

**From:** Roger Adler <rbalaw@verizon.net>

**To:** thomas.mckay <thomas.mckay@usdoj.gov>; mm <mm@monicolaw.com>

**Cc:** laura.birger <laura.birger@usdoj.gov>; audrey.strauss <audrey.strauss@usdoj.gov>

**Subject:** Re: U.S. v. Michael Cohen (18-cr-602)(WHP)(Proffer Session [Telephonic Attorneys Proffer])

**Date:** Fri, Nov 15, 2019 3:06 pm

**Attachments:** 3-17-17 DJT check.pdf (213K)

I write as a followup to our November 1<sup>st</sup> attorneys' phone proffer, summarized in Mr. Monico's November 7<sup>th</sup> letter.

In the interim, I note that Supreme Court, New York County (Scarpulla, J.) has ordered payment of a \$2 million penalty in a civil suit filed by the New York State Attorney General, finding a breach of fiduciary duty by various Trump Family members affiliated with the Trump Foundation.

The Trump Foundation (T.F.) reportedly was used to further the Trump Presidential campaign. The T.F. improperly split the \$5.6 million raised. It is unclear if the Trump Campaign treasurer timely disclosed these funds in periodic Federal Election Law filings.

We know that the so-called "Stormy Daniels" payments, which Michael Cohen made on behalf of Donald J. Trump, were knowingly disguised to resemble "legal retainer" payments to Michael Cohen so he would be reimbursed. A Trump family member knowingly signed a March 17, 2017 check drawn on "Donald J. Trump – Revocable Trust Fund" (copy attached).

Your office charged Mr. Cohen with two counts of campaign finance fraud (7 and 8), even though he concededly held no position in the Trump campaign, and has ignored, to date, allegedly falsified business records which created by, or on behalf of, Donald J. Trump. Ms. Hope Hicks, a Trump confidante, was aware of the payments, and apparently did not relay them, or knowledge to the campaign treasurer.

With the current Trump Foundation decision by Justice Scarpulla, we urge your office to revisit the conduct of the "Trump Campaign," and its knowing family enablers – none of whom enjoy the trial immunity protection of the Office of Legal Counsel (O.L.C.) memorandum.

The pertinent O.L.C. memo does not, we submit, preclude the filing of a (a) criminal complaint, (b) indictment, or (c) Information, nor does it address state law investigations by (a) local District Attorneys, or (b) State Attorney Generals.

Against this backdrop, we urge your office not to "close its eyes" to (or consciously avoid) Mr. Cohen's proffered full cooperation, and proactive assistance. We will await your response. To paraphrase President Trump, "What do you have to lose?"

**Roger B. Adler**  
(212) 406-0181

**From:** McKay, Thomas (USANYS) <Thomas.McKay@usdoj.gov>  
**To:** Roger Adler <rbalaw@verizon.net>  
**Cc:** Michael Monico <mm@monicolaw.com>; Roos, Nicolas (USANYS) <Nicolas.Roos@usdoj.gov>; McKay, Thomas (USANYS) <Thomas.McKay@usdoj.gov>  
**Subject:** Michael Cohen  
**Date:** Wed, Nov 20, 2019 9:59 am

---

Mr. Adler,

We write in response to matters raised on our calls of October 28 and November 1, as well as in your subsequent correspondence of November 7, 15 and 18. In our calls, you explained that your client, Michael Cohen, sought to be heard on several new topics about which Mr. Cohen had not previously spoken with law enforcement. You described those new subjects to us with specificity in our November 1 call, and further memorialized them in your November 7, 2019 letter.

As we explained in our prior conversations, before you were retained by Mr. Cohen, representatives of our Office met with Mr. Cohen on four separate occasions for the purpose of allowing Mr. Cohen to provide information to law enforcement. Representatives of our Office also participated in at least two additional meetings with Mr. Cohen conducted by the Special Counsel's Office. In our prior conversations, we also highlighted for you some of the concerns we had, based on our prior experiences with Mr. Cohen, about the possibility of future cooperation.

We have nevertheless reviewed and carefully considered the information that you provided by phone on November 1 and detailed in your November 7 letter. We have also reviewed and considered your additional correspondence of November 15 and 18. Having done so, our concerns about Mr. Cohen's ability to provide cooperation have not diminished and we, therefore, decline your request for a further meeting at this time.

Respectfully,

Thomas McKay

Assistant United States Attorney

Southern District of New York

Office: 212-637-2268

Cell: 646-740-9729

Email: thomas.mckay@usdoj.gov