

## EXECUTIVE SUMMARY TO VOLUME II

Our obstruction-of-justice inquiry focused on a series of actions by the President that related to the Russian-interference investigations, including the President's conduct towards the law enforcement officials overseeing the investigations and the witnesses to relevant events.

### FACTUAL RESULTS OF THE OBSTRUCTION INVESTIGATION

The key issues and events we examined include the following:

***The Campaign's response to reports about Russian support for Trump.*** During the 2016 presidential campaign, questions arose about the Russian government's apparent support for candidate Trump. After WikiLeaks released politically damaging Democratic Party emails that were reported to have been hacked by Russia, Trump publicly expressed skepticism that Russia was responsible for the hacks at the same time that he and other Campaign officials privately sought information **Harm to Ongoing Matter** about any further planned WikiLeaks releases. Trump also denied having any business in or connections to Russia, even though as late as June 2016 the Trump Organization had been pursuing a licensing deal for a skyscraper to be built in Russia called Trump Tower Moscow. After the election, the President expressed concerns to advisors that reports of Russia's election interference might lead the public to question the legitimacy of his election.

***Conduct involving FBI Director Comey and Michael Flynn.*** In mid-January 2017, incoming National Security Advisor Michael Flynn falsely denied to the Vice President, other administration officials, and FBI agents that he had talked to Russian Ambassador Sergey Kislyak about Russia's response to U.S. sanctions on Russia for its election interference. On January 27, the day after the President was told that Flynn had lied to the Vice President and had made similar statements to the FBI, the President invited FBI Director Comey to a private dinner at the White House and told Comey that he needed loyalty. On February 14, the day after the President requested Flynn's resignation, the President told an outside advisor, "Now that we fired Flynn, the Russia thing is over." The advisor disagreed and said the investigations would continue.

Later that afternoon, the President cleared the Oval Office to have a one-on-one meeting with Comey. Referring to the FBI's investigation of Flynn, the President said, "I hope you can see your way clear to letting this go, to letting Flynn go. He is a good guy. I hope you can let this go." Shortly after requesting Flynn's resignation and speaking privately to Comey, the President sought to have Deputy National Security Advisor K.T. McFarland draft an internal letter stating that the President had not directed Flynn to discuss sanctions with Kislyak. McFarland declined because she did not know whether that was true, and a White House Counsel's Office attorney thought that the request would look like a quid pro quo for an ambassadorship she had been offered.

***The President's reaction to the continuing Russia investigation.*** In February 2017, Attorney General Jeff Sessions began to assess whether he had to recuse himself from campaign-related investigations because of his role in the Trump Campaign. In early March, the President told White House Counsel Donald McGahn to stop Sessions from recusing. And after Sessions announced his recusal on March 2, the President expressed anger at the decision and told advisors that he should have an Attorney General who would protect him. That weekend, the President took Sessions aside at an event and urged him to "unrecuse." Later in March, Comey publicly

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have the Special Counsel removed in June 2017 and that McGahn had threatened to resign rather than carry out the order. The President reacted to the news stories by directing White House officials to tell McGahn to dispute the story and create a record stating he had not been ordered to have the Special Counsel removed. McGahn told those officials that the media reports were accurate in stating that the President had directed McGahn to have the Special Counsel removed. The President then met with McGahn in the Oval Office and again pressured him to deny the reports. In the same meeting, the President also asked McGahn why he had told the Special Counsel about the President's effort to remove the Special Counsel and why McGahn took notes of his conversations with the President. McGahn refused to back away from what he remembered happening and perceived the President to be testing his mettle.

**Conduct towards Flynn, Manafort, and [REDACTED]**. After Flynn withdrew from a joint defense agreement with the President and began cooperating with the government, the President's personal counsel left a message for Flynn's attorneys reminding them of the President's warm feelings towards Flynn, which he said "still remains," and asking for a "heads up" if Flynn knew "information that implicates the President." When Flynn's counsel reiterated that Flynn could no longer share information pursuant to a joint defense agreement, the President's personal counsel said he would make sure that the President knew that Flynn's actions reflected "hostility" towards the President. During Manafort's prosecution and when the jury in his criminal trial was deliberating, the President praised Manafort in public, said that Manafort was being treated unfairly, and declined to rule out a pardon. After Manafort was convicted, the President called Manafort "a brave man" for refusing to "break" and said that "flipping" "almost ought to be outlawed." **Harm to Ongoing Matter**

