



An Investigation of Allegations Concerning  
the Department of Justice's Handling of the  
Government's Sentencing Recommendation in  
*United States v. Roger Stone*



OVERSIGHT AND REVIEW DIVISION

24-081

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## I. Introduction

This report describes the Department of Justice (Department or DOJ) Office of the Inspector General's (OIG) investigation into allegations concerning the Department's handling of the sentencing in *United States v. Roger Stone* and the congressional testimony relating to those allegations. Following Roger Stone's conviction at trial, on February 10, 2020, the U.S. Attorney's Office for the District of Columbia (DC USAO) filed the government's sentencing memorandum recommending that the U.S. District Judge impose a sentence upon Stone in accord with the advisory U.S. Sentencing Guidelines (the Guidelines or USSG), which the government submitted yielded a Guidelines range of 87 to 108 months of incarceration. Early the next morning, then President Donald J. Trump posted tweets criticizing the government's sentencing recommendation in the Stone case. Hours later, at the direction of then Attorney General William Barr, the DC USAO filed a "supplemental and amended" sentencing memorandum in the Stone case stating: (1) a sentence within the Guidelines range of 87 to 108 months was "excessive and unwarranted" and "would not be appropriate or serve the interests of justice," (2) a sentence "far less than" 87 to 108 months would be reasonable under the circumstances, and (3) the government ultimately defers to the court as to what the appropriate sentence should be. The same day, all four members of the government's trial team withdrew their appearances in the Stone case, and one of them resigned from the Department.

Thereafter, the OIG received numerous requests to review the circumstances surrounding the DC USAO's filing of the supplemental and amended sentencing memorandum (second memorandum).<sup>1</sup> However, the Inspector General Act of 1978 requires the OIG to refer to DOJ's Office of Professional Responsibility (OPR) misconduct allegations concerning the actions of DOJ attorneys—including the Attorney General—in connection with the exercise of the attorney's authority to litigate, investigate, or provide legal advice.<sup>2</sup> The OIG, consistent with our practice in such circumstances, undertook an assessment of available information to determine whether the OIG had a basis to exercise jurisdiction and spoke with DOJ leadership (i.e., the Attorney General, Deputy Attorney General, and their senior staff) and OPR about the matter. During these discussions, the OIG learned that DOJ leadership did not believe there was sufficient predication to support the opening of a review by OPR and that OPR had not opened a review. The OIG continued

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<sup>1</sup> For instance, in February 2020, members of Congress asked the OIG to investigate the Department's change in sentencing position and publicly expressed concern about improper political interference in the Stone case. In letters to the OIG, members of Congress questioned whether President Trump's public comments prompted the second sentencing memorandum and whether Barr had intervened in the case because of White House pressure.

<sup>2</sup> 5 U.S.C. §§ 413(b)(2)-(3).

its assessment of available information to determine whether there was potential OIG jurisdiction.

On June 24, 2020, while the OIG was still gathering information to determine whether the OIG had jurisdiction, a member of the government's Roger Stone trial team, Prosecutor 2, testified before the U.S. House of Representatives Committee on the Judiciary (House Judiciary Committee) alleging that improper considerations influenced the Department's handling of the Stone sentencing recommendation.<sup>3</sup> In his Statement for the Record, Prosecutor 2 stated that the Department exerted "significant pressure on the line prosecutors in the case to obscure the correct Sentencing Guidelines calculation to which Roger Stone was subject—and to water down and in some cases outright distort the events that transpired in his trial and the criminal conduct that gave rise to his conviction," culminating ultimately in the filing of the government's second sentencing memorandum. Prosecutor 2 further stated that DC USAO management had participated in improper political pressure imposed on the trial team to change the sentencing memorandum and made statements that: (1) Stone was "being treated differently from any other defendant because of his relationship to the President"; (2) Interim U.S. Attorney Timothy Shea was "receiving heavy pressure from the highest levels of the Department of Justice to cut Stone a break"; and (3) the Interim U.S. Attorney was "giving Stone such unprecedentedly favorable treatment because he was 'afraid of the President.'" During the June 24 hearing, Prosecutor 2 identified three supervisors in the DC USAO—two by name and one by title—as having made these statements or been involved in the relevant discussions.

