time to issue a correction for a news story—indicates the President was not focused solely on a press strategy, but instead likely contemplated the ongoing investigation and any proceedings arising from it.

e. Intent. Substantial evidence indicates that in repeatedly urging McGahn to dispute that he was ordered to have the Special Counsel terminated, the President acted for the purpose of influencing McGahn’s account in order to deflect or prevent further scrutiny of the President’s conduct towards the investigation.

Several facts support that conclusion. The President made repeated attempts to get McGahn to change his story. As described above, by the time of the last attempt, the evidence suggests that the President had been told on multiple occasions that McGahn believed the President had ordered him to have the Special Counsel terminated. McGahn interpreted his encounter with the President in the Oval Office as an attempt to test his mettle and see how committed he was to his memory of what had occurred. The President had already laid the groundwork for pressing McGahn to alter his account by telling Porter that it might be necessary to fire McGahn if he did not deny the story, and Porter relayed that statement to McGahn. Additional evidence of the President’s intent may be gleaned from the fact that his counsel was sufficiently alarmed by the prospect of the President’s meeting with McGahn that he called McGahn’s counsel and said that McGahn could not resign no matter what happened in the Oval Office that day. The President’s counsel was well aware of McGahn’s resolve not to issue what he believed to be a false account of events despite the President’s request. Finally, as noted above, the President brought up the Special Counsel investigation in his Oval Office meeting with McGahn and criticized him for telling this Office about the June 17, 2017 events. The President’s statements reflect his understanding—and his displeasure—that those events would be part of an obstruction-of-justice inquiry.

J. The President’s Conduct Towards Flynn, Manafort, [HOM]

Overview

In addition to the interactions with McGahn described above, the President has taken other actions directed at possible witnesses in the Special Counsel’s investigation, including Flynn, Manafort, [HOM] and as described in the next section, Cohen. When Flynn withdrew from a joint defense agreement with the President, the President’s personal counsel stated that Flynn’s actions would be viewed as reflecting “hostility” towards the President. During Manafort’s prosecution and while the jury was deliberating, the President repeatedly stated that Manafort was being treated unfairly and made it known that Manafort could receive a pardon. [Harm to Ongoing Matter]

Evidence

1. Conduct Directed at Michael Flynn

As previously noted, see Volume II, Section II.B, supra, the President asked for Flynn’s resignation on February 13, 2017. Following Flynn’s resignation, the President made positive public comments about Flynn, describing him as a “wonderful man,” “a fine person,” and a “very
good person.” The President also privately asked advisors to pass messages to Flynn conveying that the President still cared about him and encouraging him to stay strong.

In late November 2017, Flynn began to cooperate with this Office. On November 22, 2017, Flynn withdrew from a joint defense agreement he had with the President. Flynn’s counsel told the President’s personal counsel and counsel for the White House that Flynn could no longer have confidential communications with the White House or the President. Later that night, the President’s personal counsel left a voicemail for Flynn’s counsel that said:

I understand your situation, but let me see if I can’t state it in starker terms. . . . If you went on to make a deal with . . . the government. . . . If there’s information that implicates the President, then we’ve got a national security issue, . . . so, you know, . . . we need some kind of heads up. Um, just for the sake of protecting all our interests if we can. . . . Remember what we’ve always said about the President and his feelings toward Flynn and, that still remains . . .

On November 23, 2017, Flynn’s attorneys returned the call from the President’s personal counsel to acknowledge receipt of the voicemail. Flynn’s attorneys reiterated that they were no longer in a position to share information under any sort of privilege. According to Flynn’s attorneys, the President’s personal counsel was indignant and vocal in his disagreement. The President’s personal counsel said that he interpreted what they said to him as a reflection of Flynn’s

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831 See, e.g., Remarks by President Trump in Press Conference, White House (Feb. 16, 2018) (stating that “Flynn is a fine person” and “I don’t think [Flynn] did anything wrong. If anything, he did something right . . . You know, he was just doing his job”); Interview of Donald J. Trump, NBC (May 11, 2017) (stating that Flynn is a “very good person”).

