **To:** Engel, Steven A. (OLC) <(b)(6) per OLC>; Gannon, Curtis E. (OLC) <(b)(6) per OLC>; Demers, John C. (NSD) <jcdemers@jmd.usdoj.gov>; Gauhar, Tashina (ODAG) <tagauhar@jmd.usdoj.gov>
> **Subject:** FW:

Duplicative Material (Document ID: 0.7.23922.55580)

Engel, Steven A. (OLC)

From:	Engel, Steven A. (OLC)
Sent:	Friday, September 14, 2018 6:48 PM
To:	O'Callaghan, Edward C. (ODAG)
Subject:	Re: RE:

Got it. Thx.

Sent from my iPhone

On Sep 14, 2018, at 6:37 PM, O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov> wrote:

> Yes and [redacted (b) (5)].
>
> Edward C. O'Callaghan
> 202-514-2105
>
> On Sep 14, 2018, at 6:22 PM, Engel, Steven A. (OLC) [redacted (b)(6) per OLC] > wrote:
>
> > [redacted (b)(5) per OLC]
> >
> > **From:** O'Callaghan, Edward C. (ODAG)
> > **Sent:** Friday, September 14, 2018 10:50 AM
> > **To:** Engel, Steven A. (OLC) [redacted (b)(6) per OLC]
> > **Subject:** RE:

[redacted Duplicative Material (Document ID: 0.7.23922.41065)]

Gauhar, Tashina (ODAG)

From:	Gauhar, Tashina (ODAG)
Sent:	Tuesday, September 18, 2018 9:10 AM
To:	Rosenstein, Rod (ODAG); O'Callaghan, Edward C. (ODAG); Engel, Steven A. (OLC); Demers, John C. (NSD)
Subject:	SCO Letter
Attachments:	2018-09-18 Letter to J.S. Raskin without attachments.pdf

From: AMZ
Sent: Tuesday, September 18, 2018 9:07 AM
To: Gauhar, Tashina (ODAG) <tagauhar@jmd.usdoj.gov>
Subject:

Ed asked me to convey to you for internal-DOJ distribution.
Thanks

Aaron Zebley
Special Counsel's Office
202.514.0512

U.S. Department of Justice

The Special Counsel's Office

Washington, D.C. 20530

September 17, 2018

Jane Serene Raskin, Esq.
Raskin & Raskin
201 Alhambra Circle, Suite 1050
Coral Gables, Florida 33134

Dear Counsel:

We write to outline how we intend to proceed to obtain the information needed from your client regarding Russia-related topics of our investigation. Included with this letter is a set of written questions for your client on Russia-related topics. While we do not believe that written answers will obviate the need for an interview, we are committed to assessing the written answers in good faith, and would not proceed with (b)(3) if we determine it is no longer necessary to the investigation, or if your client agrees to a voluntary interview in advance of (b)(3).

In order for your client to have sufficient time to provide signed and sworn written answers, (b)(3) We recognize your client's unique position and responsibilities, and we will accommodate his schedule and location requirements for his grand jury testimony. We request the written answers by or before October 8 so that we can evaluate our investigative needs in light of your client's responses by October 12.

The enclosed written questions reflect non-public investigative information. We ask that you keep them confidential and not share them with any third party.

Sincerely yours,
Robert S. Mueller, III

By: James L. Quarles III
Senior Counselor to the Special Counsel

Enclosure

Engel, Steven A. (OLC)

From: Engel, Steven A. (OLC)
Sent: Tuesday, September 18, 2018 10:27 AM
To: O'Callaghan, Edward C. (ODAG)
Subject: Re: RE: RE:

Got it.

Sent from my iPhone

On Sep 18, 2018, at 10:20 AM, O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov> wrote:

Yeah [redacted] (b) (5) [redacted]

Edward C. O'Callaghan
202-514-2105

On Sep 18, 2018, at 4:14 PM, Engel, Steven A. (OLC) [redacted] (b)(6) per OLC wrote:

FYI, [redacted] (b)(5) per OLC [redacted]

From: O'Callaghan, Edward C. (ODAG)
Sent: Friday, September 14, 2018 6:38 PM
To: Engel, Steven A. (OLC) [redacted] (b)(6) per OLC
Subject: Re: RE:

Duplicative Material (Document ID: 0.7.23922.41085)

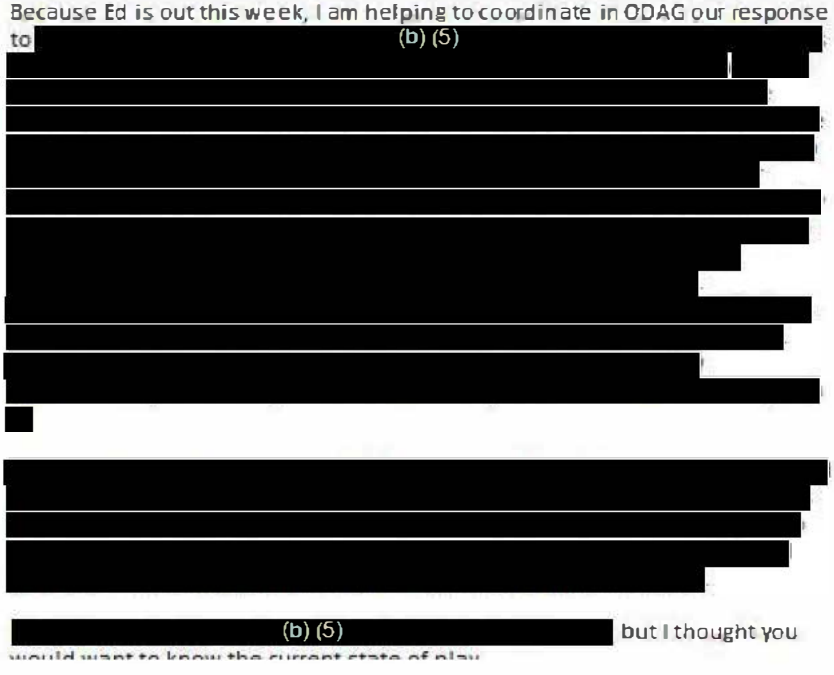
Engel, Steven A. (OLC)

From:	Engel, Steven A. (OLC)
Sent:	Friday, September 21, 2018 8:53 AM
To:	Weinsheimer, Bradley (ODAG)
Subject:	Re: President's directive concerning declassifying documents

Great.

Sent from my iPhone

On Sep 21, 2018, at 8:36 AM, Weinsheimer, Bradley (ODAG) <bradweinsheimer@jmd.usdoj.gov> wrote:

> Steve: (b) (5) I will let you know if we head in a different direction, but for right now it seems like we are trending in the right direction. Thanks, Brad.
>
> On Sep 19, 2018, at 4:25 PM, Engel, Steven A. (OLC) (b)(6) per OLC > wrote:
>
> > Brad: Thanks for giving me the heads up. I have been out of the office and off-line (b)(6) per OLC, but if you want to discuss anything this evening or tomorrow, I would be happy to make myself available. Steve
> >
> > Sent from my iPad
> >
> > On Sep 19, 2018, at 8:26 AM, Weinsheimer, Bradley (ODAG) <bradweinsheimer@jmd.usdoj.gov> wrote:
> >
> > > Steven:
> > >
> > > Because Ed is out this week, I am helping to coordinate in ODAG our response to (b) (5)
> > >
> > > 
> > >
> > > (b) (5) but I thought you would want to know the current state of play.

would want to know the current state of play.

Thanks, Brad.

Brad Weinsheimer
Associate Deputy Attorney General
Office: 202-305-7848
Cell:2 (b) (6)
Bradley.weinsheimer@usdoj.gov

O'Callaghan, Edward C. (ODAG)

From:	O'Callaghan, Edward C. (ODAG)
Sent:	Friday, October 5, 2018 3:02 PM
To:	Engel, Steven A. (OLC); Gannon, Curtis E. (OLC); Demers, John C. (NSD); Gauhar, Tashina (ODAG)
Subject:	FW: Questions
Attachments:	2018-09-18 Letter to J.S. Raskin with attachments.pdf

FYI.

Edward C. O'Callaghan
202-514-2105

From: AMZ
Sent: Friday, October 5, 2018 2:28 PM
To: O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>
Subject: RE: Questions

Deliberative.

Aaron Zebley
Special Counsel's Office
202.514.0512

From: O'Callaghan, Edward C. (ODAG)
Sent: Friday, October 5, 2018 12:31 PM
To: AMZ [redacted] (b) (6), (b) (7)(C) >
Subject: Questions

Can you send to me? Thanks.

Edward C. O'Callaghan
Principal Associate Deputy Attorney General
United States Department of Justice
(o) 202-514-2105
(c) [redacted] (b) (6)

WRITTEN QUESTIONS TO BE ANSWERED UNDER OATH BY PRESIDENT DONALD J. TRUMP

I. June 9, 2016 Meeting at Trump Tower

a. When did you first learn that Donald Trump, Jr., Paul Manafort, or Jared Kushner was considering participating in a meeting in June 2016 concerning potentially negative information about Hillary Clinton? Describe who you learned the information from and the substance of the discussion.

b. Attached to this document as Exhibit A is a series of emails from June 2016 between, among others, Donald Trump, Jr. and Rob Goldstone. In addition to the emails reflected in Exhibit A, Donald Trump, Jr. had other communications with Rob Goldstone and Emin Agalarov between June 3, 2016, and June 9, 2016.
   i. Did Mr. Trump, Jr. or anyone else tell you about or show you any of these communications? If yes, describe who discussed the communications with you, when, and the substance of the discussion(s).
   ii. When did you first see or learn about all or any part of the emails reflected in Exhibit A?
   iii. When did you first learn that the proposed meeting involved or was described as being part of Russia and its government's support for your candidacy?
   iv. Did you suggest to or direct anyone not to discuss or release publicly all or any portion of the emails reflected in Exhibit A? If yes, describe who you communicated with, when, the substance of the communication(s), and why you took that action.

c. On June 9, 2016, Donald Trump, Jr., Paul Manafort, and Jared Kushner attended a meeting at Trump Tower with several individuals, including a Russian lawyer, Natalia Veselnitskaya (the "June 9 meeting").
   i. Other than as set forth in your answers to I.a and I.b, what, if anything, were you told about the possibility of this meeting taking place, or the scheduling of such a meeting? Describe who you discussed this with, when, and what you were informed about the meeting.
   ii. When did you learn that some of the individuals attending the June 9 meeting were Russian or had any affiliation with any part of the Russian government? Describe who you learned this information from and the substance of the discussion(s).
   iii. What were you told about what was discussed at the June 9 meeting? Describe each conversation in which you were told about what was discussed at the meeting, who the conversation was with, when it occurred, and the substance of the statements they made about the meeting.