The following day, June 25, 2020, the three supervisors—the then Principal Assistant U.S. Attorney (Principal AUSA), Chief of the DC USAO's Criminal Division (Criminal Chief), and Fraud and Public Corruption Section Chief (FPC Chief)—self-reported the allegations to OPR and identified them as "false and frivolous." In light of the allegations that Prosecutor 2's congressional testimony was false and, therefore, potentially criminal in nature, and because OPR does not investigate criminal matters, OPR referred those allegations to the OIG. The OIG has jurisdiction over all criminal allegations against DOJ employees, including attorneys.<sup>4</sup>

Given Prosecutor 2's sworn testimony and the supervisors' assertions to the contrary, in July 2020, the OIG notified then Attorney General Barr that we were initiating an investigation of the allegations. The OIG informed Barr that our investigation would include both the allegation regarding Prosecutor 2's testimony before the House Judiciary Committee and an examination of the circumstances surrounding the preparation and filing of the first and second sentencing memoranda to assess the competing claims regarding whether improper considerations influenced the Department's handling of the

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<sup>3</sup> Committee on the Judiciary, U.S. House of Representatives, "Oversight of the Department of Justice: Political Interference and Threats to Prosecutorial Independence" (June 24, 2020).

<sup>4</sup> 5 U.S.C. § 413(b)(2).

Stone sentencing recommendation and whether anyone placed improper political pressure on the Stone trial team. Barr did not raise any objections to the proposed scope of the OIG investigation. The OIG also informed OPR of the scope of our investigation at that time, and OPR concurred with the OIG investigating the matter.

Our investigation included a review of documents, emails, phone records, and available text messages and an analysis of relevant laws, regulations, DOJ policies, and USSG provisions. We also conducted interviews of 24 current and former Department attorneys and officials, several over multiple days. More specifically, we interviewed three of the four members of the Stone trial team—an Assistant U.S. Attorney (AUSA) who held a senior role in the DC USAO's Fraud and Public Corruption Section (Prosecutor 1), Prosecutor 2, and Prosecutor 3—as well as Shea, members of Shea's management team, including the Principal AUSA, Chief of Staff to the Interim U.S. Attorney (Shea's Chief of Staff), the Criminal Chief, the FPC Chief, and several other DC USAO attorneys. We also interviewed former U.S. Attorney for the District of Columbia Jessie Liu, Barr's Chief of Staff Brian Rabbitt, the Principal Associate Deputy Attorney General during times relevant herein, Seth DuCharme, and several other Department officials. Barr declined our request for a voluntary interview, and because the OIG does not have the authority to subpoena testimony from former Department employees, we were unable to compel his interview. For the same reason, we were unable to compel testimony from other former Department officials and employees who declined our requests for a voluntary interview, including Jeffrey Rosen, Deputy Attorney General during times relevant to this investigation; the Department's Public Affairs Director during times relevant to this investigation; Attorney General Barr's Chief of Staff who replaced Brian Rabbitt in March 2020; and a member of the government's trial team (Prosecutor 4).

As detailed below, our investigation did not identify documentary or testimonial evidence that the actions and decisions of those involved in the preparation and filing of the first and second sentencing memoranda were affected by improper political considerations or influence. The evidence showed that, prior to Shea's appointment as Interim U.S. Attorney on February 3, 2020, and during Shea's first week in that position, there had been extensive discussions within the DC USAO about the Guidelines calculation in the Stone case, whether a sentence within the Guidelines range was reasonable, and whether the DC USAO should advocate for a Guidelines sentence. The OIG did not find evidence that DOJ leadership discussed the Stone sentencing with Shea or his Chief of Staff before they joined the DC USAO, and testimony from Liu and DuCharme indicated that no one from DOJ leadership had been tracking the upcoming sentencing. The OIG also did not find evidence indicating that, after Shea became Interim U.S. Attorney and before the first memorandum was filed, DOJ leadership exerted pressure upon Shea or the DC USAO, or otherwise inserted itself into the internal DC USAO discussions about the sentencing memorandum and recommendation. Instead, we found that Shea, unsure of what to do, decided to seek guidance from DuCharme days before the filing deadline, looking for a "steer" on what sentencing position to take. Then, on February 10, 2020, the day the DC

USAO's sentencing filing was due and immediately after a previously scheduled meeting that Shea had with Barr and others on an unrelated matter, Shea initiated a discussion with Barr about the Stone sentencing recommendation. At the time of this conversation, Shea had still not decided what position the DC USAO's sentencing memorandum should take, even though it was due later that day. Shea told Barr during their conversation that he (Shea) believed the Guidelines range was unreasonable, and he and Barr then discussed the DC USAO taking a sentencing approach that advised the court that a sentence below the Guidelines range would be appropriate and that deferred to the court on the ultimate sentence to impose.<sup>5</sup> However, rather than taking the approach he discussed with Barr, and despite telling Barr that he believed the Guidelines range was unreasonable, a few hours later Shea authorized the filing of the DC USAO's sentencing memorandum that advocated for a sentence that was "consistent with" the Guidelines range.

