

# **TWO FACTORS THAT MAY CHANGE THE IMPEACHMENT CALCULUS, PART ONE: TO ENFORCE A GOP SUBPOENA COVERING A TRUMP LIE TO MUELLER**

Since Justin Amash started laying out the necessity of impeachment and even more after yesterday's Mueller press conference, the question of whether or not to start an impeachment proceeding against the President has picked up steam.

In my opinion, Democrats have to start that process, in part to have a ready response as Trump's increasingly authoritarian approach to governing violates more and more foundational norms.

But I also wanted to point to two fairly recent developments that may change that calculus. This post will describe how Trump Organization did not comply with a GOP-issued Congressional subpoena that sustained a lie that Trump has since reiterated, under oath, to Mueller.

## **New evidence that Trump lied to Mueller and Trump Organization defied a (GOP-issued) subpoena**

As I noted the other day, Michael Cohen's testimony to the House Intelligence Committee revealed several things:

- Trump replicated Cohen's lies – that is, a cover story his defense attorney helped to write – in his sworn answers to Mueller
- Trump Organization (probably Alan Garten) withheld emails from Cohen and HPSCI that would have made it clear Cohen was lying about the Trump Tower Moscow deal

Trump's statement, submitted under oath, to Mueller included the following assertions:

- Trump and Cohen only had a few (three) conversations about the deal rather than ten or more
- Trump did not know of any travel plans to Russia
- Trump didn't discuss the project with anyone else at Trump Org, including Ivanka and Don Jr
- Cohen's attempt to contact Dmitry Peskov in January 2016 was via a public email address and proved unsuccessful

Compare those lies with the three main lies Cohen pled guilty to.

- The Moscow Project ended in January 2016 and was not discussed extensively with others in the Company.
- COHEN never agreed to travel

to Russia in connection with the Moscow Project and “never considered” asking Individual 1 to travel for the project.

- COHEN did not recall any Russian government response or contact about the Moscow Project.

That is, in spite of rumblings that Cohen was cooperating with Mueller, Trump still told the story his lawyer had helped Cohen write. And Mueller gave Trump an opportunity to fix his testimony, but he refused. In spite of the more-than-a-year long effort to avoid telling lies to the Special Counsel, Trump still managed to do so.

Perhaps that’s why the FBI (though possibly NY-based agents tied to the investigation into Bob Costello’s pardon dangle) interviewed Cohen again on March 19, 2019, which is the latest interview noted in the Mueller Report (this section must be one of the last things Mueller’s team finished as footnotes 1057-9 and 1071 all post-date the discussion of Trump’s non-responsive answers in Appendix C). Along with more details about the various pardon dangles offered to Cohen, that interview elicited this testimony:

During the summer of 2016, Cohen recalled that candidate Trump publicly claimed that he had nothing to do with Russia and then shortly afterwards privately checked with Cohen about the status of the Trump Tower Moscow project, which Cohen found “interesting.”<sup>940</sup> At some point that summer, Cohen recalled having a brief conversation with Trump in which Cohen said the Trump Tower Moscow project was going nowhere because the Russian development company had not secured a

piece of property for the project.<sup>941</sup> Trump said that was "too bad," and Cohen did not recall talking with Trump about the project after that.<sup>942</sup> Cohen said that at no time during the campaign did Trump tell him not to pursue the project or that the project should be abandoned. <sup>943</sup>

[snip]

Cohen recalled explaining to the President's personal counsel the "whole story" of the attempt to set up a meeting between Trump and Putin and Trump's role in it.<sup>981</sup> Cohen recalled that he and the President's personal counsel talked about keeping Trump out of the narrative, and the President's personal counsel told Cohen the story was not relevant and should not be included in his statement to Congress.<sup>982</sup>

[snip]

<sup>941</sup> Cohen could not recall the precise timing of this conversation, but said he thought it occurred in June or July 2016. Cohen recalled that the conversation happened at some point after candidate Trump was publicly stating that he had nothing to do with Russia.

