

THE TRUMP ORGANIZATION REALLY DOESN'T WANT FBI TO HAVE THE MICHAEL COHEN FILES

In this post yesterday, I noted how hard the Trump Organization has tried to withhold (or claw back documents) from both the Mueller team and SDNY (here's the government filing these quotes come from).

SDNY fact checks the Cohen claim, backed by his lawyer's sworn declaration, that he hadn't fully cooperated with Mueller's investigation because Mueller asked for everything.

Cohen also states that the SCO "had requested that the Trump Organization produce all of Mr. Cohen's communications that were within the Trump Organization's custody, possession, or control," and that Cohen objected "on the grounds that [the request] called for production of privileged communications, among other things." (Br. 8-9). Although in the ordinary course, the USAO-SDNY would not comment on investigative requests or demands made to third parties, particularly those from a separate office undertaking its own, independent investigation, in light of the representations made by Cohen's counsel, USAO-SDNY contacted the SCO about these representations and understands they are not accurate. In particular, the SCO

did not request that the Trump Organization produce “all communications” by Cohen in the Trump Organization’s possession or control irrespective of subject matter or privilege. Indeed, the request made by the SCO was considerably narrower, and specifically omitted, among other things, any documents that were protected by privilege or of a purely personal nature. Cohen nonetheless objected to that request for documents and, after discussions between Cohen’s counsel and the SCO, the SCO decided not to seek production at that time. That Cohen sought to preclude the Trump Organization from producing these third party communications belies both (i) his general assertion of cooperation, and (ii) his stated principal interest in protecting attorney-client communications. Indeed, a careful review of Cohen’s motion papers reveals that he does not purport to have personally produced any documents to the SCO.

The intransigence pertaining to Cohen’s documents involving the Trump Organization continued over to last week’s response. While the Trump Organization (which I suspect is really who hired Hendon) did not request to be party to this fight, they did send SDNY a letter last week demanding that it return every document involving Cohen and the Trump Organization.

USAO-SDNY has already received correspondence from counsel for the Trump Organization (Cohen’s

former employer), which referenced the searches conducted of Cohen's premises and claimed:

We consider each and every communication by, between or amongst Mr. Cohen and the Trump Organization and each of its officers, directors and employees, to be subject to and protected by the attorney-client privilege and/or the work-product privilege.

As a reminder: in March, Mueller subpoenaed the Trump Organization for documents, including but not limited to Russia. That's one reason, I suspect, that Cohen believes this raid is partly about supporting Mueller's investigation (I wonder whether Trump Org is the entity that has started destroyed documents?).

I also pointed to this passage that suggested someone had started destroying documents.

warrants. Furthermore, in the course of its investigation, the USAO-SDNY has learned that

[REDACTED]

[REDACTED] As a result, absent a search warrant, these records could have been deleted without record, and without recourse for the law enforcement.⁷

While we have no way of knowing who or what this redacted passage refers to, we do know that the Trump Organization has recently been destroying documents – in its Panama property, in advance of the majority owner kicking them out.

Two people familiar with Fintiklis's account said that, after his arrival, hotel employees barricaded office doors

with furniture, and they added that documents were shredded. The two people said Trump Organization employees – including an executive who flew down from New York City – also blocked access to a control room that houses servers and surveillance-camera monitors.

It turns out that Trump Organization had a lawyer at yesterday's hearing.

Early in the hearing, prosecutor Thomas McKay noted that Cohen had not (in briefs, anyway) addressed any materials seized from the Trump Organization.

McKay: Cohen "does not state whether he has retained any material from the Trump Organization when he left over one year ago." "The silence from the Trump Organization is telling," he adds later.

Later, Cohen's lawyer Stephen Ryan mentioned documents pertaining to the Trump Organization – but it seems like he's more concerned about matters involving Trump personally.

With all due respect, all of use started on Monday with a completely different matter. I want to say, there are five paragraphs in that attachment A that deal directly with seeking the papers of the President of the United States in possession of my client. It is not what the government has represented is about my client's personal life. There are five paragraphs there. This case is that. And we spent the weekend, frankly, narrowing the issues, taking issues off the table.

Here is what I can tell you. I know that materials for TO, for the Trump Organization, are in the materials that have been seized, so there are some materials for the Trump Organization. But the key here is a priority. The

Court can order a prioritization of where a special master is needed and it's needed with respect to the papers that may contain privileged information about the President of the United States.

It seems like Judge Kimba Wood might appoint a special master for some of the seized files – perhaps those involving Trump personally – but let the taint team proceed with the rest. It's unclear whether Trump Organization would be included or excluded if Wood gave special master treatment to Trump materials.

One other note. While I don't think it'd be among the five paragraphs pertaining to Trump in the SDNY seizure (because the SDNY is supposed to be attenuated from the Mueller investigation), BuzzFeed reported that Michael Cohen actually continued to pursue the Trump Tower Moscow deal far later into 2016 than previously revealed, in part working with a former GRU colonel, only canceling a trip to St. Petersburg, which was held from June 16-18, 2016, at the last minute.

Sater hoped to push the deal forward by attending the St. Petersburg International Economic Forum with Cohen in June 2016. Considered the most important economic gathering in Russia, the forum is regularly attended by business executives and top politicians, including President Vladimir Putin. The former Russian intelligence officer helped arrange an invitation to the conference for both Sater and Cohen, the sources said.

But neither Cohen nor Sater attended. Sources said Cohen canceled at the last minute and put the Moscow deal on hold until after the Republican National Convention. After Trump won the presidential election, the Trump Organization announced it would no

longer be working on international deals, and Sater stopped working on the project.

Last year, after Sater, Cohen, and the Trump Organization turned over emails and documents to congressional and special counsel investigators, details leaked about the Trump Moscow deal and the attempt to get VTB to finance it.

Buzzfeed notes that Sater's emails include details of these later negotiations. And SDNY has already obtained Cohen's emails.

(Side note: if Cohen really was planning on going to St. Petersburg on anything but a 3-day cruise vacation, but canceled at the last minute, he would have had to have gone through the effort of getting a visa, which would be in ...a passport. And yet no visa for Russia was in the passport Cohen shared with BuzzFeed last year.)

In my piece yesterday, I noted that Cohen and Trump seem very concerned about policing responsiveness, keeping the SDNY review within the scope of the warrants with which the material got seized (and frankly, that's an issue that even the most ardent Trump hater ought to support, some efforts to prevent a fishing expedition). But now that SDNY has secured the materials and prevented them from being destroyed like Trump Organization's Panama documents were, Mueller could certainly obtain his own warrant for some of the seized materials.

Update: According to Axios, not even the Trump Organization knows what Cohen might have done on behalf of the Trump Organization.

- Cohen knows more about some elements of Trump's life than anyone else – because some stuff, Ivanka doesn't

want to know.

[snip]

People at the Trump Organization don't even really know everything he does. It's all side deals and off-the-books stuff. Trump doesn't even fully know; he knows some but not everything."