832 See Priebus 1/18/17 302, at 9-10 (the President asked Priebus to contact Flynn the week he was terminated to convey what the President still cared about him and felt bad about what happened to him; Priebus thought the President did not want Flynn to have a problem with him); McFarland 12/22/17 302, at 18 (about a month or two after Flynn was terminated, the President asked McFarland to get in touch with Flynn and tell him that he was a good guy, he should stay strong, and the President felt bad for him); Flynn 1/19/18 302, at 9 (recalling the call from Priebus and an additional call from Hicks who said she wanted to relay on behalf of the President that the President hoped Flynn was okay); Christie 2/13/19 302, at 3 (describing a phone conversation between Kushner and Flynn the day after Flynn was fired where Kushner said, “You know the President respects you. The President cares about you. I’ll get the President to send out a positive tweet about you later,” and the President nodded his assent to Kushner’s comment promising a tweet).

833 Counsel for Flynn 3/1/18 302, at 1.

834 Counsel for Flynn 3/1/18 302, at 1.

835 11/22/17 Voicemail Transcript, President’s Personal Counsel to Counsel for Michael Flynn.

836 Counsel for Flynn 3/1/18 302, at 1.

837 Counsel for Flynn 3/1/18 302, at 1.

838 Counsel for Flynn 3/1/18 302, at 1.
hostility towards the President and that he planned to inform his client of that interpretation.³³⁹ Flynn’s attorneys understood that statement to be an attempt to make them reconsider their position because the President’s personal counsel believed that Flynn would be disturbed to know that such a message would be conveyed to the President.³⁴⁰

On December 1, 2017, Flynn pleaded guilty to making false statements pursuant to a cooperation agreement.³⁴¹ The next day, the President told the press that he was not concerned about what Flynn might tell the Special Counsel.³⁴² In response to a question about whether the President still stood behind Flynn, the President responded, “We’ll see what happens.”³⁴³ Over the next several days, the President made public statements expressing sympathy for Flynn and indicating he had not been treated fairly.³⁴⁴ On December 15, 2017, the President responded to a press inquiry about whether he was considering a pardon for Flynn by saying, “I don’t want to talk about pardons for Michael Flynn yet. We’ll see what happens. Let’s see. I can say this: When you look at what’s gone on with the FBI and with the Justice Department, people are very, very angry.”³⁴⁵

2. Conduct Directed at Paul Manafort

On October 27, 2017, a grand jury in the District of Columbia indicted Manafort and former deputy campaign manager Richard Gates on multiple felony counts, and on February 22, 2018, a grand jury in the Eastern District of Virginia indicted Manafort and Gates on additional felony

³³⁹ Counsel for Flynn 3/1/18 302, at 2. Because of attorney-client privilege issues, we did not seek to interview the President’s personal counsel about the extent to which he discussed his statements to Flynn’s attorneys with the President.

³⁴⁰ Counsel for Flynn 3/1/18 302, at 2.


³⁴⁴ See @realDonaldTrump 12/2/17 (9:06 p.m. ET) Tweet (“So General Flynn lies to the FBI and his life is destroyed, while Crooked Hillary Clinton, on that now famous FBI holiday ‘interrogation’ with no swearing in and no recording, lies many times . . . and nothing happens to her? Rigged system, or just a double standard?”); President Trump Departure Remarks, C-SPAN (Dec. 4, 2017) (“Well, I feel badly for General Flynn. I feel very badly. He’s led a very strong life. And I feel very badly.”).

³⁴⁵ President Trump White House Departure, C-SPAN (Dec. 15, 2017).
counts. The charges in both cases alleged criminal conduct by Manafort that began as early as 2005 and continued through 2018.

In January 2018, Manafort told Gates that he had talked to the President’s personal counsel and they were “going to take care of us.” Manafort told Gates it was stupid to plead, saying that he had been in touch with the President’s personal counsel and repeating that they should “sit tight” and “we’ll be taken care of.” Gates asked Manafort outright if anyone mentioned pardons and Manafort said no one used that word.

As the proceedings against Manafort progressed in court, the President told Porter that he never liked Manafort and that Manafort did not know what he was doing on the campaign. The President discussed with aides whether and in what way Manafort might be cooperating with the Special Counsel’s investigation, and whether Manafort knew any information that would be harmful to the President.