**Conduct involving Michael Cohen.** The President's conduct towards Michael Cohen, a former Trump Organization executive, changed from praise for Cohen when he falsely minimized the President's involvement in the Trump Tower Moscow project, to castigation of Cohen when he became a cooperating witness. From September 2015 to June 2016, Cohen had pursued the Trump Tower Moscow project on behalf of the Trump Organization and had briefed candidate Trump on the project numerous times, including discussing whether Trump should travel to Russia to advance the deal. In 2017, Cohen provided false testimony to Congress about the project, including stating that he had only briefed Trump on the project three times and never discussed travel to Russia with him, in an effort to adhere to a "party line" that Cohen said was developed to minimize the President's connections to Russia. While preparing for his congressional testimony, Cohen had extensive discussions with the President's personal counsel, who, according to Cohen, said that Cohen should "stay on message" and not contradict the President. After the FBI searched Cohen's home and office in April 2018, the President publicly asserted that Cohen would not "flip," contacted him directly to tell him to "stay strong," and privately passed messages of support to him. Cohen also discussed pardons with the President's personal counsel and believed that if he stayed on message he would be taken care of. But after Cohen began cooperating with the government in the summer of 2018, the President publicly criticized him, called him a "rat," and suggested that his family members had committed crimes.

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## II. FACTUAL RESULTS OF THE OBSTRUCTION INVESTIGATION

This section of the report details the evidence we obtained. We first provide an overview of how Russia became an issue in the 2016 presidential campaign, and how candidate Trump responded. We then turn to the key events that we investigated: the President's conduct concerning the FBI investigation of Michael Flynn; the President's reaction to public confirmation of the FBI's Russia investigation; events leading up to and surrounding the termination of FBI Director Comey; efforts to terminate the Special Counsel; efforts to curtail the scope of the Special Counsel's investigation; efforts to prevent disclosure of information about the June 9, 2016 Trump Tower meeting between Russians and senior campaign officials; efforts to have the Attorney General unrecuse; and conduct towards McGahn, Cohen, and other witnesses.

We summarize the evidence we found and then analyze it by reference to the three statutory obstruction-of-justice elements: obstructive act, nexus to a proceeding, and intent. We focus on elements because, by regulation, the Special Counsel has "jurisdiction . . . to investigate . . . federal crimes committed in the course of, and with intent to interfere with, the Special Counsel's investigation, such as perjury, obstruction of justice, destruction of evidence, and intimidation of witnesses." 28 C.F.R. § 600.4(a). Consistent with our jurisdiction to investigate federal obstruction crimes, we gathered evidence that is relevant to the elements of those crimes and analyzed them within an elements framework—while refraining from reaching ultimate conclusions about whether crimes were committed, for the reasons explained above. This section also does not address legal and constitutional defenses raised by counsel for the President; those defenses are analyzed in Volume II, Section III, *infra*.

### A. The Campaign's Response to Reports About Russian Support for Trump

During the 2016 campaign, the media raised questions about a possible connection between the Trump Campaign and Russia.<sup>7</sup> The questions intensified after WikiLeaks released politically damaging Democratic Party emails that were reported to have been hacked by Russia. Trump responded to questions about possible connections to Russia by denying any business involvement in Russia—even though the Trump Organization had pursued a business project in Russia as late as June 2016. Trump also expressed skepticism that Russia had hacked the emails at the same time as he and other Campaign advisors privately sought information from ██████████ about any further planned WikiLeaks releases. After the election, when questions persisted about possible links between Russia and the Trump Campaign, the President-Elect continued to deny any connections to Russia and privately expressed concerns that reports of Russian election interference might lead the public to question the legitimacy of his election.<sup>8</sup>

<sup>7</sup> This section summarizes and cites various news stories not for the truth of the information contained in the stories, but rather to place candidate Trump's response to those stories in context. Volume I of this report analyzes the underlying facts of several relevant events that were reported on by the media during the campaign.

<sup>8</sup> As discussed in Volume I, while the investigation identified numerous links between individuals with ties to the Russian government and individuals associated with the Trump Campaign, the evidence was not sufficient to charge that any member of the Trump Campaign conspired or coordinated with representatives of the Russian government to interfere in the 2016 election.