iv. Were you told that the June 9 meeting was about, in whole or in part, adoption and/or the Magnitsky Act? If yes, describe who you had that discussion with, when, and the substance of the discussion.

d. For the period June 6, 2016 through June 9, 2016, for what portion of each day were you in Trump Tower?
   i. Did you speak or meet with Donald Trump, Jr., Paul Manafort, or Jared Kushner on June 9, 2016? If yes, did any portion of any of those conversations or meetings include any reference to any aspect of the June 9 meeting? If yes, describe who you spoke with and the substance of the conversation.

e. Did you communicate directly or indirectly with any member or representative of the Agalarov family after June 3, 2016? If yes, describe who you spoke with, when, and the substance of the communication.

f. Did you learn of any communications between Donald Trump, Jr., Paul Manafort, or Jared Kushner and any member or representative of the Agalarov family, Natalia Veselnitskaya, Rob Goldstone, or any Russian official or contact that took place after June 9, 2016 and concerned the June 9 meeting or efforts by Russia to assist the campaign? If yes, describe who you learned this information from, when, and the substance of what you learned.

g. On June 7, 2016, you gave a speech in which you said, in part, "I am going to give a major speech on probably Monday of next week and we're going to be discussing all of the things that have taken place with the Clintons."
   i. Why did you make that statement?
   ii. What information did you plan to share with respect to the Clintons?
   iii. What did you believe the source(s) of that information would be?
   iv. Did you expect any of the information to have come from the June 9 meeting?
   v. Did anyone help draft the speech that you were referring to? If so, who?
   vi. Why did you ultimately not give the speech you referenced on June 7, 2016?

h. Did any person or entity inform you during the campaign that Vladimir Putin or the Russian government supported your candidacy or opposed the candidacy of Hillary Clinton? If yes, describe the source(s) of the information, when you were informed, and the content of such discussion(s).

i. Did any person or entity inform you during the campaign that any foreign government or foreign leader, other than Russia or Vladimir Putin, had provided, wished to provide, or offered to provide tangible support to your campaign, including by way of offering to provide negative information on Hillary Clinton? If

yes, describe the source(s) of the information, when you were informed, and the content of such discussion(s).

II. Russian Hacking / Russian Efforts Using Social Media / WikiLeaks

a. On June 14, 2016, it was publicly reported that computer hackers had penetrated the computer network of the Democratic National Committee (DNC) and that Russian intelligence was behind the unauthorized access, or hack. Prior to June 14, 2016, were you provided any information about any potential or actual hacking of the computer systems or email accounts of the DNC, the Democratic Congressional Campaign Committee (DCCC), the Clinton Campaign, Hillary Clinton, or individuals associated with the Clinton campaign? If yes, describe who provided this information, when, and the substance of the information.

b. On July 22, 2016, WikiLeaks released nearly 20,000 emails sent or received by Democratic party officials.
   i. Prior to the July 22, 2016 release, were you aware from any source that WikiLeaks, Guccifer 2.0, DCLeaks, or Russians had or potentially had possession of or planned to release emails or information that could help your campaign or hurt the Clinton campaign? If yes, describe who you discussed this issue with, when, and the substance of the discussion(s).
   ii. After the release of emails by WikiLeaks on July 22, 2016, were you told that WikiLeaks possessed or might possess additional information that could be released during the campaign? If yes, describe who provided this information, when, and what you were told.

c. Are you aware of any communications during the campaign, directly or indirectly, between Roger Stone, Donald Trump, Jr., Paul Manafort, or Rick Gates and (a) WikiLeaks, (b) Julian Assange, (c) other representatives of WikiLeaks, (d) Guccifer 2.0, (e) representatives of Guccifer 2.0, or (f) representatives of DCLeaks? If yes, describe who provided you with this information, when you learned of the communications, and what you know about those communications.

d. On July 27, 2016, you stated at a press conference: "Russia, if you're listening, I hope you're able to find the 30,000 emails that are missing. I think you will probably be rewarded mightily by our press."
   i. Why did you make that request of Russia, as opposed to any other country, entity, or individual?
   ii. In advance of making that statement, what discussions, if any, did you have with anyone else about the substance of the statement?
   iii. Were you told at any time before or after you made that statement that Russia was attempting to infiltrate or hack computer systems or email accounts of Hillary Clinton or her campaign? If yes, describe who provided this information, when, and what you were told.

e. On October 7, 2016, emails hacked from the account of John Podesta were released by WikiLeaks.
    i. Where were you on October 7, 2016?
    ii. Were you told at any time in advance of, or on the day of, the October 7 release that WikiLeaks possessed or might possess emails related to John Podesta? If yes, describe who told you this, when, and what you were told.
    iii. Are you aware of anyone associated with you or your campaign, including Roger Stone, reaching out to WikiLeaks, either directly or through an intermediary, on or about October 7, 2016? If yes, identify the person and describe the substance of the conversations or contacts.

f. Were you told of anyone associated with you or your campaign, including Roger Stone, having any discussions, directly or indirectly, with WikiLeaks, Guccifer 2.0, or DCLeaks regarding the content or timing of release of hacked emails? If yes, describe who had such contacts, how you became aware of the contacts, when you became aware of the contacts, and the substance of the contacts.

g. From June 1, 2016 through the end of the campaign, how frequently did you communicate with Roger Stone? Describe the nature of your communication(s) with Mr. Stone.
    i. During that time period, what efforts did Mr. Stone tell you he was making to assist your campaign, and what requests, if any, did you make of Mr. Stone?
    ii. Did Mr. Stone ever discuss WikiLeaks with you or, as far as you were aware, with anyone else associated with the campaign? If yes, describe what you were told, from whom, and when.
    iii. Did Mr. Stone at any time inform you about contacts he had with WikiLeaks or any intermediary of WikiLeaks, or about forthcoming releases of information? If yes, describe what Stone told you and when.

h. Did you have any discussions prior to January 20, 2017, regarding a potential pardon or other action to benefit Julian Assange? If yes, describe who you had the discussion(s) with, when, and the content of the discussion(s).

i. Were you aware of any efforts by foreign individuals or companies, including those in Russia, to assist your campaign through the use of social media postings or the organization of rallies? If yes, identify who you discussed such assistance with, when, and the content of the discussion(s).

III. The Trump Organization Moscow Project

a. In October 2015, a "Letter of Intent," a copy of which is attached as Exhibit B, was signed for a proposed Trump Organization project in Moscow (the "Trump Moscow project").
    i. When were you first informed of discussions about the Trump Moscow project? By whom? What were you told about the project?
    ii. Did you sign the letter of intent?

b. In a statement provided to Congress, attached as Exhibit C, Michael Cohen stated: "To the best of my knowledge, 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." Describe all discussions you had with Mr. Cohen, or anyone else associated with the Trump Organization, about the Trump Moscow project, including who you spoke with, when, and the substance of the discussion(s).

c. Did you learn of any communications between Michael Cohen or Felix Sater and any Russian government officials, including officials in the office of Dmitry Peskov, regarding the Trump Moscow project? If so, identify who provided this information to you, when, and the substance of what you learned.

d. Did you have any discussions between June 2015 and June 2016 regarding a potential trip to Russia by you and/or Michael Cohen for reasons related to the Trump Moscow project? If yes, describe who you spoke with, when, and the substance of the discussion(s).

e. Did you at any time direct or suggest that discussions about the Trump Moscow project should cease, or were you informed at any time that the project had been abandoned? If yes, describe who you spoke with, when, the substance of the discussion(s), and why that decision was made.

f. Did you have any discussions regarding what information would be provided publicly or in response to investigative inquiries about potential or actual investments or business deals the Trump Organization had in Russia, including the Trump Moscow project? If yes, describe who you spoke with, when, and the substance of the discussion(s).

g. Aside from the Trump Moscow project, did you or the Trump Organization have any other prospective or actual business interests, investments, or arrangements with Russia or any Russian interest or Russian individual during the campaign? If yes, describe the business interests, investments, or arrangements.

IV. Contacts with Russia and Russia-Related Issues During the Campaign

a. Prior to mid-August 2016, did you become aware that Paul Manafort had ties to the Ukrainian government? If yes, describe who you learned this information from, when, and the substance of what you were told. Did Mr. Manafort's connections to the Ukrainian or Russian governments play any role in your decision to have him join your campaign? If yes, describe that role.

b. Were you aware that Paul Manafort offered briefings on the progress of your campaign to Oleg Deripaska? If yes, describe who you learned this information from, when, the substance of what you were told, what you understood the purpose was of sharing such information with Mr. Deripaska, and how you responded to learning this information.

c. Were you aware of whether Paul Manafort or anyone else associated with your campaign sent or directed others to send internal Trump campaign information to any person located in Ukraine or Russia or associated with the Ukrainian or Russian governments? If yes, identify who provided you with this information, when, the substance of the discussion(s), what you understood the purpose was of sharing the internal campaign information, and how you responded to learning this information.

d. Did Paul Manafort communicate to you, directly or indirectly, any positions Ukraine or Russia would want the U.S. to support? If yes, describe when he communicated those positions to you and the substance of those communications.

e. During the campaign, were you told about efforts by Russian officials to meet with you or senior members of your campaign? If yes, describe who you had conversations with on this topic, when, and what you were told.

f. What role, if any, did you have in changing the Republican Party platform regarding arming Ukraine during the Republican National Convention? Prior to the convention, what information did you have about this platform provision? After the platform provision was changed, who told you about the change, when did they tell you, what were you told about why it was changed, and who was involved?

g. On July 27, 2016, in response to a question about whether you would recognize Crimea as Russian territory and lift sanctions on Russia, you said: "We'll be looking at that. Yeah, we'll be looking." Did you intend to communicate by that statement or at any other time during the campaign a willingness to lift sanctions and/or recognize Russia's annexation of Crimea if you were elected?

i. What consideration did you give to lifting sanctions and/or recognizing Russia's annexation of Crimea if you were elected? Describe who you spoke with about this topic, when, the substance of the discussion(s).