In public, the President made statements criticizing the prosecution and suggesting that Manafort was being treated unfairly. On June 15, 2018, before a scheduled court hearing that day on whether Manafort’s bail should be revoked based on new charges that Manafort had tampered with witnesses while out on bail, the President told the press, “I feel badly about a lot of them

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848 Gates 4/18/18 302, at 4. In February 2018, Gates pleaded guilty, pursuant to a cooperation plea agreement, to a superseding criminal information charging him with conspiring to defraud and commit multiple offenses (i.e., tax fraud, failure to report foreign bank accounts, and acting as an unregistered agent of a foreign principal) against the United States, as well as making false statements to our Office. Superseding Criminal Information, United States v. Richard W. Gates III, 1:17-cr-201 (D.D.C. Feb. 23, 2018), Doc. 195; Plea Agreement, United States v. Richard W. Gates III, 1:17-cr-201 (D.D.C. Feb. 23, 2018), Doc. 205. Gates has provided information and in-court testimony that the Office has deemed to be reliable.


850 Gates 4/18/18 302, at 4. Manafort told this Office that he never told Gates that he had talked to the President’s personal counsel or suggested that they would be taken care of. Manafort also said he hoped for a pardon but never discussed one with the President, although he noted the President’s public comments about pardons. Manafort 10/1/18 302, at 11. As explained in Volume I, Section IV.A.8, supra, Manafort entered into a plea agreement with our Office. The U.S. District Court for the District of Columbia determined that he breached the agreement by being untruthful in proffer sessions and before the grand jury. Order, United States v. Manafort, 1:17-cr-201 (D.D.C. Feb. 13, 2019), Doc. 503.

851 Porter 5/8/18 302, at 11. Priebus recalled that the President never really liked Manafort. See Priebus 4/3/18 302, at 11. Hicks said that candidate Trump trusted Manafort’s judgment while he worked on the Campaign, but she also once heard Trump tell Gates to keep an eye on Manafort. Hicks 3/13/18 302, at 16.

because I think a lot of it is very unfair. I mean, I look at some of them where they go back 12 years. Like Manafort has nothing to do with our campaign. But I feel so—I tell you, I feel a little badly about it. They went back 12 years to get things that he did 12 years ago? . . . I feel badly for some people, because they’ve gone back 12 years to find things about somebody, and I don’t think it’s right. In response to a question about whether he was considering a pardon for Manafort or other individuals involved in the Special Counsel’s investigation, the President said, “I don’t want to talk about that. No, I don’t want to talk about that. . . . But look, I do want to see people treated fairly. That’s what it’s all about.” Hours later, Manafort’s bail was revoked and the President tweeted, “Wow, what a tough sentence for Paul Manafort, who has represented Ronald Reagan, Bob Dole and many other top political people and campaigns. Didn’t know Manafort was the head of the Mob. What about Comey and Crooked Hillary and all the others? Very unfair!”

Immediately following the revocation of Manafort’s bail, the President’s personal lawyer, Rudolph Giuliani, gave a series of interviews in which he raised the possibility of a pardon for Manafort. Giuliani told the New York Daily News that “[w]hen the whole thing is over, things might get cleaned up with some presidential pardons.” Giuliani also said in an interview that, although the President should not pardon anyone while the Special Counsel’s investigation was ongoing, “when the investigation is concluded, he’s kind of on his own, right?” In a CNN interview two days later, Giuliani said, “I guess I should clarify this once and for all. . . . The president has issued no pardons in this investigation. The president is not going to issue pardons in this investigation. . . . When it’s over, hey, he’s the president of the United States. He retains his pardon power. Nobody is taking that away from him.” Giuliani rejected the suggestion that his and the President’s comments could signal to defendants that they should not cooperate in a criminal prosecution because a pardon might follow, saying the comments were “certainly not intended that way.” Giuliani said the comments only acknowledged that an individual involved in the investigation would not be “excluded from [a pardon], if in fact the president and his advisors . . . come to the conclusion that you have been treated unfairly.” Giuliani observed that pardons were not unusual in political investigations but said, “That doesn’t mean they’re going to happen