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## 2. The Trump Campaign Reacts to WikiLeaks's Release of Hacked Emails

On June 14, 2016, a cybersecurity firm that had conducted in-house analysis for the Democratic National Committee (DNC) posted an announcement that Russian government hackers had infiltrated the DNC's computer and obtained access to documents.<sup>19</sup>

On July 22, 2016, the day before the Democratic National Convention, WikiLeaks posted thousands of hacked DNC documents revealing sensitive internal deliberations.<sup>20</sup> Soon thereafter, Hillary Clinton's campaign manager publicly contended that Russia had hacked the DNC emails and arranged their release in order to help candidate Trump.<sup>21</sup> On July 26, 2016, the New York Times reported that U.S. "intelligence agencies ha[d] told the White House they now have 'high confidence' that the Russian government was behind the theft of emails and documents from the Democratic National Committee."<sup>22</sup>

Within the Trump Campaign, aides reacted with enthusiasm to reports of the hacks.<sup>23</sup> **Harm to Ongoing Matter** discussed with Campaign officials that WikiLeaks would release the hacked material.<sup>24</sup> Some witnesses said that Trump himself discussed the possibility of upcoming releases **HOM**. Michael Cohen, then-executive vice president of the Trump Organization and special counsel to Trump, recalled hearing **Harm to Ongoing Matter**

<sup>25</sup> Cohen recalled that Trump responded, "oh good, alright,"

<sup>18</sup> Josh Rogin, *Trump campaign guts GOP's anti-Russia stance on Ukraine*, Washington Post, Opinions (July 18, 2016). The Republican Platform events are described in Volume I, Section IV.A.6, *supra*.

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and **Harm to Ongoing Matter**.<sup>26</sup> Manafort said that shortly after WikiLeaks's July 22, 2016 release of hacked documents, he spoke to Trump **Harm to Ongoing Matter**; Manafort recalled that Trump responded that Manafort should **HOM** keep Trump updated.<sup>27</sup> Deputy campaign manager Rick Gates said that Manafort was getting pressure about **HOM** information and that Manafort instructed Gates **HOM** status updates on upcoming releases.<sup>28</sup> Around the same time, Gates was with Trump on a trip to an airport **HOM**, and shortly after the call ended, Trump told Gates that more releases of damaging information would be coming.<sup>29</sup> **Harm to Ongoing Matter** were discussed within the Campaign,<sup>30</sup> and in the summer of 2016, the Campaign was planning a communications strategy based on the possible release of Clinton emails by WikiLeaks.<sup>31</sup>

### 3. The Trump Campaign Reacts to Allegations That Russia was Seeking to Aid Candidate Trump

In the days that followed WikiLeaks's July 22, 2016 release of hacked DNC emails, the Trump Campaign publicly rejected suggestions that Russia was seeking to aid candidate Trump. On July 26, 2016, Trump tweeted that it was "[c]razy" to suggest that Russia was "dealing with Trump"<sup>32</sup> and that "[f]or the record," he had "ZERO investments in Russia."<sup>33</sup>

In a press conference the next day, July 27, 2016, Trump characterized "this whole thing with Russia" as "a total deflection" and stated that it was "farfetched" and "ridiculous."<sup>34</sup> Trump said that the assertion that Russia had hacked the emails was unproven, but stated that it would give him "no pause" if Russia had Clinton's emails.<sup>35</sup> Trump added, "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

President's activities, and his own criminal conduct, is described in Volume II, Section II.K, *infra*, and in Volume I, Section IV.A.1, *supra*.

<sup>26</sup> Cohen 8/7/18 302, at 8.

<sup>27</sup> **Grand Jury**. As explained in footnote 197 of Volume I, Section III.D.1.b, *supra*, this Office has included Manafort's account of these events because it aligns with those of other witnesses and is corroborated to that extent.

<sup>28</sup> Gates 10/25/18 302, at 4.

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<sup>32</sup> @realDonaldTrump 7/26/16 (6:47 p.m. ET) Tweet.