V. Contacts with Russia and Russia-Related Issues During the Transition

a. Were you asked to attend the World Chess Championship gala on November 10, 2016? If yes, who asked you to attend, when were you asked, and what were you told about about why your presence was requested?
   i. Did you attend any part of the event? If yes, describe any interactions you had with any Russians or representatives of the Russian government at the event.

b. Following the Obama Administration's imposition of sanctions on Russia in December 2016 ("Russia sanctions"), did you discuss with Lieutenant General (LTG) Michael Flynn, K.T. McFarland, Steve Bannon, Reince Priebus, Jared Kushner, Erik Prince, or anyone else associated with the transition what should be communicated to the Russian government regarding the sanctions? If yes, describe who you spoke with about this issue, when, and the substance of the discussion(s).

c. On December 29 and December 31, 2016, LTG Flynn had conversations with Russian Ambassador Sergey Kislyak about the Russia sanctions and Russia's response to the Russia sanctions.
   i. Did you direct or suggest that LTG Flynn have discussions with anyone from the Russian government about the Russia sanctions?
   ii. Were you told in advance of LTG Flynn's December 29, 2016 conversation that he was going to be speaking with Ambassador Kislyak? If yes, describe who told you this information, when, and what you were told. If no, when and from whom did you learn of LTG Flynn's December 29, 2016 conversation with Ambassador Kislyak?
   iii. When did you learn of LTG Flynn and Ambassador Kislyak's call on December 31, 2016? Who told you and what were you told?
   iv. When did you learn that sanctions were discussed in the December 29 and December 31, 2016 calls between LTG Flynn and Ambassador Kislyak? Who told you and what were you told?

d. At any time between December 31, 2016, and January 20, 2017, did anyone tell you or suggest to you that Russia's decision not to impose reciprocal sanctions was attributable in any way to LTG Flynn's communications with Ambassador Kislyak? If yes, identify who provided you with this information, when, and the substance of what you were told.

e. On January 12, 2017, the Washington Post published a column that stated that LTG Flynn phoned Ambassador Kislyak several times on December 29, 2016. After learning of the column, did you direct or suggest to anyone that LTG Flynn should deny that he discussed sanctions with Ambassador Kislyak? If yes, who did you make this suggestion or direction to, when, what did you say, and why did you take this step?
    i. After learning of the column, did you have any conversations with LTG Flynn about his conversations with Ambassador Kislyak in December 2016? If yes, describe when those discussions occurred and the content of the discussions.

f. Were you told about a meeting between Jared Kushner and Sergei Gorkov that took place in December 2016?
    i. If yes, describe who you spoke with, when, the substance of the discussion(s), and what you understood was the purpose of the meeting.

g. Were you told about a meeting or meetings between Erik Prince and Kirill Dmitriev or any other representative from the Russian government that took place in January 2017?
    i. If yes, describe who you spoke with, when, the substance of the discussion(s), and what you understood was the purpose of the meeting(s).

h. Prior to January 20, 2017, did you talk to Steve Bannon, Jared Kushner, or any other individual associated with the transition regarding establishing an unofficial line of communication with Russia? If yes, describe who you spoke with, when, the substance of the discussion(s), and what you understood was the purpose of such an unofficial line of communication.

Message

From: Rob Goldstone [rob@oui2.com]
Sent: 6/6/2016 4:48:14 PM
To: Donald Trump Jr. [/O=TRUMP ORG/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=DJTJR]
Subject: Re: Russia - Clinton - private and confidential

A pleasure
Rob

This iphone speaks many languages

On Jun 6, 2016, at 16:38, Donald Trump Jr. <djtjr@trumporg.com> wrote:

Rob thanks for the help.
D

Sent from my iPhone

> On Jun 6, 2016, at 3:43 PM, Rob Goldstone <rob@oui2.com> wrote:
>
> Ok he's on stage in Moscow but should be off within 20
> Minutes so I am sure can call
> Rob
>
> This iphone speaks many languages
>
> On Jun 6, 2016, at 15:38, Donald Trump Jr. <djtjr@trumporg.com> wrote:
>
> My cell (b) (6), (b) (7)(C) thanks
> d
>
>
>
> Donald J. Trump Jr.
> Executive Vice President of Development and Acquisitions
> The Trump Organization
> 725 Fifth Avenue | New York, NY | 10022
> p. 212.715.7247 | f. 212.688.8135
> djtjr@trumporg.com | trump.com
>
>
>
> -----Original Message-----
> From: Rob Goldstone [mailto:rob@oui2.com]
> Sent: Monday, June 06, 2016 3:37 PM
> To: Donald Trump Jr. <djtjr@trumporg.com>
> Subject: Ree Russia - Clinton - private and confidential
>
> Let me track him down in Moscow
> What number he could call?
>
> This iphone speaks many languages
>
> On Jun 6, 2016, at 15:03, Donald Trump Jr. <djtjr@trumporg.com> wrote:
>
> Rob could we speak now?
> d
>
>
>
> Donald J. Trump Jr.
> Executive Vice President of Development and Acquisitions The Trump Organization
> 725 Fifth Avenue | New York, NY | 10022
> p. 212.715.7247 | f. 212.688.8135
> djtjr@trumporg.com | trump.com
>
>
>
> -----original Message-----

> From: Rob Goldstone [mailto:rob@oui2.com]
> Sent: Monday, June 06, 2016 12:40 PM
> To: Donald Trump Jr. <djtjr@trumporg.com>
> Subject: Re: Russia - Clinton - private and confidential
>
> Hi Don
> Let me know when you are free to talk with Emin by phone about this Hillary info - you had mentioned early this week so wanted to try to schedule a time and day Best to you and family Rob Goldstone
>
> This iphone speaks many languages
>
> On Jun 3, 2016, at 10:53, Donald Trump Jr. <djtjr@trumporg.com> wrote:
>
> Thanks Rob I appreciate that. I am on the road at the moment but perhaps I just speak to Emin first. Seems we have some time and if it's what you say I love it especially later in the summer. Could we do a call first thing next week when I am back?
> Best,
> Don
>
>
> Sent from my iPhone
>
>> On Jun 3, 2016, at 10:36 AM, Rob Goldstone <rob@oui2.com> wrotea
>>
>> Good morning
>> Emin just called and asked me to contact you with something very interesting.
>> The Crown prosecutor of Russia met with his father Aras this morning and in their meeting offered to provide the Trump campaign with some official documents and information that would incriminate Hillary and her dealings with Russia and would be very useful to your father.
>> This is obviously very high level and sensitive information but is part of Russia and its government's support for Mr. Trump - helped along by Aras and Emin.
>> What do you think is the best way to handle this information and would you be able to speak to Emin about it directly?
>> I can also send this info to your father via Rhona, but it is ultra sensitive so wanted to send to you first.
>> Best
>> Rob Goldstone
>>
>> This iphone speaks many languages
>
> This e-mail message, and any attachments to it, are for the sole use of the intended recipients, and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution of this email message or its attachments is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Please note that any views or opinions presented in this email are solely those of the author and do not necessarily represent those of the company. Finally, while the company uses virus protection, the recipient should check this email and any attachments for the presence of viruses. The company accepts no liability for any damage caused by any virus transmitted by this email.

Message

From: Donald Trump Jr. [/O=TRUMP ORG/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=DJTJR]
Sent: 6/7/2016 5:16:52 PM
To: Rob Goldstone [rob@oui2.com]
Subject: Re: Russia - Clinton - private and confidential

How about 3 at our offices? Thanks rob appreciate you helping set it up.
D

Sent from my iPhone

> On Jun 7, 2016, at 4:20 PM, Rob Goldstone <rob@oui2.com> wrote:
>
> Don
> Hope all is well
> Emin asked that I schedule a meeting with you and The Russian government attorney who is flying over from Moscow for this Thursday.
> I believe you are aware of the meeting - and so wondered if 3pm or later on Thursday works for you?
> I assume it would be at your office.
> Best
> Rob Goldstone
> This iphone speaks many languages
>
> On Jun 6, 2016, at 16:38, Donald Trump Jr. <djtjr@trumporg.com> wrote:
>
> Rob thanks for the help.
> D
>
>
> Sent from my iPhone
>
>> On Jun 6, 2016, at 3:43 PM, Rob Goldstone <rob@oui2.com> wrote:
>>
>> Ok he's on stage in Moscow but should be off within 20
>> Minutes so I am sure can call
>> Rob
>>
>> This iphone speaks many languages
>>
>> On Jun 6, 2016, at 15:38, Donald Trump Jr. <djtjr@trumporg.com> wrote:
>>
>> My cell (b) (6), (b) (7)(C) thanks
>> d
>>
>>
>>
>> Donald J. Trump Jr.
>> Executive Vice President of Development and Acquisitions
>> The Trump Organization
>> 725 Fifth Avenue | New York, NY | 10022
>> p. 212.715.7247 | f. 212.688.8135
>> djtjr@trumporg.com | trump.com
>>
>>
>>
>> -----Original Message-----
>> From: Rob Goldstone [mailto:rob@oui2.com]
>> Sent: Monday, June 06, 2016 3:37 PM
>> To: Donald Trump Jr. <djtjr@trumporg.com>
>> Subject: Re: Russia - Clinton - private and confidential
>>
>> Let me track him down in Moscow
>> What number he could call?
>>
>> This iphone speaks many languages
>>
>> On Jun 6, 2016, at 15:03, Donald Trump Jr. <djtjr@trumporg.com> wrote:
>>
>> Rob could we speak now?

[redacted]

Message

From: Donald Trump Jr. [/O=TRUMP ORG/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=DJTJR]
Sent: 6/7/2016 6:14:58 PM
To: Rob Goldstone [rob@oui2.com]
Subject: Re: Russia - Clinton - private and confidential

Great. It will likely be Paul Manafort (campaign boss) my brother in law and me. 725 Fifth Ave 25th floor.

Sent from my iPhone

> On Jun 7, 2016, at 5:29 PM, Rob Goldstone <rob@oui2.com> wrote:
>
> Perfect. I won't sit in on the meeting, but will bring them at 3pm and introduce you etc.
> I will send the names of the two people meeting with you for security when I have them later today.
>
> best
>
> Rob
>
>> On Jun 7, 2016, at 5:16 PM, Donald Trump Jr. <djtjr@trumporg.com> wrote:
>>
>> How about 3 at our offices? Thanks rob appreciate you helping set it up.
>> D
>>
>>
>> Sent from my iPhone
>>
>>> On Jun 7, 2016, at 4:20 PM, Rob Goldstone <rob@oui2.com> wrote:
>>>
>>> Don
>>> Hope all is well
>>> Emin asked that I schedule a meeting with you and The Russian government attorney who is flying over from Moscow for this Thursday.
>>> I believe you are aware of the meeting - and so wondered if 3pm or later on Thursday works for you?
>>> I assume it would be at your office.
>>> Best
>>> Rob Goldstone
>>> This iphone speaks many languages
>>>
>>> On Jun 6, 2016, at 16:38, Donald Trump Jr. <djtjr@trumporg.com> wrote:
>>>
>>> Rob thanks for the help.
>>> D
>>>
>>>
>>> Sent from my iPhone
>>>
>>>> On Jun 6, 2016, at 3:43 PM, Rob Goldstone <rob@oui2.com> wrote:
>>>>
>>>> Ok he's on stage in Moscow but should be off within 20
>>>> Minutes so I am sure can call
>>>> Rob
>>>>
>>>> This iphone speaks many languages
>>>>
>>>> On Jun 6, 2016, at 15:38, Donald Trump Jr. <djtjr@trumporg.com> wrote:
>>>>
>>>> My cell (b) (6), (b) (7)(C) thanks
>>>> d
>>>>
>>>>
>>>>
>>>> Donald J. Trump Jr.
>>>> Executive Vice President of Development and Acquisitions
>>>> The Trump Organization
>>>> 725 Fifth Avenue | New York, NY | 10022
>>>> p. 212.715.7247 | f. 212.688.8135
>>>> djtjr@trumporg.com | trump.com
>>>>