853 Remarks by President Trump in Press Gaggle, White House (June 15, 2018).
854 Remarks by President Trump in Press Gaggle, White House (June 15, 2018).
855 @realDonaldTrump 6/15/18 (1:41 p.m. ET) Tweet.
858 State of the Union with Jake Tapper Transcript, CNN (June 17, 2018); see Karoun Demirjian, Giuliani suggests Trump may pardon Manafort after Mueller’s probe, Washington Post (June 17, 2018).
859 State of the Union with Jake Tapper Transcript, CNN (June 17, 2018).
860 State of the Union with Jake Tapper Transcript, CNN (June 17, 2018).
here. Doesn’t mean that anybody should rely on it. . . . Big signal is, nobody has been pardoned yet.\textsuperscript{861}

On July 31, 2018, Manafort’s criminal trial began in the Eastern District of Virginia, generating substantial news coverage.\textsuperscript{862} The next day, the President tweeted, “This is a terrible situation and Attorney General Jeff Sessions should stop this Rigged Witch Hunt right now, before it continues to stain our country any further. Bob Mueller is totally conflicted, and his 17 Angry Democrats that are doing his dirty work are a disgrace to USA!”\textsuperscript{863} Minutes later, the President tweeted, “Paul Manafort worked for Ronald Reagan, Bob Dole and many other highly prominent and respected political leaders. He worked for me for a very short time. Why didn’t government tell me that he was under investigation. These old charges have nothing to do with Collusion—a Hoax!”\textsuperscript{864} Later in the day, the President tweeted, “Looking back on history, who was treated worse, Alfonse Capone, legendary mob boss, killer and ‘Public Enemy Number One,’ or Paul Manafort, political operative & Reagan/Dole darling, now serving solitary confinement—although convicted of nothing? Where is the Russian Collusion?”\textsuperscript{865} The President’s tweets about the Manafort trial were widely covered by the press.\textsuperscript{866} When asked about the President’s tweets, Sanders told the press, “Certainly, the President’s been clear. He thinks Paul Manafort’s been treated unfairly.”\textsuperscript{867}

On August 16, 2018, the Manafort case was submitted to the jury and deliberations began. At that time, Giuliani had recently suggested to reporters that the Special Counsel investigation needed to be “done in the next two or three weeks,”\textsuperscript{868} and media stories reported that a Manafort acquittal would add to criticism that the Special Counsel investigation was not worth the time and expense, whereas a conviction could show that ending the investigation would be premature.\textsuperscript{869}

\textsuperscript{861} State of the Union with Jake Tapper Transcript, CNN (June 17, 2018).
\textsuperscript{862} See, e.g., Katelyn Polantz, Takeaways from day one of the Paul Manafort trial, CNN (July 31, 2018); Frank Bruni, Paul Manafort’s Trial Is Donald Trump’s, Too, New York Times Opinion (July 31, 2018); Rachel Weiner et al., Paul Manafort trial Day 2: Witnesses describe extravagant clothing purchases, home remodels, lavish cars paid with wire transfers, Washington Post (Aug. 1, 2018).
\textsuperscript{863} @realDonaldTrump 8/1/18 (9:24 a.m. ET) Tweet. Later that day, when Sanders was asked about the President’s tweet, she told reporters, “It’s not an order. It’s the President’s opinion.” Sarah Sanders, White House Daily Briefing, C-SPAN (Aug. 1, 2018).
\textsuperscript{864} @realDonaldTrump 8/1/18 (9:34 a.m. ET) Tweet.
\textsuperscript{865} @realDonaldTrump 8/1/18 (11:35 a.m. ET) Tweet.
\textsuperscript{866} See, e.g., Carol D. Leonnig et al., Trump calls Manafort prosecution “a hoax,” says Sessions should stop Mueller investigation “right now”, Washington Post (Aug. 1, 2018); Louis Nelson, Trump claims Manafort case has “nothing to do with collusion”, Politico (Aug. 1. 2018).
\textsuperscript{867} Sarah Sanders, White House Daily Briefing, C-SPAN (Aug. 1, 2018).
\textsuperscript{869} See, e.g., Katelyn Polantz et al., Manafort jury ends first day of deliberations without a verdict, CNN (Aug. 16, 2018); David Voreacos, What Mueller’s Manafort Case Means for the Trump Battle to
On August 17, 2018, as jury deliberations continued, the President commented on the trial from the South Lawn of the White House. In an impromptu exchange with reporters that lasted approximately five minutes, the President twice called the Special Counsel’s investigation a “rigged witch hunt.” When asked whether he would pardon Manafort if he was convicted, the President said, “I don’t talk about that now. I don’t talk about that.” The President then added, without being asked a further question, “I think the whole Manafort trial is very sad when you look at what’s going on there. I think it’s a very sad day for our country. He worked for me for a very short period of time. But you know what, he happens to be a very good person. And I think it’s very sad what they’ve done to Paul Manafort.” The President did not take further questions. In response to the President’s statements, Manafort’s attorney said, “Mr. Manafort really appreciates the support of President Trump.”

