

ON MUELLER'S CHOICE NOT TO ELABORATE ON PAULIE'S LIES

Back in November, I noted that by finding Paul Manafort in breach of his plea deal, Mueller guaranteed he could write a report – in the form of a sentencing memo laying out the significance of his lies – that Big Dick Toilet Salesman could not suppress.

And that “detailed sentencing submission ... sett[ing] forth the nature of the defendant’s crimes and lies” that Mueller mentions in the report?

There’s your Mueller report, which will be provided in a form that Matt Whitaker won’t be able to suppress.

Back in December, I noted that at each step of his investigation, Mueller has chosen to submit far more details into the public record than necessary, effectively issuing a report of his work along the way. The WaPo and AP have neat stories in the last few days substantiating that that remains the case.

Indeed, today’s sentencing memo reinforces that point, insofar as it includes 577 pages of trial exhibits laying out Manafort’s sleazy influence peddling with respect to Ukraine.

What it doesn’t do is what I suggested – had Mueller chosen to use it as such – he might do, if he believed his report would be suppressed by the then [Acting] Attorney General, which is to use this report to lay out extensive details of what his investigation discovered. Rather than doing that, which would totally be in the norm for sentencing memos (indeed, Mueller would have been able to present more than Manafort’s lies as related conduct), he instead simply notes that Amy Berman Jackson is already familiar with all that.

Manafort's conduct after he pleaded guilty is pertinent to sentencing. It reflects a hardened adherence to committing crimes and lack of remorse. As the Court is fully familiar with this proof, we do not repeat the evidence herein.

The sentencing memo then incorporates Special Counsel's submissions on the breach determination.

The government relies on and incorporates herein its submissions on this issue.

In a footnote supporting the first statement, the memo cites ABJ's order finding that Manafort had lied to protect a Trump flunkie in another investigation, lied to hide why and how he dealt polling data to Konstantin Kilimnik at a meeting where they also discussed a Ukrainian peace deal (which Manafort knew to be code for sanctions relief), lied about his ongoing discussions about a sanctions-relief peace deal, and lied about a kickback scheme he had with vendors he hired to work for Trump's campaign. It also cites the transcript where she explained her ruling on those issues, which among other things deemed the August 2, 2016 meeting to be material to the investigation, including the core issue of coordination with the Russian government.

[O]ne cannot quibble about the materiality of this meeting.

[snip]

This is a topic at the undisputed core of the Office of Special Counsel's investigation into, as paragraph (b) of the appointment order put it, Any links and/or coordination between the Russian government and individuals associated with the campaign.

A footnote supporting the second statement cites the FBI's declaration supporting the breach determination, which also included a slew of exhibits.

Of course, the transcript, declaration, and exhibits are significantly (almost entirely, in the case of the breach exhibits) redacted. Some of those redactions are dictated by law and DOJ regulations. The grand jury transcripts are protected by grand jury secrecy rules. The description of the other DOJ investigation Manafort lied about is protected as an ongoing investigation. And names of unindicted people are protected per DOJ regulations.

But the rest of those materials are redacted for another reason: to protect the investigation.

In addition, we know that Mueller actually didn't show all the evidence of Manafort's ongoing communications with the Trump administration, including communications that "provid[e] information about the questions or other things that are happening in the special counsel investigation, ... sharing that with other people." That was the only area where ABJ totally disagreed with Mueller's claim that Manafort was in breach (she agreed Manafort's lies about conspiring with Kilimnik were not good faith cooperation, but said making a finding that they had proven it without a transcript was "challenging"). In other words, Mueller could have presented more evidence that Manafort continued to be in communication with Trump to get ABJ's ruling on that topic too, but didn't, at least in part because they didn't want to share what they knew with Manafort.

So Mueller chose not to make that information available, when he could have, especially given reports (which I have no reason to doubt) that the investigation is substantially complete. Compare the decision to keep that stuff secret with what Mueller did in the George Papadopoulos, Mike Flynn, Michael Cohen, and draft Jerome Corsi pleas, and Roger Stone's indictment. In each of the other accusations of

lying, Mueller laid out juicy details that pointed to key details of the investigation. Here, in a case where they legitimately considered charging Manafort with more false statements charges, they chose to keep precisely the kind of stuff they had disclosed in other false statements accusations secret. Particularly on the issue of sharing polling data, which Andrew Weissmann described to be the “the core of what it is that the special counsel is supposed to be investigating” because they pertained to whether contacts with Russia “were more intentional or not,” Mueller kept the key details redacted to protect the ongoing investigation.

And by choosing to leave the record where it stands – by choosing not to describe what the evidence shows regarding that August 2 meeting in this sentencing memo – Mueller has deviated from the approach he has taken in every other instance (including this one, as it pertains to Manafort’s Ukrainian lobbying) where he had an opportunity to provide a speaking document.

So it was, in fact, the case that deeming Manafort to be in breach provided an opportunity – that Big Dick Toilet Salesman could not and did not prevent – to provide more information. We got snippets of that, especially on the August 2 meeting. If Mueller believed he could not present a substantive final report now, he could have presented those details in unredacted form.

But is also the case that Mueller deviated from past practice. And he did so not because he didn’t believe the lies were material, nor because he believed the lies weren’t criminal, as the lies that Papadopoulos, Flynn, Cohen, Corsi, and Stone all told also were. Both Weissmann and ABJ made it clear the lies, particularly about that August 2 meeting, were central to the topic of investigation. He deviated from past practice to protect an ongoing investigation we have every reason to believe is substantially completed.

That leads me to believe he's certain he will be able to provide a report in some *public* form, presumably in the same kind of detail he has presented in all his other statements. He doesn't need to avail himself of this opportunity to do so.

I don't know what that means about what form the report will take. I don't know what that means about what it will show with regards to criminal conduct (except that, presumably, we'll get the details that remain hidden about the August 2 meeting and communications with Trump's people).

But it does make it clear that even given the opportunity to follow past practice at a time when, according to most reporting, the investigation is substantially done, Mueller chose not to avail himself of that opportunity, instead just pointing to materials that hide the most important details to protect the investigation.

After predicting (given claims that have since not borne out that the report was coming out next week) that this sentencing memo would lay out precisely the details that Mueller chose to keep hidden with his citations to redacted documents, I argued "we'll learn a lot abt what [reports that Mueller is done] means from Manafort's sentencing memo tho."

I believe it suggests that Mueller plans to and believes he can present the details about that August 2 meeting somewhere else.

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.