CONFIDENTIAL

[redacted]

Message

From: Donald Trump Jr. [/O=TRUMP ORG/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=DJTJR]
Sent: 6/8/2016 11:15:34 AM
To: Rob Goldstone [rob@oui2.com]
Subject: RE: Russia - Clinton - private and confidential

Yes Rob I could do that unless they wanted to do 3 today instead... just let me know and ill lock it in either way.
d

Donald J. Trump Jr.
Executive Vice President of Development and Acquisitions
The Trump Organization
725 Fifth Avenue | New York, NY | 10022
p. 212.715.7247 | f. 212.688.8135
djtjr@trumporg.com | trump.com

-----Original Message-----
From: Rob Goldstone [mailto:rob@oui2.com]
Sent: Wednesday, June 08, 2016 10:34 AM
To: Donald Trump Jr. <djtjr@trumporg.com>
Subject: Re: Russia - Clinton - private and confidential

Good morning
Would it be possible to move tomorrow meeting to 4pm as the Russian attorney is in court until 3 i was just informed.
Best
Rob

This iphone speaks many languages

On Jun 7, 2016, at 18:14, Donald Trump Jr. <djtjr@trumporg.com> wrote:

Great. It will likely be Paul Manafort (campaign boss) my brother in law and me. 725 Fifth Ave 25th floor.

Sent from my iPhone

> On Jun 7, 2016, at 5:19 PM, Rob Goldstone <rob@oui2.com> wrote:
>
> Perfect..I won't sit in on the meeting, but will bring them at 3pm and introduce you etc.
> I will send the names of the two people meeting with you for security when I have them later today.
>
> best
>
> Rob
>
>> On Jun 7, 2016, at 5:16 PM, Donald Trump Jr. <djtjr@trumporg.com> wrote:
>>
>> How about 3 at our offices? Thanks rob appreciate you helping set it up.
>> D
>>
>>
>> Sent from my iPhone
>>
>>> On Jun 7, 2016, at 4:20 PM, Rob Goldstone <rob@oui2.com> wrote:
>>>
>>> Don
>>> Hope all is well
>>> Emin asked that I schedule a meeting with you and The Russian government attorney who is flying over from Moscow for this Thursday.
>>> I believe you are aware of the meeting - and so wondered if 3pm or later on Thursday works for you?
>>> I assume it would be at your office.
>>> Best
>>> Rob Goldstone
>>> This iphone speaks many languages

CONFIDENTIAL

[redacted]

Message

From: Donald Trump Jr. [/O=TRUMP ORG/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=DJTJR]
Sent: 6/8/2016 12:01:52 PM
To: Rob Goldstone [rob@oui2.com]
Subject: RE: Russia - Clinton - private and confidential

See you then

Donald J. Trump Jr.
Executive Vice President of Development and Acquisitions
The Trump Organization
725 Fifth Avenue | New York, NY | 10022
p. 212.715.7247 | f. 212.688.8135
djtjr@trumporg.com | trump.com

-----Original Message-----
From: Rob Goldstone [mailto:rob@oui2.com]
Sent: Wednesday, June 08, 2016 11:18 AM
To: Donald Trump Jr. <djtjr@trumporg.com>
Subject: Re: Russia - Clinton - private and confidential

They can't do today as she hasn't landed yet from Moscow 4pm is great tomorrow.
Best
Rob

This iphone speaks many languages

On Jun 8, 2016, at 11:15, Donald Trump Jr. <djtjr@trumporg.com> wrote:

Yes Rob I could do that unless they wanted to do 3 today instead... just let me know and ill lock it in either way.
d

Donald J. Trump Jr.
Executive Vice President of Development and Acquisitions The Trump Organization
725 Fifth Avenue | New York, NY | 10022
p. 212.715.7247 | f. 212.688.8135
djtjr@trumporg.com | trump.com

-----Original Message-----
From: Rob Goldstone [mailto:rob@oui2.com]
Sent: Wednesday, June 08, 2016 10:34 AM
To: Donald Trump Jr. <djtjr@trumporg.com>
Subject: Re: Russia - Clinton - private and confidential

Good morning
Would it be possible to move tomorrow meeting to 4pm as the Russian attorney is in court until 3 i was just informed.
Best
Rob

This iphone speaks many languages

On Jun 7, 2016, at 18:14, Donald Trump Jr. <djtjr@trumporg.com> wrote:

Great. It will likely be Paul Manafort (campaign boss) my brother in law and me. 725 Fifth Ave 25th floor.

Sent from my iPhone

> On Jun 7, 2016, at 5:19 PM, Rob Goldstone <rob@oui2.com> wrote:

CONFIDENTIAL

[redacted]

Message

From: Donald Trump Jr. [/O=TRUMP ORG/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=DJTJR]
Sent: 6/8/2016 12:02:35 PM
To: Jared Kushner [/O=TRUMP ORG/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=JAREDKUSHNER]; Paul Manafort [pmanafort@donaldtrump.com]
Subject: FW: Russia - Clinton - private and confidential

Meeting got moved to 4 tomorrow at my offiæesa
Best,
Don

Donald J. Trump Jr.
Executive Vice President of Development and Acquisitions
The Trump Organization
725 Fifth Avenue | New York, NY | 10022
p. 212.715.7247 | f. 212.688.8135
djtjr@trumporg.com | trump.com

-----Original Message-----
From: Rob Goldstone [mailto:rob@oui2.com]
Sent: Wednesday, June 08, 2016 11:18 AM
To: Donald Trump Jr. <djtjr@trumporg.com>
Subject: Re: Russia - Clinton - private and confidential

They can't do today as she hasn't landed yet from Moscow 4pm is great tomorrow.
Best
Rob

This iphone speaks many languages

On Jun 8, 2016, at 11:15, Donald Trump Jr. <djtjr@trumporg.com> wrote:

Yes Rob I could do that unless they wanted to do 3 today instead... just let me know and ill lock it in either way.
d

Donald J. Trump Jr.
Executive Vice President of Development and Acquisitions The Trump Organization
725 Fifth Avenue | New York, NY | 10022
p. 212.715.7247 | f. 212.688.8135
djtjr@trumporg.com | trump.com

---—Original Message-----
From: Rob Goldstone [mailto:rob@oui2.com]
Sent: Wednesday, June 08, 2016 10:34 AM
To: Donald Trump Jr. <djtjr@trumporg.com>
Subject: Re: Russia - Clinton - private and confidential

Good morning
Would it be possible to move tomorrow meeting to 4pm as the Russian attorney is in court until 3 i was just informed.
Best
Rob

Thia iphone speaks many languages

On Jun 7, 2016, at 18:14, Donald Trump Jr. <djtjr@trumporg.com> wrote:

Great. It will likely be Paul Manafort (campaign boss) my brother in law and me. 725 Fifth Ave 25th floor.

[redacted]

TRUMP ACQUISITION, LLC

725 Fifth Avenue, 26th Floor
New York, NY 10022

October 28, 2015

I.C. Expert Investment Company
Riga Land Business Center B3
New Riga Highway, Krasnogorsky
Moscow, Russia, 143421
Attention: Andrey Rozov

Re: *Proposed development of a first class, luxury, mixed use to be known as Trump Moscow (or such other name as mutually agreed upon by the Parties), and located in Moscow City (the "Project")*

Dear Andrey:

This letter of intent (this "LOI") sets forth a summary of some of the basic terms of a license agreement (the "License Agreement") to be entered into by Trump Acquisition, LLC and/or one or more of its affiliates, as licensor ("Licensor"), and I.C. Expert Investment Company and/or one or more of its affiliates, as licensee ("Licensee"), with respect to the Project (Licensor and Licensee, collectively, the "Parties") and in accordance with Licensor's current form of license agreement. This LOI is only intended to facilitate further discussions between the Parties and solely represents the Parties' current intention to negotiate for and attempt to enter into a mutually acceptable agreement covering all aspects of the transaction, subject, however, to the terms and conditions hereafter provided. A general outline of the proposed transaction is, as follows:

Licensor:	Trump Acquisition, LLC and/or one or more of its affiliates
Licensee:	I.C. Expert Investment Company and/or one or more of its affiliates
Property:	Real property to be acquired by Licensee and to be known as Trump Moscow (or such other name as mutually agreed upon by the Parties) and located in Moscow City, as mutually agreed upon by the Parties (the "Property").
Licensed Mark:	Licensor will grant to Licensee a non-exclusive right to use one or more derivatives of the "Trump" name to be agreed upon by the Parties (the "Licensed Marks"), for the purpose of identifying, promoting and marketing the Property and each and every amenity and component to be located thereon (each a "Development Component"), subject to the terms of the License Agreement.
Term:	The term of the License Agreement shall commence on the date of the License Agreement and end on the date the License Agreement shall terminate pursuant to its terms or by operation of law.

AVR

[redacted]

Development Components: In addition to certain other related amenities, components and facilities as the Parties shall mutually agree upon from time to time, the Property shall contain and consist of the following Development Components:

Development Component	Description/Requirements
Residential Component	Approximately 250 first class, luxury residential condominiums.
Hotel Component	One first class, luxury hotel consisting of approximately 15 floors and containing not fewer than 150 hotel rooms.
Recreational Component	One first class, luxury spa/fitness center with related amenities.
Commercial Component	A commercial component consistent with the overall luxury level of the Property.
Office Component	An office component consistent with Class A luxury office properties.
Parking Component	A parking component consistent with the overall luxury of the Property.

Development Standards: Licensee will design, develop, construct, equip and furnish the Property, including without limitation, each Development Component, in accordance with Licensor's Development Standards, which have been provided to Licensee under separate cover and will be contained in the License Agreement.

Operating Standards: Licensee will, at all times, operate and maintain the Property and each Development Component and ensure that all users maintain those standards of ownership, operation and maintenance set forth in Licensor's Operating Standards, which have been provided to Licensee under separate cover and will be contained in the License Agreement, in connection with the Property and each Development Component.

Review of Plans: Licensee shall deliver to Licensor all plans and specifications, renderings, a proposed construction budget and other explanatory materials as Licensor shall reasonably require to convey the design of the Property (collectively, the "**Plans**"). All Plans shall be subject to Licensor's prior review and approval, which approval shall not be unreasonably withheld or delayed provided that the Plans comply with Licensor's Development Standards and Operating Standards, where applicable. Each architect, designer, engineer, landscape

AVR

[redacted]

designer and consultant retained by Licensee in connection with the design, construction and development of the Property shall be subject to Licensor's prior written approval (not to be unreasonably withheld or delayed).