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General to find out whether the White House or the President was being investigated, although it is not clear whether the President knew at that time of the FBI's recent request concerning Flynn.<sup>306</sup>

2. FBI Director Comey Publicly Confirms the Existence of the Russia Investigation in Testimony Before HPSCI

On March 9, 2017, Comey briefed the "Gang of Eight" congressional leaders about the FBI's investigation of Russian interference, including an identification of the principal U.S. subjects of the investigation.<sup>307</sup> Although it is unclear whether the President knew of that briefing at the time, notes taken by Annie Donaldson, then McGahn's chief of staff, on March 12, 2017, state, "POTUS in panic/chaos . . . Need binders to put in front of POTUS. (1) All things related to Russia."<sup>308</sup> The week after Comey's briefing, the White House Counsel's Office was in contact with SSCI Chairman Senator Richard Burr about the Russia investigations and appears to have received information about the status of the FBI investigation.<sup>309</sup>

On March 20, 2017, Comey was scheduled to testify before HPSCI.<sup>310</sup> In advance of Comey's testimony, congressional officials made clear that they wanted Comey to provide information about the ongoing FBI investigation.<sup>311</sup> Dana Boente, who at that time was the Acting Attorney General for the Russia investigation, authorized Comey to confirm the existence of the Russia investigation and agreed that Comey should decline to comment on whether any particular individuals, including the President, were being investigated.<sup>312</sup>

<sup>306</sup> Donaldson 11/6/17 302, at 14; *see* SC\_AD\_000168 (Donaldson 3/6/17 Notes) ("POTUS wants to call Dana [then the Acting Attorney General for campaign-related investigations] / Is investigation / No / We know something on Flynn / GSA got contacted by FBI / There's something hot").

<sup>307</sup> Comey 11/15/17 302, at 13-14; SNS-Classified-0000140-44 (3/8/17 Email, Gauhar to Page et al.).

<sup>308</sup> SC\_AD\_00188 (Donaldson 3/12/18 Notes). Donaldson said she was not part of the conversation that led to these notes, and must have been told about it from others. Donaldson 11/6/17 302, at 13.

<sup>309</sup> Donaldson 11/6/17 302, at 14-15. On March 16, 2017, the White House Counsel's Office was briefed by Senator Burr on the existence of "4-5 targets." Donaldson 11/6/17 302, at 15. The "targets" were identified in notes taken by Donaldson as "Flynn (FBI was in—wrapping up)→DOJ looking for phone records"; "Comey→Manafort (Ukr + Russia, not campaign)"; **HOM** "Carter Page (\$ game)"; and "Greek Guy" (potentially referring to George Papadopoulos, later charged with violating 18 U.S.C. § 1001 for lying to the FBI). SC\_AD\_00198 (Donaldson 3/16/17 Notes). Donaldson and McGahn both said they believed these were targets of SSCI. Donaldson 11/6/17 302, at 15; McGahn 12/12/17 302, at 4. But SSCI does not formally investigate individuals as "targets"; the notes on their face reference the FBI, the Department of Justice, and Comey; and the notes track the background materials prepared by the FBI for Comey's briefing to the Gang of 8 on March 9. *See* SNS-Classified-0000140-44 (3/8/17 Email, Gauhar to Page et al.); *see also* Donaldson 11/6/17 302, at 15 (Donaldson could not rule out that Burr had told McGahn those individuals were the FBI's targets).

<sup>310</sup> *Hearing on Russian Election Tampering Before the House Permanent Select Intelligence Committee*, 115th Cong. (Mar. 20, 2017).

<sup>311</sup> Comey 11/15/17 302, at 16; McCabe 8/17/17, at 15; McGahn 12/14/17 302, at 1.

<sup>312</sup> Boente 1/31/18 302, at 5; Comey 11/15/17 302, at 16-17.

General to find out whether the White House or the President was being investigated, although it is not clear whether the President knew at that time of the FBI's recent request concerning Flynn.<sup>306</sup>

2. FBI Director Comey Publicly Confirms the Existence of the Russia Investigation in Testimony Before HPSCI

On March 9, 2017, Comey briefed the "Gang of Eight" congressional leaders about the FBI's investigation of Russian interference, including an identification of the principal U.S. subjects of the investigation.<sup>307</sup> Although it is unclear whether the President knew of that briefing at the time, notes taken by Annie Donaldson, then McGahn's chief of staff, on March 12, 2017, state, "POTUS in panic/chaos . . . Need binders to put in front of POTUS. (1) All things related to Russia."<sup>308</sup> The week after Comey's briefing, the White House Counsel's Office was in contact with SSCI Chairman Senator Richard Burr about the Russia investigations and appears to have received information about the status of the FBI investigation.<sup>309</sup>