On August 21, 2018, the jury found Manafort guilty on eight felony counts. Also on August 21, Michael Cohen pleaded guilty to eight offenses, including a campaign-finance violation that he said had occurred “in coordination with, and at the direction of, a candidate for federal office.” The President reacted to Manafort’s convictions that day by telling reporters, “Paul Manafort’s a good man” and “it’s a very sad thing that happened.” The President described the Special Counsel’s investigation as “a witch hunt that ends in disgrace.” The next day, the President tweeted, “I feel very badly for Paul Manafort and his wonderful family. ‘Justice’ took a 12 year old tax case, among other things, applied tremendous pressure on him and, unlike Michael Cohen, he refused to ‘break’—make up stories in order to get a ‘deal.’ Such respect for a brave man!”

In a Fox News interview on August 22, 2018, the President said: “[Cohen] makes a better deal when he uses me, like everybody else. And one of the reasons I respect Paul Manafort so much is he went through that trial—you know they make up stories. People make up stories. This

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876 President Trump Remarks on Manafort Trial, C-SPAN (Aug. 21, 2018).
877 President Trump Remarks on Manafort Trial, C-SPAN (Aug. 21, 2018).
878 @realDonaldTrump 8/22/18 (9:21 a.m. ET) Tweet.
whole thing about flipping, they call it, I know all about flipping." The President said that flipping was "not fair" and "almost ought to be outlawed." In response to a question about whether he was considering a pardon for Manafort, the President said, "I have great respect for what he's done, in terms of what he's gone through. . . . He worked for many, many people many, many years, and I would say what he did, some of the charges they threw against him, every consultant, every lobbyist in Washington probably does." Giuliani told journalists that the President "really thinks Manafort has been horribly treated" and that he and the President had discussed the political fallout if the President pardoned Manafort. The next day, Giuliani told the Washington Post that the President had asked his lawyers for advice on the possibility of a pardon for Manafort and other aides, and had been counseled against considering a pardon until the investigation concluded.

On September 14, 2018, Manafort pleaded guilty to charges in the District of Columbia and signed a plea agreement that required him to cooperate with investigators. Giuliani was reported to have publicly said that Manafort remained in a joint defense agreement with the President following Manafort's guilty plea and agreement to cooperate, and that Manafort's attorneys regularly briefed the President's lawyers on the topics discussed and the information Manafort had provided in interviews with the Special Counsel's Office. On November 26, 2018, the Special Counsel's Office disclosed in a public court filing that Manafort had breached his plea agreement by lying about multiple subjects. The next day, Giuliani said that the President had been "upset for weeks" about what he considered to be "the un-American, horrible treatment of

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879 Fox & Friends Exclusive Interview with President Trump, Fox News (Aug. 23, 2018) (recorded the previous day).

880 Fox & Friends Exclusive Interview with President Trump, Fox News (Aug. 23, 2018) (recorded the previous day).

881 Fox & Friends Exclusive Interview with President Trump, Fox News (Aug. 23, 2018) (recorded the previous day).

882 Maggie Haberman & Katie Rogers, "How Did We End Up Here?" Trump Wonders as the White House Soldiers On, New York Times (Aug. 22, 2018).

883 Carol D. Leonnig & Josh Dawsey, Trump recently sought his lawyers' advice on possibility of pardoning Manafort, Giuliani says, Washington Post (Aug. 23, 2018).