Licensor shall also have reasonable approval over the sales and marketing agencies retained by Licensee to market and promote the Property and the Development Components as well as approval over all advertising materials and sales and marketing campaigns.

Management of the Property: Licensee shall execute a Hotel Management Agreement with an affiliate of Licensor for the operation of the Hotel in accordance with the terms set forth in Schedule 1 hereto and pursuant to Licensor's or its affiliate's customary form of hotel management agreement.

Licensee shall also execute a Residential Management Agreement at Licensor's option, for the management of the Residential Condominium by an affiliate of Licensor, on terms which shall be competitive with those terms offered by an experienced manager of branded luxury real estate comparable to the Residential Condominium, as determined by Licensor in its reasonable discretion. In the event Licensor shall elect in its sole discretion not to manage the Residential Condominium, the company selected by Licensee to manage the Residential Condominium, and any agreement relating thereto, and the terms thereof, shall be subject to Licensor's prior written approval (not to be unreasonably withheld or delayed). In this case, Licensor shall have the right to supervise the operations and management of the Residential Condominium by the selected manager to ensure compliance with the Operating Standards, and Licensor shall be entitled to reimbursement of Licensor's costs and expenses for such supervision (the "**Supervisory Fee**"), which Supervisory Fee Licensor shall be entitled to collect from all residential condominium unit owners of the Property pursuant to an applicable provision to be included in the Condominium Documents (as defined in the License Agreement).

License Fees: Licensee shall pay to Licensor certain non-refundable license fees as set forth on Schedule 2 attached hereto.

Termination Rights/Cross-Termination: The Parties shall negotiate applicable termination rights giving Licensor certain rights to terminate the License Agreement in certain events, including, without limitation, in the event of a default by Licensee or its affiliate under, or a termination of, the Hotel Management Agreement or the Residential Management Agreement.

Licensee Transfer Rights: Except for sales of individual condominium units at the Property in the ordinary course of Licensee's business and in accordance with the terms of the License Agreement and certain limited circumstances to be articulated in detail in the License Agreement, Licensee shall be

AVR

[redacted]

precluded from conveying all or any portion of its interest in the Property, any direct or indirect ownership interests in Licensee or any of its right, title and interest to the License Agreement.

Deposits: All deposits, down payments, installments and other payments (together, "**Deposits**") made by any purchaser of any unit in advance of the closing of such unit shall be deposited in escrow, and Licensee shall not, without the prior written consent of Licensor, which may be withheld in Licensor's sole discretion, remove any portion of the Deposits from escrow irrespective of whether Licensee is permitted to withdraw the deposit in question from escrow pursuant to the terms of the contract of sale governing the sale of such unit or pursuant to any loan documents with respect to any financing obtained by Licensee with respect to the Property.

No Other Uses: In no event may the Property or any portion thereof be used for Other Uses (as hereinafter defined) without the prior written consent of Licensor, which may be withheld in Licensor's sole discretion. In the event of a breach of this section, Licensor shall have the immediate right to terminate the License Agreement. For purposes of this section, the term "**Other Uses**" shall mean all uses other than the Development Components expressly set forth in this LOI and shall include, without limitation, [(A) time shares, residential or resort membership clubs, fractional ownership and any similar forms of ownership that divide such ownership according to specific assigned calendar periods or similar methods, (B) hotel condominiums, serviced apartments, extended stay hotels or any similar use, (C) golf courses and (D) casinos and the ownership, operation or management of casinos and any gaming activities, including, without limitation, any activities relating to or consisting of the taking or receiving of bets or wagers upon the result of games of chance or skill.

Expense Deposit: Prior to the date that Licensor shall hire, retain or otherwise agree to utilize the services of any third party (including, but not limited to, local counsel, tax counsel, trademark counsel, condominium counsel and any accountants) for the provision of advice or services related to the drafting and negotiation of the License Agreement ("**Third Party Services**"), Licensor shall deliver a notice of such intent in writing (which may be sent via email) to Licensee, and within three (3) days of Licensee's receipt of such notice, Licensee shall be required to deposit with Licensor an amount equal to $100,000 (the "**Expense Deposit**"). Simultaneously with the execution of the License Agreement, the first instalment of the Up-Front Fee (as defined in Schedule 2) shall be offset by the full amount of the Expense Deposit (*i.e.*, if Licensee has delivered the Expense Deposit to Licensor in accordance with this LOI, Licensee shall be obligated to pay to Licensor an amount equal to $900,000 upon execution of the License Agreement, representing an amount equal to first

AVP

[redacted]

instalment of the Up-Front Fee less the Expense Deposit). If Licensee has paid the Expense Deposit and thereafter either Party in its sole discretion chooses not to execute the License Agreement, then Licensor shall refund to Licensee the portion of such Expense Deposit (if any) that has not been allocated to the payment of costs incurred by Licensor for Third Party Services.

No Brokers: Licensee represents and warrants to Licensor that it has not dealt with any broker with respect to the transaction contemplated by this LOI and agrees to indemnify and hold Licensor harmless from and against any claim for any brokerage or other commission or finder's fee made by any person or entity claiming to have acted on the behalf of Licensee by reason of the transaction contemplated herein. The indemnity set forth in this paragraph shall survive the termination of this LOI.

Principal: Licensee hereby represents and warrants that the principal of Licensee is Andrey Rozov ("**Principal**"), who owns 100% of Licensee.

Non-Disturbance: Licensee will provide Licensor with a non-disturbance agreement from all mortgagees, ground lessors and other superior instrument holders, on Licensor's standard form.

Confidentiality: The Parties (which for the purposes of this paragraph shall include the Parties' respective officers, directors, members, employees, agents, contractors, consultants, servants, associates or representatives) agree to keep confidential the terms of this LOI, their relationship with the other Party and any other information disclosed which is pertinent to this LOI, and will only disclose the same to its representatives, lenders and third parties on a need to know basis. Notwithstanding the foregoing, Donald J. Trump shall be permitted to make public statements with respect to the transactions contemplated by this LOI and the relationship of the Parties provided that such public statements do not disclose any financial terms hereof. The terms of this confidentiality provision shall survive the termination of this LOI.

Recourse: Principal shall be required to guarantee the payment to Licensor of any loss, damage, cost or expense, including reasonable counsel fees and disbursements, incurred by or on behalf of Licensor by reason of the occurrence of certain bad boy acts committed by Licensee.

Currency: All references in this LOI (including all exhibits and schedules) to dollar amounts, and all uses of the symbol "$", shall refer to the lawful currency of the United States of America and all amounts to be paid hereunder, including, without limitation, all License Fees, shall be paid in US Dollars.

A.V.D.

[redacted]

Taxes; Local Law:	Licensee shall cooperate with Licensor, at Licensee's sole cost and expense, in the event that Licensor desires to restructure all or any portion of the transactions contemplated by the LOI to account for tax and/or local law concerns.
Governing Law/Venue:	The binding provisions of this LOI (and, if and when executed, the License Agreement) shall be governed by the laws of the State of New York (without regard to conflict of laws principles). All disputes between the Parties under the binding provisions of this LOI (and, if and when executed, the License Agreement) shall be settled by binding arbitration in accordance with the Comprehensive Arbitration Rules and Procedures of JAMS International Arbitration Rules. The place of arbitration shall be New York, NY.

Except for the Brokers, Confidentiality and Governing Law/Venue provisions set forth herein, this LOI shall not be binding on any party hereto. The Parties agree that unless and until a License Agreement between the Parties has been executed and delivered, (a) no party shall be under any legal obligation of any kind whatsoever to consummate a transaction hereby by virtue of this LOI; (b) this LOI shall not be construed to be a binding contract between the Parties (other than with respect to the Brokers, Confidentiality and Governing Law/Venue provisions set forth herein); and (c) no equitable cause of action shall be asserted by any party that a contract or agreement (definitive or otherwise) exists between the Parties with respect to any transaction contemplated, proposed, or discussed herein.

[SIGNATURES FOLLOW THIS PAGE]

AVP.

[redacted]

Provided you are in agreement with these terms, please countersign this LOI in the space provided below and return a copy to my attention. We look forward to your timely response.

Very truly yours,

TRUM[illegible] ACQUISITION, LLC

By: _____
Name:
Title:

THE ABOVE IS ACKNOWLEDGED, CONSENTED TO AND AGREED TO BY:

I.C. EXPERT INVESTMENT COMPANY

By: _____
Andrey Rozov
CEO

AVR

SCHEDULEd

HOTEL MANAGEMENT AGREEMENT TERM SHEET

The following sets forth an outline of the principal terms and conditions of the proposed hotel management agreement (the "**HMA**") *that the below mentioned parties* (each, a "**Party**", and together, the "**Parties**") *have the intention to negotiate with respect to the below referenced hotel. With your approval of these terms and conditions, Operator (as defined below) is prepared to draft an HMA and TSA (as hereinafter defined) for your review.*

Hotel:	A first class, luxury hotel (the "**Hotel**") to be known and operated as Trump International Hotel & Tower Moscow (or such other name as the Parties shall mutually agree upon) located in Moscow City containing approximately 150 hotel rooms.
Owner:	I.C. Expert Investment Company and/or one or more of its affiliates.
Operator:	Trump International Hotels Management, LLC and/or one or more of its affiliates.
Term:	The HMA shall expire twenty-five (25) full calendar years from the date the Hotel opens for business as a Trump brand hotel accepting paying guests in accordance with the HMA (the "**Opening Date**"), with two (2) consecutive five (5) year consecutive renewal terms, each of which renewal terms shall be at Operator's election.
Management Fees:	**Base Fee:** A base fee (payable on a monthly basis) for each month during the Term (including any partial month at the commencement and expiration or termination of the Term) equal to:

Years 1-5: 3.00% of Gross Operating Revenues
Years 6-25 (plus renewals): 4.00% of Gross Operating Revenues

"**Gross Operating Revenues**" means all revenue and income of any kind derived directly or indirectly from the operation of the Hotel, and expressly including all gross revenues generated from (a) guest rooms and other areas, (b) food and beverage areas, (c) the operation of all banquet, catering and room service functions at the Hotel, including any such services which may be provided off site, (d) the operation of any parking facilities at the Hotel or the site or which otherwise provide parking services for Hotel guests and visitors, (e) lease payments, management or

operating payments, rentals or other payments or distributions to Owner or the Hotel from any third parties that are tenants of or otherwise manage or operate areas in the Hotel, and (f) fees for services such as internet and movie, facilities fees, resort fees, and similar fees and all commissions received; but expressly excluding the following: (i) taxes; (ii) receipts from the financing, sale or other disposition of capital assets and other items not in the ordinary course of the Hotel's operations and income derived from securities and other property acquired and held for investment; (iii) any proceeds paid as compensation for condemnation or alterations or physical damage to the Hotel; (iv) proceeds of any insurance; and (v) rebates, discounts or credits provided by Operator to Hotel guests.

