

TRUMP'S OPEN BOOK TEST STILL POSES A BIG PERJURY RISK

In spite of a great deal of encouragement to do so on Twitter, I can't muster a victory lap from the news that the Mueller team has agreed that Trump's first round of open book test will focus only on conspiracy with Russia.

President Donald Trump's legal team is preparing answers to written questions provided by special counsel Robert Mueller, according to sources familiar with the matter.

The move represents a major development after months of negotiations and signals that the Mueller investigation could be entering a final phase with regard to the President.

The questions are focused on matters related to the investigation of possible collusion between Trump associates and Russians seeking to meddle in the 2016 election, the sources said. Trump's lawyers are preparing written responses, in part relying on documents previously provided to the special counsel, the sources said.

[snip]

Negotiations for Trump's testimony lasted for the better part of a year. The two sides nearly reached a deal in January for Trump to be questioned at the presidential retreat in rural Maryland, Camp David, only for talks to break down at the last minute. What followed was a series of letters and meetings – some hostile – in which Trump's lawyers raised objections and sought to limit any potential testimony.

For months, Mueller told Trump's lawyers that he needed to hear from the President to determine his intent on key events in the obstruction inquiry.

While I find it significant that this report came first from Evan Perez and (?!?!) Dana Bash, not Maggie and Mike (suggesting it may come from different sources than the people who fed the NYT the line that Mueller was primarily interested in obstruction), this report seems to suggest that after letting Trump stall for almost a year, Mueller has decided to finally get him on the record on the key crimes.

While CNN has not said anything about timing – that is, how long Trump's lawyers will stall over an open book test that they claim they've already written many of the answers to – this agreement may have as much to do with preparation for the post-election period in which Mueller can roll out any indictments he has been working on and Trump can start firing people. That is, before he makes any big moves in the case in chief, he has to get Trump on the record in some form or other. Better to get him on the record in sworn written statements than launch a subpoena fight that will last past that post-election period.

So I don't think this says much about the relative legal exposure Mueller thinks Trump has for obstruction versus conspiracy (though, again, if you've got the conspiracy charges, the obstruction charges will be minor by comparison). It says that Mueller has decided it's time to get Trump committed to one story, under penalty of perjury.

That said, consider two details about obstruction.

First, Mueller has gotten both of the men Trump reportedly dangled pardons to, Mike Flynn and Paul Manafort, to enter cooperation agreements. That means he's got both men – possibly along with the non-felon lawyers who passed on the

offer – describing that they were offered pardons if they protected the President. That, to my mind, is the most slam dunk instance of obstruction even considered. So by obtaining Manafort’s cooperation, Mueller may have already obtained the most compelling evidence of obstruction possible.

Also, it’s not at all clear that Trump can avoid perjury exposure even on an open book test. We’ve already seen that some of the written responses the Trump team has provided Mueller – such as the two versions of their explanation for the Flynn firing – obscure key details (including Trump’s own role in ordering Flynn to tell Russia not to worry about sanctions). Plus, Trump’s lawyers have recently come to realize they not only don’t know as much as they thought they did about what other “friendly” witnesses had to say (Bill Burck seems to have reconfirmed last week that his clients – which include, at a minimum, Don McGahn, Steve Bannon, and Reince Priebus – don’t have Joint Defense Agreements with Trump), but that they don’t actually know everything they need to know from Trump. Trump is unmanageable as a client, so it’s likely he continues to lie to his own lawyers.

Most importantly, on all of the key conspiracy questions Mueller posed to Trump last March (the first two were also in his first set of questions in January), Mueller has at least one and sometimes several cooperating witnesses.

- What did you know about phone calls that Mr. Flynn made with the Russian ambassador, Sergey I. Kislyak, in late December 2016? [Flynn]
- When did you become aware of the Trump Tower meeting? [Manafort]
- During a 2013 trip to

Russia, what communication and relationships did you have with the Agalarovs and Russian government officials? [Cohen, Goldstone, Kaveladze]

- What communication did you have with Michael D. Cohen, Felix Sater and others, including foreign nationals, about Russian real estate developments during the campaign? [Cohen, Sater]
- What discussions did you have during the campaign regarding any meeting with Mr. Putin? Did you discuss it with others? [Manafort, Gates, Cohen]
- What discussions did you have during the campaign regarding Russian sanctions? [Manafort, Flynn]
- What involvement did you have concerning platform changes regarding arming Ukraine? [Manafort, Gates]
- During the campaign, what did you know about Russian hacking, use of social media or other acts aimed at the campaign? [Stone's associates, Gates, Manafort]
- What knowledge did you have of any outreach by your campaign, including by Paul Manafort, to Russia about

potential assistance to the campaign? [Manafort]

- What did you know about communication between Roger Stone, his associates, Julian Assange or WikiLeaks? [Stone's associates, Manafort]
- What did you know during the transition about an attempt to establish back-channel communication to Russia, and Jared Kushner's efforts? [Flynn]
- What do you know about a 2017 meeting in Seychelles involving Erik Prince? [Flynn]
- What do you know about a Ukrainian peace proposal provided to Mr. Cohen in 2017? [Cohen]

The one area where that's not true is with Roger Stone (though Rick Gates, at least, seems to have been in the loop on some of that), but then Mueller has spent the last 10 months collecting every imaginable piece of evidence pertaining to Stone.

Between Trump's lawyers' incomplete grasp of what their client did and the witnesses and other evidence regarding these activities, Mueller has a much better idea of what happened than Trump's lawyers do. Which means they may not be able to help their client avoid lying.

As I disclosed in 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.*