

# **THE INVISIBLE GAME OF CHICKEN: THE THINGS THE PEOPLE CLAIMING TO UNDERSTAND THE MANAFORT EXTENSION DON'T KNOW (NOR DO I)**

There's a lot of tea reading around the fact that the parties asked for a 10-day extension in the first status report on how well Paul Manafort has been cooperating. Originally the report (set two months ago when he flipped) was set for tomorrow, which is . the last Friday before Thanksgiving. The motion asks for an extension to November 26, which is the first Monday after Thanksgiving.

Some people have suggested that means the key issue on which Manafort is cooperating is close to done, but not done, and from that promised indictments tomorrow (since what grand jury in its right constitution-saving mind would work the day after Thanksgiving).

That may be right, but there are a lot more pieces in play than just that, including:

## **Trump's open book test**

Sometime in October, Mueller gave Trump his open book test of questions to answer. It already seemed like Trump was stalling until he tried his Matt Whitaker ploy. And this week, Trump's lawyers have continued to dick around about whether they're even going to answer all the questions.

There's good reason not to reveal publicly whether Manafort is cooperating fully until you've gotten whatever answers you're going to get or given up waiting. If you reveal in a status report that Mueller's team thinks

Manafort hasn't been cooperating, then Trump would feel more free to lie. If you reveal Manafort has been cooperating fully, including about Trump's actions (in contradiction to some reports that he hasn't been), then Trump will be more likely to avoid answering.

So there's good reason to wait until after Trump has turned in his open book test or gotten a D on the exam.

## **Whitaker's ethics review and first briefing**

While Matt Whitaker has blessing from the Office of Legal Counsel to oversee Mueller, there's no indication he has undergone his ethics review on whether he can supervise Mueller. Indeed, contrary to much panic that I think stemmed from Jerome Corsi's specific comments about how mean prosecutors are, I'm not at all convinced Whitaker has even been read into the Mueller investigation yet (this report seems to suggest he has not).

There are lots of reason to delay action – on both voting up indictments and revealing details about Manafort's cooperation – until there's more clarity on Whitaker's role. Indeed, if Mueller has truly shocking things, things that even Whitaker would be unwilling to veto, it might serve him well to hold them, and make Whitaker buy off on them.

And that uncertainty might lead to a Manafort delay.

## **The Maryland challenge to Whitaker's authority**

Tuesday Maryland's Attorney General, Brian Frosh, submitted his promised challenge to Whitaker's appointment. This challenge – and others we should expect – won't be decided

anytime soon, but they may lead Mueller to delay until, at least, he knows he can continue to ensure the legality of his actions by reporting them through Rosenstein.

## Manafort's forfeitures

On October 9, Mueller's team started the process for seizing the \$46 million of assets Manafort had taken in his plea deal. Others with an ownership stake in the assets have a month to contest the seizure. Just the bank holding the mortgage on his Trump Tower apartment challenged the seizure.

That means around about now, the rest of his assets (they won't really be worth \$46 million, but they're worth a lot) will begin to be put beyond the reach of presidential pardon.

## Monday's briefing

Meanwhile, there are two things going on at the DC Circuit.

Yesterday, the Mystery Appellant challenging some action Mueller took submitted a reply brief to Mueller's brief submitted (in the wake of the Whitaker appointment) last Thursday. Today a notice of some sort was filed.

10/23/2018	ENTRY OF APPEARANCE [1756609] filed by appellee. [18-3071] [Entered: 10/23/2018 11:06 AM]
10/23/2018	APPELLANT BRIEF [1756693] filed by appellant [Service Date: 10/23/2018 ] Length of Brief: 12904 words. [18-3071] [Entered: 10/23/2018 01:49 PM]
10/23/2018	APPENDIX [1756695] filed [Volumes: 1] [Service Date: 10/23/2018 ] [18-3071] [Entered: 10/23/2018 01:51 PM]
11/07/2018	SEALED APPELLEE BRIEF [1759161] filed [Service Date: 11/07/2018 ] Length of Brief: 12,970 words. [18-3071] [Entered: 11/08/2018 11:24 AM]
11/07/2018	SEALED MOTION [1759196] filed by appellee (Service Date: 11/07/2018 by mail) Length Certification: 2 pages. [18-3071] [Entered: 11/08/2018 01:02 PM]
11/07/2018	SEALED APPELLEE BRIEF [1759198] lodged [Service Date: 11/07/2018 ] Length of Brief: 12,970 words. [18-3071] [Entered: 11/08/2018 01:04 PM]
11/07/2018	SEALED MOTION [1759200] filed by appellee (Service Date: 11/07/2018 by US Mail) Length Certification: 2 pages. [18-3071] [Entered: 11/08/2018 01:05 PM]
11/07/2018	SEALED SUPPLEMENTAL APPENDIX [1759201] lodged. [Volumes: 1] [Service Date: 11/07/2018 ] [18-3071] [Entered: 11/08/2018 01:06 PM]
11/14/2018	SEALED APPELLANT REPLY BRIEF [1759865] filed by appellant [Service Date: 11/14/2018 ] Length of Brief: 6,487 words. [18-3071] [Entered: 11/14/2018 01:11 PM]
11/15/2018	SEALED NOTICE [1760116] filed by appellant [Service Date: 11/15/2018 ] [18-3071] [Entered: 11/15/2018 02:44 PM]

This stuff may be relevant – we don't know! But the developments in this appeal may affect Mueller's willingness to show more cards (though it won't be resolved until December at the earliest).

We do know, however, that Mueller has to turn in

a briefing describing how Whitaker's appointment affects his own authority. That may well be the first that we understand what he knows to have occurred since Whitaker's appointment and how he sees it affecting his own authority – and whether he think he has mitigated any risk that his actions will be invalidated by reporting through Rosenstein.

Sure, the delay might be a handful of indictments to drop tomorrow or even next Friday. But right now all we can be sure of is that Mueller and Trump are playing either a secret game of Chicken – or Chess. And we've seen just a tiny fraction of the plays so far.

All that said, one thing that that comes after this date is the next Trump Putin meeting – which will be in Argentina during the G-20, which starts November 30.