Incentive Fee: An incentive fee (payable on a monthly basis and subject to annual reconciliation) equal to 20% of Adjusted Gross Operating Profit. "**Adjusted Gross Operating Profit**" shall mean Gross Operating Profit (as such term shall be defined in the HMA) less the Base Fee.

Employees: Other than Hotel executive staff that Operator, in its sole discretion, elects to employ, Owner or an affiliate of Owner will be the employer of all employees of the Hotel and will be solely responsible for the payment all employee salaries, costs and expenses, all of which shall be included as Operating Expenses. The selection of all employees of the Hotel will be at Operator's discretion, and Operator will be responsible for and control all employee hiring, termination, benefits, training, development, administration and other employee related matters.

Development Standards: Owner, at Owner's sole cost and expense, shall design, develop, construct, equip and furnish the Hotel in accordance with the Trump Brand Standards (as such term shall be defined in the HMA).

Maintenance and Repair of Hotel: Operator, at Owner's sole cost and expense, shall operate and maintain the Hotel in accordance with the Trump Brand Standards, and Owner shall provide Operator with sufficient funds so as to enable Operator to comply with such obligations.

Centralized Services: The Hotel and its employees shall be obligated to participate in all of Operator's (and its affiliates) mandatory centralized services, which centralized services may, at Operator's election, include, without limitation, coordinated marketing and advertising (as more particularly described below), training and orientation, information technology services, reservation services, human

AHR

resources, payroll, benefit plan administration, purchasing services, guest satisfaction surveys and brand assurance audits. Owner shall pay Operator for such centralized services within fifteen (15) days following Operator's demand therefor.

Reimbursement of Fees: Owner shall reimburse Operator for all of Operator's customary costs and expenses, including, but not limited to, legal fees, travel related expenses (including airfare), architectural review fees, domain name filing fees and trademark filing and review fees, all as more particularly described in Operator's current form of HMA.

Hotel Technical Services: Operator will provide technical services to Owner in connection with the development of the Hotel pursuant to a separate technical services agreement to be entered into between Owner and Operator in accordance with Operator's customary form (the "TSA"). The term of the TSA shall expire on the later of (a) the Opening Date or (b) the date the work on the Deficiency List (as such term shall be defined in the TSA) is completed to Operator's reasonable satisfaction. The TSA will, among other items, contain customary terms and conditions, including, without limitation, a technical services fee to be paid by Owner to Operator in the amount of $[1][____] per room per year (and any portion thereof on a prorated basis) for the term of the TSA), and the reimbursement of all of Operator's out of pocket expenses. In the event Operator shall provide personnel on-site, the costs and expenses associated with such personnel (including all compensation paid to such personnel) will be reimbursed to Operator by Owner.

Debt Covenants: Owner shall not incur Financing (as such term shall be defined in the HMA) in connection with the Hotel (whether secured by the Hotel or otherwise) that: (x) prior to the Opening Date exceeds seventy-five percent (75%) of the cost to develop, furnish and open the Hotel, (y) at any time following the Opening Date exceeds seventy-five percent (75%) of the loan to value ratio for the Hotel or (z) would cause the ratio of (i) Adjusted Gross Operating Profit minus the cost of taxes, insurance premiums and deposits into the Reserve Fund (as such term shall be defined in the HMA) for the period in question to (ii) anticipated aggregate Debt Service (as such term shall be defined in the HMA) in connection with all Financings for the next twelve months is not reasonably anticipated to be less than 1.4 to 1. Any Financing must be obtained from an Institutional Lender (as such term shall be defined in the HMA).

[1] To be discussed with Trump Hotel CRO.

AVR

Hotel Sales and Marketing Fund:	During each fiscal year, Owner and Operator shall set aside 2.00% of Gross Operating Revenues to be contributed to a centralized fund to be administered by Operator or an affiliate of Operator for coordinated sales and marketing efforts among all "Trump" branded hotels.
Food and Beverage:	Operator may elect to manage the food and beverage facilities of the Hotel. If Operator does not elect to manage such facilities, it may choose to have such food and beverage facilities operated by a third party, which may be an affiliate of Operator. Operator's selection of any third party, the manner in which such food and beverage facilities shall be operated (*i.e.*, a lease, license, concession management or similar agreement) on behalf of Owner and the forms of such agreements shall be subject to Owner's reasonable approval. Once such approval is granted, Operator may negotiate, enter into and administer such agreements, so long as such agreements either (a) have a term equal to or less than one (1) year or (b) can be terminated, without penalty, and upon notice of not more than 180 days. In connection with the preparation, negotiation and/or administration of any such agreement, Operator may, at Owner's expense, engage counsel reasonably approved by Owner. All such agreements shall require the third parties to operate the food and beverage facilities in accordance with the Trump Brand Standards.
Spa/Fitness Facilities:	Operator may elect to manage the spa and/or fitness facilities of the Hotel. If Operator elects not to manage any spa and/or fitness facilities as a department of the Hotel, Operator may select a third party, which may be an affiliate of Operator, to operate all or any portion of such facilities under such party's brand name or such other name pursuant to an agreement as determined by Operator. Operator may negotiate, enter into and administer such agreements, so long as such agreements either (x) have a term equal to or less than one (1) year or (y) can be terminated, without penalty, and upon notice of no more than 180 days. Operator may also (a) brand all or any portion of the spa or fitness facilities as "The Spa by Ivanka Trump" or similar brand and/or (b)(i) operate such branded spa or fitness facilities as a department of the Hotel or (ii) select any third party, which may be an affiliate of Operator, to operate such branded spa or fitness facilities, and, in connection therewith, may negotiate, enter into and administer, in the name and on behalf of Owner, any agreement for such branded spa or fitness facilities. All interior design elements of the spa or fitness facilities shall be completed and maintained in

AVB

such manner as approved by, in their sole and absolute discretion, (i) Operator and (ii) to the extent that the spa or fitness facilities are branded under the "Spa by Ivanka Trump" (or similar) brand, Ivanka Trump or her designee.

Reserve Fund: During each fiscal year, Operator shall, on a monthly basis, set aside (from funds otherwise due to Owner) the percentage of Gross Operating Revenues set forth below to a bank account designated by Owner and controlled by Operator to fund furniture, fixtures and equipment replacement for the Hotel, capital improvements and all other expenditures reasonably necessary to maintain the Trump Brand Standards and physical standards for all portions of the Hotel as determined by Operator. In the event that there are not enough funds from the operation of the Hotel to fully fund such reserves, Owner shall be required to fund such reserves from other sources. Further, in the event the amount on reserve is inadequate to pay for the cost of any of the foregoing, Owner shall be required to fund the difference.

The percent of Gross Operating Revenues which Owner must set aside or otherwise fund are, as follows:

Year 1:	3% of Gross Operating Revenues
Year 2:	4% of Gross Operating Revenues
Years 3-25 (plus renewals):	5% of Gross Operating Revenues

Sale/Assignment: Provided that Owner is not in default under the HMA or TSA following the Opening Date, Owner may effect a transfer of an ownership or leasehold interest in the Hotel to a party who (x) is not a Prohibited Person (as such term shall be defined in the HMA), (y) has sufficient financial resources and liquidity to satisfy Owner's obligations to Operator and its affiliates under the HMA and (z) has adequate experience in the ownership of projects similar to the Hotel, in each case as reasonably determined by Operator, provided that (i) Owner's entire interest in the Hotel is transferred and (ii) the HMA is assigned, with all obligations, to the transferee and the transferee assumes all such obligations in writing.

Memorandum of HMA: Simultaneously with the execution of the HMA or upon a later date to be mutually agreed upon by the Parties, the Parties shall execute a recordable memorandum of HMA. Upon execution, such memorandum shall be recorded and/or registered (as applicable) at Owner's sole cost and expense in the jurisdiction in which the Hotel is located.

AVR

Working Capital: Operator will establish and maintain (from funds otherwise due to Owner) a working capital account which shall at all times contain a sum equal to four (4) months of estimated operating expenses for Operator to use to operate the Hotel.

Limitation on Operators Duty: Operator's performance of any obligations under the HMA that require the expenditure of money shall be subject to the availability of sufficient funds from the operation of the Hotel or otherwise provided by Owner, and under no circumstance shall Operator be obligated to advance its own funds. All costs and expenses of operating, maintaining, marketing and improving the Hotel and providing Operator's services shall be payable out of funds from the operation of the Hotel. In the event there shall not be enough funds from the operation of the Hotel to satisfy such costs and expenses, Owner shall be required to make sufficient funds available to Operator within fifteen (15) days after Operator's demand therefor. Operator shall use reasonable efforts to forecast and advise Owner in advance of any such anticipated deficiencies. Although Operator shall not be obligated to advance its own funds, if Operator chooses to do so, in Operator's sole discretion, Owner shall reimburse Operator (or, if directed by Operator, its affiliates) for any costs and expenses that are incurred and paid by Operator for Owner's account.

No Gaming: In no event may the Hotel or any portion thereof be used for Casino and Gaming Activities (as defined herein) without the prior written consent of Operator, which may be withheld in Operator's sole discretion. In the event of a breach of this section, Operator shall have the immediate right to terminate the HMA. For purposes of this section, the term **"Casino and Gaming Activities"** shall mean the business of owning, operating, managing or developing a casino or similar facility in which a principal business activity is the taking or receiving of bets or wagers upon the result of games of chance or skill, including hotel, dockside, riverboat, cruise ship, transportation, entertainment, sports, resort, bar, restaurant and retail services in connection with any of the foregoing activities.

Currency: All references in this Term Sheet (including all exhibits and schedules) to dollar amounts, and all uses of the symbol "$", shall refer to the lawful currency of the United States of America, and all amounts to be paid hereunder, including, without limitation, the Management Fees, shall be paid in US Dollars. Concurrently with the making of any payment, Owner shall pay to Operator an amount equal to any sales, value added, excise and similar taxes

AVR

levied on or deducted from such payment or assessed against Operator. If any withholding or other taxes, duties or deductions apply to any payments to Operator, Owner shall increase these payments so that Operator receives the same net amount that they would have received if no withholding or other taxes, duties or deductions were applicable.

Non-Disturbance: Owner will provide Operator with a non-disturbance agreement from all mortgagees, ground lessors and other superior instrument holders, on Operator's standard form, providing for, among other matters, Operator's right to continue operating the Hotel in accordance with the HMA notwithstanding foreclosure of the mortgage, termination of the ground lease or other similar events, the non-subordination of Management Fees and Operator's control of funds and accounts.

