

MANAFORT WAS PURSUING A UKRAINIAN “PEACE” DEAL WELL AFTER HE WAS CHARGED FOR LYING ABOUT BEING AN AGENT OF UKRAINE

The exhibits in Mueller’s latest filing make it clear that Paul Manafort was still trying to pitch a “peace” deal for Ukraine as recently as May 2018 – at a time when he was making undisclosed ongoing attempts to reach out to the White House.

WILLIAM BARR FALSELY DENIES HIS MUELLER MEMO MAKES THE CASE FOR IMPEACHMENT

William Barr has released his opening statement for his confirmation hearing tomorrow. While it surely is tailored to address the biggest concerns about his nomination, there’s a lot to like about it.

He suggests he’s not as big of a hawk on criminal justice as he used to be. He emphasizes the need to protect the right to vote. He seems to suggest a concern about rising hate crimes.

And – as most outlets have focused on – he affirms the importance of Robert Mueller finishing his work and being able to publish his findings.

First, I believe it is vitally important that the Special Counsel be allowed to complete his investigation. I have known Bob Mueller personally and professionally for 30 years. We worked closely together throughout my previous tenure at the Department of Justice under President Bush. We've been friends since. I have the utmost respect for Bob and his distinguished record of public service. When he was named special counsel, I said that his selection was "good news" and that, knowing him, I had confidence he would handle the matter properly. I still have that confidence today.

Given his public actions to date, I expect that the Special Counsel is well along in his investigation. At the same time, the President has been steadfast that he was not involved in any collusion with Russian interference in the election. I believe it is in the best interest of everyone – the President, Congress, and, most importantly, the American people – that this matter be resolved by allowing the Special Counsel to complete his work. The country needs a credible resolution of these issues. If confirmed, I will not permit partisan politics, personal interests, or any other improper consideration to interfere with this or any other investigation. I will follow the Special Counsel regulations scrupulously and in good faith, and on my watch, Bob will be allowed to complete his work.

Second, I also believe it is very important that the public and Congress be informed of the results of the Special Counsel's work. For that reason, my goal will be to provide as much transparency as I can consistent with the law. I can assure you that, where

judgments are to be made by me, I will make those judgments based solely on the law and will let no personal, political, or other improper interests influence my decision.

I'm most interested, however, in the way that Barr addresses the memo on the Mueller investigation he wrote last year. In comments also surely designed to reassure Democrats, Barr claims that the memo only addressed one theory of obstruction.

I would like to briefly address the memorandum that I wrote last June. I wrote the memo as a former Attorney General who has often weighed in on legal issues of public importance, and I distributed it broadly so that other lawyers would have the benefit of my views. As I explained in a recent letter to Ranking Member Feinstein, my memo was narrow in scope, explaining my thinking on a specific obstruction-of-justice theory under a single statute that I thought, based on media reports, the Special Counsel might be considering. The memo did not address – or in any way question – the Special Counsel's core investigation into Russian interference in the 2016 election. Nor did it address other potential obstruction-of-justice theories or argue, as some have erroneously suggested, that a President can never obstruct justice. I wrote it myself, on my own initiative, without assistance, and based solely on public information.

The claim that that's what he addressed – which I correctly unpacked here – is important because, as Jack Goldsmith has since laid out, Barr's views on that theory of obstruction fit solidly within OLC precedent.

Yet Barr makes a false claim in that paragraph:

that his memo “did [not] address other potential obstruction-of-justice theories.” Indeed, before he finishes his first page, he addresses another potential obstruction-of-justice theory:

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.

It’s right there, on the bottom of his first page, another potential obstruction of justice theory.

As if his reference to Nixon and Clinton didn’t already make it clear, the rest of his memo describes that the proper remedy when the President engages in such crimes is impeachment.