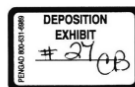
That Trump adhered to this lie even after Cohen showed signs of flipping makes the apparent fact that Trump Organization withheld emails that would make it clear Cohen lied to the House Intelligence all that more damning. This is one of three emails that would have made it clear to HPSCI in real time that Cohen was lying that apparently did not get turned over.

Message  
From: Michael Cohen [/O=TRUMP ORG/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=MCOHEN]  
Sent: 1/16/2016 10:28:21 AM  
To: Pr\_peskova@prpress.gov.ru  
Subject: Request

Dear Sirs:  
I am trying to reach Mr. Sergei Ivanov. Can someone English speaking kindly contact me? I thank you in advance for your assistance.

Sent from my iPhone

Michael D. Cohen  
Executive Vice President and  
Special Counsel to  
Donald J. Trump  
725 Fifth Avenue  
New York, New York 10022  
Phone: [REDACTED]  
Cellular: [REDACTED]  
mcohen@trumporg.com



*Clear notes:*

*introduced @ 3:35pm  
by Nicolas Mitchell*

Remember: Cohen was almost alone among Trump flunkies in having been subpoenaed by any committee in Congress. And the subpoena that Trump Organization defied was signed not by Adam Schiff, but by Devin Nunes [Update: this may have been Mike Conaway].

Even with all the efforts Republicans in Congress have made to help Trump avoid legal jeopardy, he – or rather, his eponymous company – still managed to break the law in complying with GOP requests!

## **Congress can obtain withheld Trump Organization emails more easily than thought**

And while normally proving that Trump Organization violated the law to protect the President would be especially hard for Congress to prove (because they'll fight subpoenas even more aggressively than Trump's accountants or creditors), the opposite may be the case in this instance.

That's because since June 21, 2017, Microsoft – which provides Trump Organization's email service for the company – has been preserving Michael Cohen's Trump Organization emails and since July 14, 2017, Microsoft has been

preserving *all* Trump Organization emails.

54. On or about July 14, 2017, the Federal Bureau of Investigation sent a request, pursuant to 18 U.S.C. § 2703(f), to Microsoft, requesting that Microsoft preserve all content for all email accounts associated with the domain "trumporg.com," which included the Target Account.

[snip]

62. On or about June 21, 2017, the Federal Bureau of Investigation sent a request, pursuant to 18 U.S.C. § 2703(f), to Microsoft, requesting that Microsoft preserve all content associated with the Target Account.

So rather than going to Trump Organization to obtain proof that their Attorney Alan Garten withheld documents that were clearly responsive to a Congressional subpoena, HPSCI can go to Microsoft itself.

## **Michael Cohen is the a demonstrable example of someone who was willing to lie only so long as a pardon offer was on the table**

One more detail about Cohen makes his case a particularly apt case to impeach the President.

The sworn evidence in the case makes it very clear Cohen was willing to – and did – lie to Congress so long as he believed he'd be pardoned for those lies.

But as soon as it became clear that he could not expect a pardon, Cohen decided to start telling the truth.

(I'll revisit and reconfirm this, but the record shows that a pardon was withdrawn (and Trump stopped paying Cohen's legal bills) around the same time 1) Trump got to see all the paperwork and recording that might back Cohen's claims against him 2) He saw that Cohen had recorded him agreeing to the Karen McDougal hush payment).

He told the truth about something implicating "Individual-1" as a co-conspirator.

And he told the truth about lying to Congress.

In other words, with Cohen, it will be very easy to show that Trump's pardon offers led to a witness providing false testimony in response to a Congressional subpoena (false testimony made possibly only through parallel obstruction on the part of Trump's business).

In other words, Cohen is a fairly strong case proving Trump successfully suborned perjury.

So with Cohen, there is all new evidence of Trump-related crimes: Trump's sworn lies about Trump Tower Moscow to Mueller mirrored by Trump Organization's defiance of a Republican issued Congressional subpoena on precisely that topic.

And Congress should be able to get proof of it.

This provides an opportunity to pitch impeachment in terms of GOP equities. That will surely not make a difference for Republicans, at first, but for any that want to find an excuse to come around to supporting impeachment, it may be useful down the road.

*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.*