Governing Law and Jurisdiction: The binding provisions of this Term Sheet (and, if and when executed, the TSA and the HMA) shall be governed by the laws of the State of New York (without regard to conflict of laws principles). All disputes between the Parties under the binding provisions of this Term Sheet (and, if and when executed, the TSA and the HMA) shall be settled by binding arbitration in accordance with the Comprehensive Arbitration Rules and Procedures of JAMS International Arbitration Rules. The place of arbitration shall be New York, NY.

Confidentiality: The Parties (which for the purposes of this paragraph shall include each of the Parties' officers, directors, members, employees, agents, contractors, consultants, servants, associates or representatives) shall at all times keep the terms of this Term Sheet, including any information disclosed which is pertinent to this Term Sheet, and the underlying transaction, strictly confidential. Owner shall also keep its relationship with Operator, the Trump Brand Standards and the form of agreements provided by Operator confidential. Notwithstanding the foregoing, Donald J. Trump shall be permitted to make public statements with respect to the transactions contemplated by this Term Sheet and the relationship of the Parties provided that such public statements do not disclose any financial terms hereof. The terms of this confidentiality provision are binding and shall survive the termination of this Term Sheet.

No Brokers: Owner represents and warrants to Operator that it has not dealt with any broker with respect to the transaction contemplated by this Term Sheet and agrees to indemnify and hold Operator harmless from and against any claim for any brokerage or other

AVL

[redacted]

commission or finder's fee made by any person or entity claiming to have acted on the behalf of Owner by reason of the transaction contemplated herein. The indemnity set forth in this paragraph shall survive the termination of this Term Sheet.

Interpretation: The words "include", "includes", "including" and "such as" shall be construed as inclusive expressions and as if followed by the words "without being limited to" or "without limitation".

Except for the No-Brokers, Confidentiality and Governing Law/Jurisdiction provisions set forth herein, this Term Sheet shall not be binding on any Party hereto. The Parties hereto agree that unless and until the agreements contemplated by this Term Sheet have been executed and delivered, (a) no Party shall be under any legal obligation of any kind whatsoever to consummate a transaction hereby by virtue of this Term Sheet, and no equitable cause of action shall be asserted by any Party with respect to the consummation of such transaction, and (b) this Term Sheet shall not be construed to be a binding contract between any Party hereto (other than with respect to the No-Brokers, Confidentiality and Governing Law/Jurisdiction provisions set forth herein).

AVR

SCHEDULE 2

LICENSE FEES

Licensee shall pay to Licensor for the license of the Licensed Mark, as herein provided, all of the following non-refundable fees (the Up-Front Fee, Gross Sales Fees, Commercial & Office Component Rent Fee and Other Fees, collectively, the "License Fees").

AMOUNT OF PAYMENT	TIMING/MANNER OF PAYMENT
The "Up-Front Fee":	
$4,000,000	25% upon execution of the License Agreement; 25% upon Licensor's approval of the location of the Property; 50% upon the earlier to occur of (i) seven (7) days prior to the groundbreaking of the Project and (ii) two (2) years following the execution of the License Agreement.
The below, collectively, are the "Gross Sales Fees":	
(i) 5% of Gross Sales Price up to $100,000,000; (ii) Thereafter, 4% of Gross Sales Price up to $250,000,000; (iii) Thereafter, 3% of Gross Sales Price up to $500,000,000; (iv) Thereafter, 2% of Gross Sales Price up to $1,000,000,000; (v) Thereafter, 1% of Gross Sales Price (each of the foregoing, as applicable, the "Gross Sales Rate"). For purposes of this Agreement, "Gross Sales Price" shall mean the total selling price of each residential condominium unit (each, a "Residential Unit"), without any deduction therefrom whatsoever.	Upon the applicable Gross Sales Fee Payment Date.
Gross Sales Rate of 5% of Other Unit Gross Sales Price. For purposes of this Agreement, "Other Unit Gross Sales Price" shall mean the total selling price of any portion of the Property which is not a Residential Unit, including, without limitation, portions of the retail area, storage spaces, cabanas and similar areas and all additional amenities or components (including any memberships) not otherwise	Upon the applicable Gross Sales Fee Payment Date.

AVR

contemplated in the License Agreement (each, an "Other Unit"), without any deduction therefrom whatsoever.	
The "Commercial & Office Component Rent Fee":	
For any Other Unit space leased at any time at the Property, 3% percent of all the rent (base rent plus all additional rent, including, without limitation any percentage rent) applicable to such Other Unit.	On a monthly basis, within five (5) business days of receipt from the tenant.
The "Other Fees":	
3% of Other Revenue. For purposes of this Agreement, "Other Revenue" shall mean any and all other revenue whatsoever derived from the Property, including, without limitation (or duplication), concessions, activity fees, catering, conference and banquet fees, food and beverage receipts, fitness center and spa sales and receipts, equipment rentals and provision of other services.	On a monthly basis, prior to the tenth (10th) day of each calendar month on account of the prior calendar month.

As used herein, "Closing" shall mean the earliest to occur of the date upon which (a) the buyer of a Residential Unit or Other Unit is granted ownership rights over the Residential Unit or Other Unit in question and/or title to the Residential Unit or Other Unit is transferred, (b) the buyer of a Residential Unit or Other Unit is otherwise permitted to occupy or in any manner use the Residential Unit or Other Unit in question, or (c) Licensee takes any action which, in the commercially reasonable judgment of Licensor, constitutes a constructive closing of the sale of the Residential Unit or Other Unit in question (including the remittance of any deposit, down payment, installment payment or other form of payment by any purchaser of a Residential Unit or Other Unit which, in the commercially reasonable judgment of Licensor, constitutes a material portion of the Gross Sales Price or Other Unit Gross Sales Price, as applicable, in respect of such Residential Unit or Other Unit), irrespective of whether or not, in each case, (i) ownership rights over the Residential Unit or Other Unit and/or title to such Residential Unit or Other Unit have been transferred or (ii) Licensee has received payment in full or in part from the applicable buyer or (iii) construction on such Residential Unit or Other Unit is complete other than punchlist items or items waived by the purchaser

As used herein, "Gross Sales Fee Payment Date" shall mean, with respect to any Residential Unit or Other Unit, at the Closing of the sale of such Residential Unit or Other Unit, or, if applicable, (x) in installments, simultaneously at any earlier time(s) that (i) Licensee withdraws any of the Deposits made with respect to such Residential Unit or Other Unit, as applicable, from escrow (any such withdrawal shall be subject to the terms of the License Agreement) or (ii) any purchaser of any Residential Unit or Other Unit remits any deposits, installment payments, downpayments or other funds which, in the commercially reasonable judgment of Licensor, constitutes all or any portion of the Gross

RVR

Sales Price or Other Unit Gross Sales Price, as applicable, of such Residential Unit or Other Unit (which installment shall be equal to the Fee Share (as defined in the License Agreement)) and/or (y) on the Extrapolation Date (as defined in the License Agreement).

STATEMENT OF MICHAEL D. COHEN, ESQ.

Today, August 28, 2017, my legal counsel, Stephen M. Ryan of McDermott Will & Emery LLP, produced documents to the Senate Select Committee on Intelligence (the "Committee") on my behalf. Certain documents in the production reference a proposal for "Trump Tower Moscow," which contemplated a private real estate development in Russia. The proposal was similar to other ideas for real estate projects contemplated years before any campaign. I am writing to provide the Committee with additional information regarding the proposal.

As background, other U.S. hotel chains and brands had already opened in Moscow, including Hyatt Hotels Corporation, Marriott International, Inc., and the Ritz-Carlton Hotel Company. Similarly, the Trump Organization had foreign hotels, as well as golf and land projects, in Canada, India, Indonesia, Ireland, Panama, Philippines, Scotland, South Korea, Turkey, the UAE and Uruguay. During my ten years with the Trump Organization, the company received countless proposals for licensing deals and real estate ventures in locations across the globe.

In or around September 2015, I received a proposal for the construction of a luxury hotel, office, and residential condominium building in Moscow, Russia. I performed some initial due diligence to assess whether the "Trump Tower Moscow" proposal aligned with the Trump Organization's strategic business interests. Based on my preliminary assessment of the proposal, the licensee would be required to find and present an appropriate parcel of land that could be obtained and developed with all necessary government permits and permissions. In addition, the licensee would be responsible for all development costs and financing of the land and building. The Trump Organization would license the "Trump" brand name to a qualified Moscow-based real estate development company for the purpose of identifying, promoting, and marketing the building. 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.

I worked on the proposal within my capacity as Executive Vice President and Special Counsel to the Trump Organization. I performed a dual role in evaluating the proposal and provided both legal and business advice. I primarily communicated with the Moscow-based development company, I.C. Expert Investment Company ("Expert Investment"), through a U.S. citizen third-party intermediary, Mr. Felix Sater.

Mr. Sater was formerly an executive at a company called Bayrock Group and was involved in the deal for the Trump SoHo New York Hotel, which broke ground in 2007. Mr. Sater claimed to have appropriate relationships within the business community in Russia in order to obtain the real estate, financing, government permits, and other items necessary for such a development. The Trump Organization did not employ Mr. Sater in connection with the Trump Tower Moscow proposal, nor did the Trump Organization compensate Mr. Sater for his involvement in the proposal. Mr. Sater acted as a deal broker and would have been compensated by the licensee if the proposal had been successful. I have known Mr. Sater for several decades and I routinely handled communications with him regarding the proposal. Mr. Sater, on occasion, made claims

about aspects of the proposal, as well as his ability to bring the proposal to fruition. Over the course of my business dealings with Mr. Sater, he has sometimes used colorful language and has been prone to "salesmanship." As a result, I did not feel that it was necessary to routinely apprise others within the Trump Organization of communications that Mr. Sater sent only to me. Mr. Sater constantly asked me to travel to Moscow as part of his efforts to push forward the discussion of the proposal. I ultimately determined that the proposal was not feasible and never agreed to make a trip to Russia. Consequently, I did not travel to Russia for this proposal (nor did any other representative of the Trump Organization to the best of my knowledge) and I have never traveled to Russia. 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. To the best of my knowledge, 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.

On or around October 28, 2015, Trump Acquisition, LLC executed a non-binding letter of intent ("LOI") with Expert Investment, memorializing the parties' "intention to negotiate for and attempt to enter into a mutually acceptable agreement covering all aspects of the transaction." The parties expressly agreed that, "unless and until a License Agreement between the Parties has been executed and delivered, . . . no party shall be under any legal obligation of any kind whatsoever to consummate a transaction hereby by virtue of this LOI." Following execution of the non-binding LOI, we began more detailed work and analysis regarding various aspects of the proposal. For example, we solicited building designs from different architects and engaged in preliminary discussions regarding potential financing for the proposal. In mid-January 2016, Mr. Sater suggested that I send an email to Mr. Dmitry Peskov, the Press Secretary for the President of Russia, since the proposal would require approvals within the Russian government that had not been issued. Those permissions were never provided. I decided to abandon the proposal less than two weeks later for business reasons and do not recall any response to my email, nor any other contacts by me with Mr. Peskov or other Russian government officials about the proposal. The proposal never advanced beyond the non-binding LOI. I did not ask or brief Mr. Trump, or any of his family, before I made the decision to terminate further work on the proposal.