On March 20, 2017, Comey was scheduled to testify before HPSCI.<sup>310</sup> In advance of Comey's testimony, congressional officials made clear that they wanted Comey to provide information about the ongoing FBI investigation.<sup>311</sup> Dana Boente, who at that time was the Acting Attorney General for the Russia investigation, authorized Comey to confirm the existence of the Russia investigation and agreed that Comey should decline to comment on whether any particular individuals, including the President, were being investigated.<sup>312</sup>

<sup>306</sup> Donaldson 11/6/17 302, at 14; *see* SC\_AD\_000168 (Donaldson 3/6/17 Notes) ("POTUS wants to call Dana [then the Acting Attorney General for campaign-related investigations] / Is investigation / No / We know something on Flynn / GSA got contacted by FBI / There's something hot").

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<sup>310</sup> *Hearing on Russian Election Tampering Before the House Permanent Select Intelligence Committee*, 115th Cong. (Mar. 20, 2017).

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<sup>312</sup> Boente 1/31/18 302, at 5; Comey 11/15/17 302, at 16-17.

was pursuing the proposed Trump Tower Moscow project through June 2016 and candidate Trump was repeatedly briefed on the progress of those efforts.<sup>498</sup> In addition, some witnesses said that Trump was aware that **Harm to Ongoing Matter** at a time when public reports stated that Russian intelligence officials were behind the hacks, and that Trump privately sought information about future WikiLeaks releases.<sup>499</sup> More broadly, multiple witnesses described the President's preoccupation with press coverage of the Russia investigation and his persistent concern that it raised questions about the legitimacy of his election.<sup>500</sup>

Finally, the President and White House aides initially advanced a pretextual reason to the press and the public for Comey's termination. In the immediate aftermath of the firing, the President dictated a press statement suggesting that he had acted based on the DOJ recommendations, and White House press officials repeated that story. But the President had decided to fire Comey before the White House solicited those recommendations. Although the President ultimately acknowledged that he was going to fire Comey regardless of the Department of Justice's recommendations, he did so only after DOJ officials made clear to him that they would resist the White House's suggestion that they had prompted the process that led to Comey's termination. The initial reliance on a pretextual justification could support an inference that the President had concerns about providing the real reason for the firing, although the evidence does not resolve whether those concerns were personal, political, or both.

#### E. The President's Efforts to Remove the Special Counsel

##### Overview

The Acting Attorney General appointed a Special Counsel on May 17, 2017, prompting the President to state that it was the end of his presidency and that Attorney General Sessions had failed to protect him and should resign. Sessions submitted his resignation, which the President ultimately did not accept. The President told senior advisors that the Special Counsel had conflicts of interest, but they responded that those claims were "ridiculous" and posed no obstacle to the Special Counsel's service. Department of Justice ethics officials similarly cleared the Special Counsel's service. On June 14, 2017, the press reported that the President was being personally investigated for obstruction of justice and the President responded with a series of tweets

<sup>498</sup> See Volume II, Section II.K.1, *infra*.

<sup>499</sup> See Volume I, Section III.D.1, *supra*.

<sup>500</sup> In addition to whether the President had a motive related to Russia-related matters that an FBI investigation could uncover, we considered whether the President's intent in firing Comey was connected to other conduct that could come to light as a result of the FBI's Russian-interference investigation. In particular, Michael Cohen was a potential subject of investigation because of his pursuit of the Trump Tower Moscow project and involvement in other activities. And facts uncovered in the Russia investigation, which our Office referred to the U.S. Attorney's Office for the Southern District of New York, ultimately led to the conviction of Cohen in the Southern District of New York for campaign-finance offenses related to payments he said he made at the direction of the President. See Volume II, Section II.K.5, *infra*. The investigation, however, did not establish that when the President fired Comey, he was considering the possibility that the FBI's investigation would uncover these payments or that the President's intent in firing Comey was otherwise connected to a concern about these matters coming to light.