And, as I have laid out, the public evidence (even before recent disclosures about how the FBI worried that Trump was literally taking orders from Russian when he fired Comey) provides strong circumstantial evidence that Trump attempted to impair the integrity and availability of evidence to the FBI, possibly

including suborning perjury from Mike Flynn.

While Barr doesn't presume to dictate whether Congress must judge such behavior adequate to sustain impeachment, he certainly sees it as an adequate basis for impeachment.

Which is why I find his statement troubling. He's not only placating Democrats with this statement (and opposing any possibility that the President can be charged for criminal acts). He's also backing off the clear implication of his memo, that if Trump engaged in witness tampering, it would be improper.

All that's separate from the wisdom and ethics of writing 19 pages, as he did, on a theory based off a really skewed understanding of the evidence, or accepting a job after having done so in the scope of job considerations.

To be sure, if Barr really intends to let Mueller finish and ensure the right to vote, he may be the best Attorney General candidate we're likely to get from Trump. But he still needs to be asked whether he backs the implications of his memo, which actually back impeachment.

Update: This is fairly batshit. In a letter to Lindsey Graham dated yesterday – the same day Barr released opening statements that say “Nor did [his memo] address other potential obstruction-of-justice theories,” he said that his entire memo was a different theory of obstruction of justice.

The principal conclusion of my memo is that the actions prohibited by section 1512(c) are, generally speaking, the hiding, withholding, destroying, or altering of evidence – in other words, acts that impair the availability or integrity of evidence in a proceeding. The memorandum did not suggest that a President can never obstruct justice. Quite the contrary, it expressed my belief that a President, just like anyone else, can obstruct justice if he or she engages in wrongful actions that

impair the availability of evidence. Nor did the memorandum claim, as some have incorrectly suggested, that a President can never obstruct justice whenever he or she is exercising a constitutional function. If a President, acting with the requisite intent, engages in the kind of evidence impairment the statute prohibits – regardless whether it involves the exercise of his or her constitutional powers or not – then a President commits obstruction of justice under the statute. It is as simple as that.

As I disclosed last July, I provided information to the FBI on issues related to the Mueller investigation, so I'm going to include disclosure statements on Mueller investigation posts from here on out. I will include the disclosure whether or not the stuff I shared with the FBI pertains to the subject of the post.

THE SUPREME COURT HAS ALREADY AGREED THAT THE MYSTERY APPELLANT CAUSED A “DIRECT EFFECT” IN THE UNITED STATES

Assuming the Mystery Appellant really did challenge a Mueller subpoena, that means the Supreme Court has already agreed with a Mueller argument that a company owned by a foreign

TRUMP'S "OFFICIAL ACTS" TO PAY OFF A RUSSIAN BRIBE SHOULD MAKE IMPEACHMENT A LEGAL ISSUE, NOT JUST A POLITICAL ONE

Since Rashida Tlaib raised the stakes on impeaching Trump, both sides have treated impeachment as a political question. But if Mueller names Trump in a bribery conspiracy, it may make it clearer that it is also a legal one.

PAUL MANAFORT'S ONGOING CONSPIRACY WITH SUSPECTED RUSSIAN AGENT KONSTANTIN KILIMNIK

It doesn't actually help Paul Manafort's story much that he was sharing data with pro-Russian Ukrainian oligarchs rather than a Russian one.

OLEG DERIPASKA MET

SERGEI MILLIAN AT THE ST. PETERSBURG FORUM MICHAEL COHEN WOULD HAVE MET PUTIN

Oleg Deripaska met with Sergei Millian at the same St. Petersburg Forum where Michael Cohen would have negotiated a Trump Tower deal with Vladimir Putin.

MANAFORT CLAIMS HE CAN'T BE A WITNESS TO TRUMP'S CONSPIRACY WITH RUSSIA BECAUSE HE MANAGED THE CAMPAIGN

Manafort is excusing his forgetfulness about anything that might show a conspiracy between him, while he was campaign manager for the Trump campaign, and Kilimnik, by saying his activities as campaign manager prevent him from remembering conspiring with Kilimnik while working for the campaign.