The Trump Tower Moscow proposal was not related in any way to Mr. Trump's presidential campaign. The decision to pursue the proposal initially, and later to abandon it, was unrelated to the Donald J. Trump for President Campaign. Both I and the Trump Organization were evaluating this proposal and many others from solely a business standpoint, and rejected going forward on that basis.

Engel, Steven A. (OLC)

From:	Engel, Steven A. (OLC)
Sent:	Friday, October 5, 2018 4:03 PM
To:	O'Callaghan, Edward C. (ODAG)
Subject:	RE: Questions

Thanks.

From: O'Callaghan, Edward C. (ODAG)
Sent: Friday, October 5, 2018 3:02 PM
To: Engel, Steven A. (OLC) (b)(6) per OLC Gannon, Curtis E. (OLC) (b)(6) per OLC
Demers, John C. (NSD) <jcdemers@jmd.usdoj.gov>; Gauhar, Tashina (ODAG) <tagauhar@jmd.usdoj.gov>
Subject: FW: Questions

Duplicative Material (Document ID: 0.7.23922.41912)

Engel, Steven A. (OLC)

From:	Engel, Steven A. (OLC)
Sent:	Tuesday, October 9, 2018 5:32 PM
To:	Lasseter, David F. (OLA)
Cc:	O'Callaghan, Edward C. (ODAG); Boyd, Stephen E. (OLA); Weinsheimer, Bradley (ODAG)
Subject:	Re: Speaker Ryan letter

Ok. Thx.

Sent from my iPhone

On Oct 9, 2018, at 5:29 PM, Lasseter, David F. (OLA) <dlasseter@jmd.usdoj.gov> wrote:

> Negative. [redacted (b) (5)] .
>
> **From:** Engel, Steven A. (OLC)
> **Sent:** Tuesday, October 9, 2018 5:26 PM
> **To:** Lasseter, David F. (OLA) <dlasseter@jmd.usdoj.gov>
> **Cc:** O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>; Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>; Weinsheimer, Bradley (ODAG) <bradweinsheimer@jmd.usdoj.gov>
> **Subject:** RE: Speaker Ryan letter
>
> [redacted (b)(5) per OLC] ?
>
> **From:** Lasseter, David F. (OLA)
> **Sent:** Tuesday, October 9, 2018 5:20 PM
> **To:** Engel, Steven A. (OLC) [redacted (b)(6) per OLC]
> **Cc:** O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>; Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>; Weinsheimer, Bradley (ODAG) <bradweinsheimer@jmd.usdoj.gov>
> **Subject:** Speaker Ryan letter
>
> Steve—good afternoon. Please find attached draft letter intended, at some point, for Speaker Ryan. It has been reviewed by ODAG, SCO, FBI, ODNI, and at some point previously by your team in OLC.
>
> Thanks,
> David
>
> David F. Lasseter
> Deputy Assistant Attorney General
> Office of Legislative Affairs
> U.S. Department of Justice
> (202) 514-1260

Weinsheimer, Bradley (ODAG)

From:	Weinsheimer, Bradley (ODAG)
Sent:	Friday, October 19, 2018 11:47 AM
To:	Engel, Steven A. (OLC); Colborn, Paul P (OLC)
Cc:	O'Callaghan, Edward C. (ODAG); Boyd, Stephen E. (OLA); Gannon, Curtis E. (OLC); Petersom, Andrew (ODAG); Ellis, Corey F. (ODAG)
Subject:	RE: DAG interview preamble
Attachments:	RJR Interview statement ver.2.docx

Looks good to me. I have deleted out the margin comments and fixed some editing typos (stray periods). Here is the clean version. Brad.

From: Engel, Steven A. (OLC)
Sent: Friday, October 19, 2018 10:58 AM
To: Weinsheimer, Bradley (ODAG) <bradweinsheimer@jmd.usdoj.gov>; Colborn, Paul P (OLC) <(b)(6) per OLC>
Cc: O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>; Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>; Gannon, Curtis E. (OLC) (b)(6) per OLC
Subject: RE: DAG interview preamble

I attach some edits from OLC, in clean and redline.

From: Weinsheimer, Bradley (ODAG)
Sent: Thursday, October 18, 2018 7:07 PM
To: Engel, Steven A. (OLC) (b)(6) per OLC; Colborn, Paul P (OLC) (b)(6) per OLC
Cc: O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>; Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>
Subject: DAG interview preamble

Steve and Paul: Attached is a draft preamble designed to be used when the DAG is interviewed by HJC/HOGR next week. Ed already has reviewed it. As you will see, (b) (5) [redacted].

Also attached is a press release that HJC/HOGR just issued. Note that they anticipate public release of the interview transcript. Among other things, I think (b) (5) [redacted] We can discuss that more tomorrow obviously.

https://judiciary.house.gov/press-release/goodlatte-gowdy-announce-details-of-transcribed-interview-with-rosenstein/

Thanks, Brad.

Brad Weinsheimer
Associate Deputy Attorney General
Office: 202-305-7848
Cell: (b) (6)
Bradley.weinsheimer@usdoj.gov

Gannon, Curtis E. (OLC)

From:	Gannon, Curtis E. (OLC)
Sent:	Monday, October 22, 2018 9:26 AM
To:	Ellis, Corey F. (ODAG); O'Callaghan, Edward C. (ODAG); Weinsheimer, Bradley (ODAG)
Cc:	Peterson, Andrew (ODAG); Boyd, Stephen E. (OLA); Lasseter, David F. (OLA); Colborn, Paul P (OLC); Engel, Steven A. (OLC)
Subject:	RE: RJR Interview statement ver.2
Attachments:	(b)(5) per OLC .pdf

Attached is another related item: (b)(5) per OLC

(b)(5) per OLC

From: Ellis, Corey F. (ODAG)
Sent: Monday, October 22, 2018 9:16 AM
To: O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>; Weinsheimer, Bradley (ODAG) <bradweinsheimer@jmd.usdoj.gov>
Cc: Peterson, Andrew (ODAG) <anpeterson@jmd.usdoj.gov>; Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>; Lasseter, David F. (OLA) <dlasseter@jmd.usdoj.gov>; Colborn, Paul P (OLC) (b)(6) per OLC ; Gannon, Curtis E. (OLC) (b)(6) per OLC >; Engel, Steven A. (OLC) (b)(6) per OLC
Subject: RE: RJR Interview statement ver.2

A couple of suggestions attached.

Brad,

Can you pass along: (b) (5) ?

From: O'Callaghan, Edward C. (ODAG)
Sent: Monday, October 22, 2018 8:34 AM
To: Weinsheimer, Bradley (ODAG) <bradweinsheimer@jmd.usdoj.gov>
Cc: Peterson, Andrew (ODAG) <anpeterson@jmd.usdoj.gov>; Ellis, Corey F. (ODAG) <cfellis@jmd.usdoj.gov>; Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>; Lasseter, David F. (OLA) <dlasseter@jmd.usdoj.gov>; Colborn, Paul P (OLC) < (b)(6) per OLC ; Gannon, Curtis E. (OLC) (b)(6) per OLC ; Engel, Steven A. (OLC) < (b)(6) per OLC
Subject: RE: RJR Interview statement ver.2

Thanks for comments. ((b) (5)

Let us know if there are any other

[redacted] (b) (5) [redacted]. Let us know if there are any other comments. I'd like to send to DAG today for him to review and consider. Thanks.

Edward C. O'Callaghan
202-514-2105

From: Weinsheimer, Bradley (ODAG)
Sent: Sunday, October 21, 2018 4:42 PM
To: O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>
Cc: Peterson, Andrew (ODAG) <anpeterson@jmd.usdoj.gov>; Ellis, Corey F. (ODAG) <cfellis@jmd.usdoj.gov>; Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>; Lasseter, David F. (OLA) <dlasseter@jmd.usdoj.gov>; Colborn, Paul P (OLC) [redacted] (b)(6) per OLC [redacted]; Gannon, Curtis E. (OLC) [redacted] (b)(6) per OLC [redacted]>
Subject: Re: RJR Interview statement ver.2

I think this is good but have concerns about [redacted] (b) (5) [redacted]

[redacted]

Thanks, Brad.

On Oct 21, 2018, at 4:02 PM, O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov> wrote:

> See edits to version sent around by Andy. We may want build in some room for the DAG to discuss [redacted] (b) (5) [redacted], so I have added some language to that effect. Thanks.
>
> Edward C. O'Callaghan
> 202-514-2105
>
> ---
>
> **From:** Peterson, Andrew (ODAG)
> **Sent:** Saturday, October 20, 2018 9:52 PM
> **To:** Ellis, Corey F. (ODAG) <cfellis@jmd.usdoj.gov>; O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>; Weinsheimer, Bradley (ODAG) <bradweinsheimer@jmd.usdoj.gov>; Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>; Lasseter, David F. (OLA) <dlasseter@jmd.usdoj.gov>; Colborn, Paul P (OLC) [redacted] (b)(6) per OLC [redacted]>; Gannon, Curtis E. (OLC) [redacted] (b)(6) per OLC [redacted]
> **Subject:** RJR Interview statement ver.2
>
> Attached is an updated version of the DAG's interview statement (thank you stephen for sending around your own recollection). Edits welcome.
>
> <RJR Interview statement ver 2eoc.docx>

Colborn, Paul P (OLC)

From:	Colborn, Paul P (OLC)
Sent:	Monday, October 22, 2018 1:48 PM
To:	Ellis, Corey F. (ODAG); O'Callaghan, Edward C. (ODAG); Weinsheimer, Bradley (ODAG)
Cc:	Peterson, Andrew (ODAG); Boyd, Stephen E. (OLA); Lasseter, David F. (OLA); Gannon, Curtis E. (OLC); Engel, Steven A. (OLC)
Subject:	RE: RJR Interview statement ver.2
Attachments:	RJR Interview statement ver.3 + olc.docx

Here are some edits and comments from OLC.

From: Ellis, Corey F. (ODAG)
Sent: Monday, October 22, 2018 9:16 AM
To: O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>; Weinsheimer, Bradley (ODAG) <bradweinsheimer@jmd.usdoj.gov>
Cc: Peterson, Andrew (ODAG) <anpeterson@jmd.usdoj.gov>; Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>; Lasseter, David F. (OLA) <dlasseter@jmd.usdoj.gov>; Colborn, Paul P (OLC) (b)(6) per OLC >; Gannon, Curtis E. (OLC) (b)(6) per OLC ; Engel, Steven A. (OLC) (b)(6) per OLC
Subject: RE: RJR Interview statement ver.2

Duplicative Material (Document ID: 0.7.23922.10369)