was pursuing the proposed Trump Tower Moscow project through June 2016 and candidate Trump was repeatedly briefed on the progress of those efforts.<sup>498</sup> In addition, some witnesses said that Trump was aware that **Roger Stone was pursuing information about hacked documents from WikiLeaks** at a time when public reports stated that Russian intelligence officials were behind the hacks, and that Trump privately sought information about future WikiLeaks releases.<sup>499</sup> More broadly, multiple witnesses described the President's preoccupation with press coverage of the Russia investigation and his persistent concern that it raised questions about the legitimacy of his election.<sup>500</sup>

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

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

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

## J. The President’s Conduct Towards Flynn, Manafort, **HOM**

### *Overview*

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

### *Evidence*

#### 1. Conduct Directed at Michael Flynn

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

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## J. The President’s Conduct Towards Flynn, Manafort, **and Stone**

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In addition to the interactions with McGahn described above, the President has taken other actions directed at possible witnesses in the Special Counsel’s investigation, including Flynn, Manafort, **Stone**, and as described in the next section, Cohen. When Flynn withdrew from a joint defense agreement with the President, the President’s personal counsel stated that Flynn’s actions would be viewed as reflecting “hostility” towards the President. During Manafort’s prosecution and while the jury was deliberating, the President repeatedly stated that Manafort was being treated unfairly and made it known that Manafort could receive a pardon. **And the President commended Stone for having the “guts” to say that he would not testify against the President.**

### *Evidence*

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

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

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

### 3. Harm to Ongoing Matter

**Harm to Ongoing Matter**

**HOM**<sup>891</sup> Harm to Ongoing Matter  
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<sup>887</sup> Stephen Collinson, *Trump appears consumed by Mueller investigation as details emerge*, CNN (Nov. 29, 2018).

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

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

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

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### 3. Conduct Directed at Roger Stone

In the second half of 2018, the media reported that Roger Stone said he expected to be charged with crimes in the Special Counsel investigation.<sup>891</sup> In press interviews, Stone repeatedly asserted that he would not testify against the President.<sup>892</sup> On August 30, 2018, for example, Stone said that he anticipated he would be “pressure[d] . . . to testify against the president” and he was “not going to do it.”<sup>893</sup>

On November 20, 2018, the President submitted written answers to questions that had been provided by the Special Counsel’s Office, and the President’s legal team announced that he had done so.<sup>894</sup> Several questions addressed the President’s communications with Stone during the

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

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

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

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<sup>891</sup> See, e.g., Ken Dilanian, *Ex-Trump advisor Roger Stone says he expects Mueller to charge him with a crime*, NBC (Aug. 30, 2018).

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<sup>894</sup> 11/20/18 Letter, President’s Personal Counsel to Special Counsel’s Office (transmitting written responses of Donald J. Trump); Jordan Fabian, *Trump submits written answers to Mueller*, Hill (Nov. 20,

Harm to Ongoing Matter

<sup>95</sup> Harm to Ongoing Matter

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<sup>897</sup> Harm to Ongoing Matter

<sup>898</sup> Harm to Ongoing Matter

<sup>899</sup> Harm to Ongoing Matter

campaign, including “Did Mr. Stone ever discuss WikiLeaks with you or, as far as you were aware, with anyone else associated with the campaign?” and “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?”<sup>895</sup> In his written answers, the President stated: “I spoke by telephone with Roger Stone from time to time during the campaign. I have no recollection of the specifics of any conversations I had with Mr. Stone between June 1, 2016 and November 8, 2016. I do not recall discussing WikiLeaks with him, nor do I recall being aware of Mr. Stone having discussed WikiLeaks with individuals associated with my campaign, although I was aware that WikiLeaks was the subject of media reporting and campaign-related discussion at the time.”<sup>896</sup>

As described in Volume I, Section III.D.1, *supra*, and Volume II, Section II.A, *supra*, several witnesses said that candidate Trump was told during the campaign that Stone had access to WikiLeaks and could provide information about planned releases of damaging material related to Hillary Clinton before those releases occurred. Cohen recalled a conversation in which Roger Stone told Trump that WikiLeaks planned to release information soon, and Manafort recalled that Trump had asked him to stay in touch with Stone about WikiLeaks. Witnesses also said that Stone’s connection to WikiLeaks was common knowledge within the Campaign.