Manafort. In an interview on November 28, 2018, the President suggested that it was "very brave" that Manafort did not "flip":

If you told the truth, you go to jail. You know this flipping stuff is terrible. You flip and you lie and you get—the prosecutors will tell you 99 percent of the time they can get people to flip. It's rare that they can't. But I had three people: Manafort, Corsi—I don't know Corsi, but he refuses to say what they demanded. Manafort, Corsi... It's actually very brave.

In response to a question about a potential pardon for Manafort, the President said, "It was never discussed, but I wouldn't take it off the table. Why would I take it off the table?"

3. Harm to Ongoing Matter

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887 Stephen Collinson, Trump appears consumed by Mueller investigation as details emerge, CNN (Nov. 29, 2018).

888 "Corsi" is a reference to Jerome Corsi, who was involved in efforts to coordinate with WikiLeaks and Assange, and who stated publicly at that time that he had refused a plea offer from the Special Counsel's Office because he was "not going to sign a lie." Sara Murray & Eli Watkins, says he won't agree to plea deal, CNN (Nov. 26, 2018).

889 Marisa Schultz & Nikki Schwab, Oval Office Interview with President Trump: Trump says pardon for Paul Manafort still a possibility, New York Post (Nov. 28, 2018). That same day, the President tweeted: "While the disgusting Fake News is doing everything within their power not to report it that way, at least 3 major players are intimating that the Angry Mueller Gang of Dems is viciously telling witnesses to lie about facts & they will get relief. This is our Joseph McCarthy Era!" @realDonaldTrump 11/28/18 (8:39 a.m. ET) Tweet.

Analysis

In analyzing the President’s conduct towards Flynn, Manafort, the following evidence is relevant to the elements of obstruction of justice:

a. Obstructive act. The President’s actions towards witnesses in the Special Counsel’s investigation would qualify as obstructive if they had the natural tendency to prevent particular witnesses from testifying truthfully, or otherwise would have the probable effect of influencing, delaying, or preventing their testimony to law enforcement.

With regard to Flynn, the President sent private and public messages to Flynn encouraging him to stay strong and conveying that the President still cared about him before he began to cooperate with the government. When Flynn’s attorneys withdrew him from a joint defense agreement with the President, signaling that Flynn was potentially cooperating with the government, the President’s personal counsel initially reminded Flynn’s counsel of the President’s warm feelings towards Flynn and said “that still remains.” But when Flynn’s counsel reiterated that Flynn could no longer share information under a joint defense agreement, the President’s personal counsel stated that the decision would be interpreted as reflecting Flynn’s hostility towards the President. That sequence of events could have had the potential to affect Flynn’s decision to cooperate, as well as the extent of that cooperation. Because of privilege issues, however, we could not determine whether the President was personally involved in or knew about the specific message his counsel delivered to Flynn’s counsel.

With respect to Manafort, there is evidence that the President’s actions had the potential to influence Manafort’s decision whether to cooperate with the government. The President and his personal counsel made repeated statements suggesting that a pardon was a possibility for Manafort, while also making it clear that the President did not want Manafort to “flip” and cooperate with the government. On June 15, 2018, the day the judge presiding over Manafort’s D.C. case was considering whether to revoke his bail, the President said that he “felt badly” for Manafort and stated, “I think a lot of it is very unfair.” And when asked about a pardon for Manafort, the President said, “I do want to see people treated fairly. That’s what it’s all about.” Later that day, after Manafort’s bail was revoked, the President called it a “tough sentence” that was “Very unfair!” Two days later, the President’s personal counsel stated that individuals involved in the Special Counsel’s investigation could receive a pardon “if in fact the [P]resident and his advisors . . . come to the conclusion that you have been treated unfairly”—using language that paralleled how the President had already described the treatment of Manafort. Those statements, combined with the President’s commendation of Manafort for being a “brave man” who “refused to ‘break,’” suggested that a pardon was a more likely possibility if Manafort continued not to cooperate with the government. And while Manafort eventually pleaded guilty pursuant to a cooperation agreement, he was found to have violated the agreement by lying to investigators.