MANAFORT'S REDACTION FAIL TELLS

TRUMP THAT MUELLER CAUGHT HIM LYING ABOUT HIS RUSSIAN HANDLER, KONSTANTIN KILIMNIK

Boy do I look stupid! This morning, I suggested that Robert Mueller had finally found a way to shut Paul Manafort up. Then I went away for a few hours, and come back to discover Manafort's filing on the lies he got caught telling about the information he shared with Konstantin Kilimnik. The redactions covering up details of that information-sharing are easily reversible, showing the following:

Manafort lied about three communications with Kilimnik

Two redactions in a section on Manafort's interactions with Kilimnik hide that he went to Madrid and listened to a Kilimnik pitch on a peace plan for Ukraine.

(See, e.g., Doc. 460 at 5 (After being shown documents, Mr. Manafort "conceded" that he discussed or may have discussed a Ukraine peace plan with Mr. Kilimnik on more than one occasion); id. at 6 (After being told that Mr. Kilimnik had traveled to Madrid on the same day that Mr. Manafort was in Madrid, Mr. Manafort "acknowledged" that he and Mr. Kilimnik met while they were both in Madrid)).

[snip]

In fact, during a proffer meeting held with the Special Counsel on September 11, 2018, Mr. Manafort explained to the Government attorneys and investigators

that he would have given the Ukrainian peace plan more thought, had the issue not been raised during the period he was engaged with work related to the presidential campaign. Issues and communications related to Ukrainian political events simply were not at the forefront of Mr. Manafort's mind during the period at issue and it is not surprising at all that Mr. Manafort was unable to recall specific details prior to having his recollection refreshed. The same is true with regard to the Government's allegation that Mr. Manafort lied about sharing polling data with Mr. Kilimnik related to the 2016 presidential campaign. (See Doc. 460 at 6).

He excuses this lie by saying that he was just so busy with the campaign that he didn't pay attention to the requests his Russian handler was making of him during the campaign.

Perhaps more damning still – given that the Russians were stealing Hillary's analytics well into September – is the revelation that Manafort shared polling data with Kilimnik, a lie about which Manafort offers no real excuse.

Update: I believe the filing means to say Manafort lied about three things:

- Sharing polling data from the campaign
- Discussing a Ukraine peace deal multiple times
- Meeting in Madrid

Only the first definitively happened in 2016; the confusion regarding the rest stems from Manafort's excuse that he forgot about it all because he was running a campaign. But a number of his other excuses are stupid so it wouldn't be surprising if this was.

Manafort claims his pattern of covering for Kilimnik doesn't amount to a pattern of covering for Kilimnik

Most remarkable, in a brief that addresses three lies about Konstantin Kilimnik and one about Tom Barrack (who is believed to have been in the loop on at least one of their meetings), Manafort's lawyers claim there's no pattern here.

Notably, there is no identifiable pattern to Mr. Manafort's purported misrepresentations – no specific individual or potential crime is identified in the Government's submission.

I guess, sure, you could say there's no pattern to the many other people he attempted to protect with his obstruction.

But it's clear that Kilimnik is a key one, especially given Manafort's embarrassing lawyer that in spite of Kilimnik's agreement to help him tamper with witnesses, he can't say that Kilimnik entered into a conspiracy with him.

Mr. Manafort was asked to agree that Mr. Kilimnik, too, possessed the requisite state of mind to legally establish his guilt. Mr. Manafort balked at this characterization, because he did not believe he could confirm what another person's internal thoughts or understandings were, i.e., another individual's state of mind.

Manafort doesn't much care that Mueller caught him lying

Manafort's lawyers don't offer much by way of explanation for his lies. They note he was being held in solitary, suffered from gout, and did not have an opportunity to review documents before telling these lies. But they concede that given the "good faith" standard on breaching the plea agreement they consented to, there's not much to argue about. So long as Mueller doesn't charge Manafort further, they won't contest the finding he breached the agreement, even while claiming the breach was not intentional.