As described above, in an interview on November 28, 2018, one week after submitting his written answers, the President criticized “flipping” and said that Stone (along with Manafort and Corsi) was “very brave” in indicating he would not cooperate with prosecutors.<sup>897</sup> On December 2, 2018, Stone told the press that there was “no circumstance” under which he would “testify against the president.”<sup>898</sup> He also said he had had no discussions about a pardon.<sup>899</sup> On December 3, 2018, the President tweeted, “I will never testify against Trump.” This statement was recently made by Roger Stone, essentially stating that he will not be forced by a rogue and out of control

2018) (quoting the President’s personal counsel as saying the President’s answers cover “issues regarding the Russia-related topics of the inquiry”).

<sup>895</sup> 9/17/18 Letter, Special Counsel’s Office to President’s Personal Counsel (providing written questions).

<sup>896</sup> Written Responses of Donald J. Trump (Nov. 20, 2018), at 13-14 (Response to Question II, Part (g)).

<sup>897</sup> Marisa Schultz & Nikki Schwab, *New York Post Oval Office Interview with President Trump: Trump says pardon for Paul Manafort still a possibility*, *New York Post* (Nov. 28, 2018).

<sup>898</sup> George Stephanopoulos, *‘This Week’ Transcript 12-2-18: James Baker, Colin Powell, Rep. Adam Schiff and Roger Stone*, ABC (Dec. 2, 2018).

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prosecutor to make up lies and stories about 'President Trump.' Nice to know that some people still have 'guts!'"<sup>900</sup>

On January 24, 2019, a grand jury indicted Stone on charges of obstruction, witness tampering, and making false statements.<sup>901</sup> One of the counts charged Stone with violating 18 U.S.C. § 1001 for testifying falsely in Congress that he had never told anyone involved in the Trump Campaign about discussions he was having during the campaign with an individual who acted as an intermediary between him and Assange.<sup>902</sup> After making an initial court appearance on January 25, 2019, Stone told reporters, "There is no circumstance whatsoever under which I will bear false witness against the president, nor will I make up lies to ease the pressure on myself. . . . I will not testify against the President, because I would have to bear false witness."<sup>903</sup>

That evening, Stone appeared on Fox News and indicated he had knowledge of the President's answers to this Office's written questions. When asked if he had spoken to the President about the allegation that he had lied to Congress, Stone said, "I have not" and added, "When the President answered the written interrogatories, he correctly and honestly said Roger Stone and I never discussed this and we never did."<sup>904</sup>

The next day, January 26, 2019, the President tweeted, "If Roger Stone was indicted for lying to Congress, what about the lying done by Comey . . . and soooo many others?"<sup>905</sup> On January 31, 2019, the President criticized the execution of the search and arrest warrants for Stone, saying "I think that was a very sad thing for this country" and "I like Roger."<sup>906</sup> On February 3, 2019, the President said in an interview, "Roger is somebody that I've always liked."<sup>907</sup> When asked whether he would pardon Stone, the President said, "I have not thought about it. It looks like he's defending himself very well. But you have to get rid of the Russia witch hunt because it is indeed."<sup>908</sup>

<sup>900</sup> @realDonaldTrump 12/3/18 (10:48 a.m. ET) Tweet.

<sup>901</sup> Indictment, *United States v. Roger Jason Stone, Jr.*, 1:19-cr-18 (D.D.C. Jan. 24, 2019), Doc. 1 (Stone Indictment).

<sup>902</sup> Stone Indictment ¶¶ 35, 43. Stone had testified before Congress on September 26, 2017, and was asked, "Did you discuss your conversations with the intermediary with anyone involved in the Trump campaign?" Stone responded, "I did not." Executive Session, Permanent Select Committee on Intelligence, U.S. House of Representatives, Interview of Roger J. Stone, Jr. (Sept. 26, 2017), at 102.

<sup>903</sup> Devlin Barrett et al., *Longtime Trump adviser Roger Stone indicted by special counsel in Russia investigation*, Washington Post (Jan. 25, 2019).

<sup>904</sup> *Former Trump 2016 Presidential Campaign Aide Roger Stone Interviewed on Fox News*, CQ Newsmaker Transcripts, at 5 (Jan. 25, 2019).

<sup>905</sup> @realDonaldTrump 1/26/19 (8:42 a.m. ET) Tweet.

<sup>906</sup> Peter Baker et al., *Excerpts From Trump's Interview With The New York Times*, New York Times (Feb. 1, 2019).