The President’s public statements during the Manafort trial, including during jury deliberations, also had the potential to influence the trial jury. On the second day of trial, for example, the President called the prosecution a “terrible situation” and a “hoax” that “continues to stain our country” and referred to Manafort as a “Reagan/Dole darling” who was “serving solitary confinement” even though he was “convicted of nothing.” Those statements were widely picked up by the press. While jurors were instructed not to watch or read news stories about the case and
are presumed to follow those instructions, the President’s statements during the trial generated substantial media coverage that could have reached jurors if they happened to see the statements or learned about them from others. And the President’s statements during jury deliberations that Manafort “happens to be a very good person” and that “it’s very sad what they’ve done to Paul Manafort” had the potential to influence jurors who learned of the statements, which the President made just as jurors were considering whether to convict or acquit Manafort.

### Harm to Ongoing Matter

b. **Nexus to an official proceeding.** The President’s actions towards Flynn, Manafort, HOM appear to have been connected to pending or anticipated official proceedings involving each individual. The President’s conduct towards Flynn HOM principally occurred when both were under criminal investigation by the Special Counsel’s Office and press reports speculated about whether they would cooperate with the Special Counsel’s investigation. And the President’s conduct towards Manafort was directly connected to the official proceedings involving him. The President made statements about Manafort and the charges against him during Manafort’s criminal trial. And the President’s comments about the prospect of Manafort “flipping” occurred when it was clear the Special Counsel continued to oversee grand jury proceedings.

c. **Intent.** Evidence concerning the President’s intent related to Flynn as a potential witness is inconclusive. As previously noted, because of privilege issues we do not have evidence establishing whether the President knew about or was involved in his counsel’s communications with Flynn’s counsel stating that Flynn’s decision to withdraw from the joint defense agreement and cooperate with the government would be viewed as reflecting “hostility” towards the President. And regardless of what the President’s personal counsel communicated, the President continued to express sympathy for Flynn after he pleaded guilty pursuant to a cooperation agreement, stating that Flynn had “led a very strong life” and the President “felt very badly” about what had happened to him.

Evidence concerning the President’s conduct towards Manafort indicates that the President intended to encourage Manafort to not cooperate with the government. Before Manafort was convicted, the President repeatedly stated that Manafort had been treated unfairly. One day after Manafort was convicted on eight felony charges and potentially faced a lengthy prison term, the President said that Manafort was “a brave man” for refusing to “break” and that “flipping” “almost ought to be outlawed.” At the same time, although the President had privately told aides he did not like Manafort, he publicly called Manafort “a good man” and said he had a “wonderful family.” And when the President was asked whether he was considering a pardon for Manafort, the President did not respond directly and instead said he had “great respect for what [Manafort]’s done, in terms of what he’s gone through.” The President added that “some of the charges they threw against him, every consultant, every lobbyist in Washington probably does.” In light of the President’s counsel’s previous statements that the investigations “might get cleaned up with some presidential pardons” and that a pardon would be possible if the President “come[s] to the conclusion that you have been treated unfairly,” the evidence supports the inference that the
President intended Manafort to believe that he could receive a pardon, which would make cooperation with the government as a means of obtaining a lesser sentence unnecessary.

We also examined the evidence of the President’s intent in making public statements about Manafort at the beginning of his trial and when the jury was deliberating. Some evidence supports a conclusion that the President intended, at least in part, to influence the jury. The trial generated widespread publicity, and as the jury began to deliberate, commentators suggested that an acquittal would add to pressure to end the Special Counsel’s investigation. By publicly stating on the second day of deliberations that Manafort “happens to be a very good person” and that “it’s very sad what they’ve done to Paul Manafort” right after calling the Special Counsel’s investigation a “rigged witch hunt,” the President’s statements could, if they reached jurors, have the natural tendency to engender sympathy for Manafort among jurors, and a factfinder could infer that the President intended that result. But there are alternative explanations for the President’s comments, including that he genuinely felt sorry for Manafort or that his goal was not to influence the jury but to influence public opinion. The President’s comments also could have been intended to continue sending a message to Manafort that a pardon was possible. As described above, the President made his comments about Manafort being “a very good person” immediately after declining to answer a question about whether he would pardon Manafort.