Despite Mr. Manafort's position that he has not made intentional misstatements, he is not requesting a hearing on the breach issue. As discussed further below – given the highly deferential standard that applies to the Government's determination of a breach and the Government's stated intention to limit the effect of the breach determination to its advocacy at sentencing in this case¹ – Mr. Manafort suggests that any necessary factual determinations are better addressed as part of the presentencing report ("PSR") process.

¹ Based upon discussions occurring after the November 30 and December 11 hearings, the OSC has advised that the only remedies it currently plans to seek related to the alleged breach relate to its position regarding sentencing in this matter. Should the Government seek to bring additional charges or take any other adverse action beyond its sentencing position, the defendant reserves his right to challenge the Government's breach determination at that time.

Manafort demands to have more witness testimony before he'll respond to other details on his lies

In a section on how Tom Barrack paid him via a third party contractor – for what is not yet clear – Manafort suggests he can't respond because the government hasn't shared the witness statements of others alleging to the fact.

The Government has indicated that Mr. Manafort's statements about this payment are inconsistent with those of others, but the defense has not received any witness statements to support this contention.

Then, in a section rebutting his lies about whether or not he had contacts with the Trump Administration, he claims the two instances that Mueller raised don't really count. He again demands more witness statements.

The first alleged misstatement identified in the Special Counsel's submission (regarding a text exchange on May 26, 2018) related to a text message from a third-party asking permission to use Mr. Manafort's name as an introduction in the event the third-party met the President. This does not constitute outreach by Mr. Manafort to the President. The second example identified by the Special Counsel is hearsay purportedly offered by an undisclosed third party and the defense has not been provided with the statement (or any witness statements that form the basis for alleging intentional falsehoods).

Then, even as agreeing there's no need to have a breach hearing, Manafort asks for more witness statements again.

While a hearing regarding the Government's "good faith" in declaring a breach of the plea agreement is not necessary, to the extent that there are witness statements that the OSC contends demonstrate Mr. Manafort's intentional falsehoods, these should be produced to the defense. After having an opportunity to review such statements and any other documentary evidence, the defendant would then suggest that the issues be narrowed during the usual sentencing process in the parties' submissions to the U.S. Probation Office in the preparation of the PSR.

This mistaken non-redaction conveniently lets co-conspirators know what Mueller shared

I have no idea whether this non-redaction was a colossal mistake or whether this was a cute way to disclose what evidence Mueller has shared with Manafort (remember: these five lies were not the only ones that Manafort told; just the only ones that Mueller wanted to describe).

But even ignoring the redaction fail, the filing feels very contemptuous, as if they're still playing for a pardon.

Effectively, they're admitting their client maybe lied or just conveniently forgot to minimize his ongoing conspiracy with someone even Rick Gates has said has ties to Russian intelligence – the same Russian intelligence agency that hacked Democrats. But they don't think that's a big deal. They're just going to

double down on obtaining more information on the evidence Mueller has while they wait for the pardon.

Update: Per CNN, Manafort says this Madrid meeting was after the campaign. Okay. That makes the explanation all the more ridiculous. Took out references to the campaign accordingly.

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TRUMP'S 200 MILLION INAUGURATION VISITORS AND \$15 MILLION NET WORTH: THE SCALE OF HIS BORDER LIES

If Trump's two most famous lies were told on the same scale as his lies about terrorists coming across the southern border, he'd have had 200 million people at his inauguration but be worth only \$15 million.

ROBERT MUELLER

FINALLY FOUND A WAY TO GET PAUL MANAFORT TO KEEP A SECRET

Paul Manafort's failure to file an unsealed filing due yesterday may have as much to do with the reasons Mueller couldn't wait to obtain Roger Stone's House Intelligence transcripts last month as with any tardiness on his lawyers' part.