<sup>907</sup> *Face the Nation interview with President Trump*, CBS (Feb. 3, 2019).

<sup>908</sup> *Face the Nation interview with President Trump*, CBS (Feb. 3, 2019).

### *Analysis*

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

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

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

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

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

### *Analysis*

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

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

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

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

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

**Harm to Ongoing Matter**

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

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

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

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Finally, there is evidence that the President's actions towards Stone had the potential to affect a decision about cooperating with the government. After Stone publicly announced that he would never provide evidence against the President's interests, the President called Stone "very brave" and said he had "guts!" for not "testify[ing] against Trump."

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

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

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

#### Harm to Ongoing Matter



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With regard to the President's conduct towards Stone, there is evidence that the President intended to reinforce Stone's public statements that he would not cooperate with the government when the President likely understood that Stone could potentially provide evidence that would be adverse to the President. By late November 2018, the President had provided written answers to the Special Counsel's Office in which the President said he did not recall "the specifics of any call [he] had" with Stone during the campaign period and did not recall discussing WikiLeaks with Stone. Witnesses have stated, however, that candidate Trump discussed WikiLeaks with Stone, that Trump knew that Manafort and Gates had asked Stone to find out what other damaging information about Clinton WikiLeaks possessed, and that Stone's claimed connection to WikiLeaks was common knowledge within the Campaign. It is possible that, by the time the President submitted his written answers two years after the relevant events had occurred, he no longer had clear recollections of his discussions with Stone or his knowledge of Stone's asserted communications with WikiLeaks. But the President's conduct could also be viewed as reflecting his awareness that Stone could provide evidence that would run counter to the President's denials and would link the President to Stone's efforts to reach out to WikiLeaks. On November 28, 2018, eight days after the President submitted his written answers to the Special Counsel, the President criticized "flipping" and said that Stone was "very brave" for not cooperating with prosecutors. Five days later, on December 3, 2018, the President applauded Stone for having the "guts" not to testify against him. These statements, as well as those complimenting Stone and Manafort while disparaging Michael Cohen once Cohen chose to cooperate, support the inference that the President intended to communicate a message that witnesses could be rewarded for refusing to provide testimony adverse to the President and disparaged if they chose to cooperate.

the decision.<sup>1057</sup> The Office also again asked for the timing of the President's discussions with Cohen about Trump Tower Moscow and asked him to specify "what period of the campaign" he was involved in discussions concerning the project.<sup>1058</sup> In response, the President's personal counsel declined to provide additional information from the President and stated that "the President has fully answered the questions at issue."<sup>1059</sup>

In the weeks following Cohen's plea and agreement to provide assistance to this Office, the President repeatedly implied that Cohen's family members were guilty of crimes. On December 3, 2018, after Cohen had filed his sentencing memorandum, the President tweeted, "Michael Cohen asks judge for no Prison Time.' You mean he can do all of the TERRIBLE, unrelated to Trump, things having to do with fraud, big loans, Taxis, etc., and not serve a long prison term? He makes up stories to get a GREAT & ALREADY reduced deal for himself, and get his wife and father-in-law (who has the money?) off Scott Free. He lied for this outcome and should, in my opinion, serve a full and complete sentence."<sup>1060</sup> Harm to Ongoing Matter



On December 12, 2018, Cohen was sentenced to three years of imprisonment.<sup>1062</sup> The next day, the President sent a series of tweets that said:

I never directed Michael Cohen to break the law. . . . Those charges were just agreed to by him in order to embarrass the president and get a much reduced prison sentence, which he did—including the fact that *his family was temporarily let off the hook*. As a lawyer, Michael has great liability to me!<sup>1063</sup>

On December 16, 2018, the President tweeted, "Remember, Michael Cohen only became a 'Rat' after the FBI did something which was absolutely unthinkable & unheard of until the Witch Hunt was illegally started. They BROKE INTO AN ATTORNEY'S OFFICE! Why didn't they break into the DNC to get the Server, or Crooked's office?"<sup>1064</sup>

In January 2019, after the media reported that Cohen would provide public testimony in a congressional hearing, the President made additional public comments suggesting that Cohen's

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<sup>1060</sup> @realDonaldTrump 12/3/18 (10:24 a.m. ET and 10:29 a.m. ET) Tweets (emphasis added).  
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