The evidence showed that immediately upon learning that evening from media reporting that the DC USAO's memorandum's sentencing recommendation was inconsistent with the approach that he and Shea had discussed, Barr expressed to members of his staff that the recommendation reported in the media did not reflect what he and Shea discussed earlier that day, and his view that it needed to be "fixed." Several hours later, shortly after midnight on February 11, then President Trump issued tweets attacking the DC USAO's sentencing memorandum. Thus, we found that Barr had articulated his position about the sentencing recommendation both before and shortly after the first sentencing memorandum was filed, and before the President's tweets.

Based on the evidence described in this report, we concluded that the sequence of events that resulted in the Department's extraordinary step of filing a second sentencing memorandum was largely due to Shea's ineffectual leadership. We found no evidence that DOJ leadership, Shea, or DC USAO supervisors engaged in misconduct or violated Department policy in connection with the Stone sentencing.<sup>6</sup>

We also concluded that Prosecutor 2 did not provide false testimony to the House Judiciary Committee in violation of 18 U.S.C. §§ 1621 and 1001. Although we did not find evidence sufficient to establish improper political considerations or influence, as Prosecutor 2 had alleged in his testimony before the House Judiciary Committee, we identified statements made by Prosecutor 1 and speculative comments by the FPC Chief that influenced Prosecutor 2's suspicions about possible political interference and formed a substantial basis for Prosecutor 2's testimony. As a result, we found that Prosecutor 2's

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<sup>5</sup> As we describe in this report, even career lawyers at the DC USAO believed at the time that reasonable minds could differ about the appropriateness of a sentencing recommendation within the range of the Guidelines.

<sup>6</sup> Unless otherwise noted, the OIG applies the preponderance of the evidence standard in determining whether Department personnel have committed misconduct. The Merit Systems Protection Board applies this same standard when reviewing a federal agency's decision to take adverse action against an employee based on misconduct. See 5 U.S.C. § 7701(c)(1)(B); 5 C.F.R. § 1201.56(b)(1)(ii).

belief that he (and the rest of the trial team) had been pressured to revise the memorandum for political reasons was not unreasonable.

We recognize that the Department's handling of the sentencing in the Stone case was highly unusual, including its filing of a second sentencing memorandum and DOJ leadership's personal involvement in the preparation of that second memorandum. Moreover, Shea's and Barr's participation in the Stone sentencing, given their status as Administration political appointees and Stone's relationship with the then President, resulted in questions being asked and allegations being made about the Department's decision making. However, absent a law, rule, regulation, or Department policy that prohibits their participation (none of which exist here), whether the U.S. Attorney and/or the Attorney General should personally participate in such a matter is ultimately left to their discretion and judgment, including their assessment of how such involvement will affect public perceptions of the federal justice system and the Department's integrity, independence, and objectivity.

The OIG has provided a copy of this report to the Offices of the Attorney General and Deputy Attorney General and the Executive Office for U.S. Attorneys for their information.

## **II. Background**

### ***A. United States v. Roger Stone***

On January 24, 2019, a federal grand jury indicted Roger Stone on one count of obstruction of a proceeding, five counts of making false statements, and one count of witness tampering relating to the U.S. House of Representatives Permanent Select Committee on Intelligence's (HPSCI) investigation into Russian interference in the 2016 U.S. presidential election. The HPSCI investigation was interested in Stone's efforts in the months leading up to the 2016 presidential election to obtain information from an organization, later identified as WikiLeaks, that would help the Trump campaign. The Fraud and Public Corruption Section of the DC USAO's Criminal Division prosecuted Stone under the supervision of the FPC Chief. The trial team included Prosecutor 1, Prosecutor 2, Prosecutor 3, and Prosecutor 4.

During Stone's trial, the DC USAO trial team presented evidence that Stone obstructed the HPSCI investigation by giving false and misleading testimony about, among other things, his communications with the Trump campaign regarding WikiLeaks, requests he made for information from WikiLeaks, the source of certain public statements he made about WikiLeaks, and his possession of documents pertinent to the HPSCI investigation. Evidence was introduced to show that Stone failed to turn over, and lied about the existence of, records responsive to HPSCI's document requests; submitted a letter to HPSCI falsely identifying a person, later identified as Randy Credico, as his intermediary or source

for information concerning WikiLeaks; and attempted to have Credico testify falsely before HPSCI or prevent him from testifying.

Most relevant to the issues described later in this report, with respect to the witness tampering offense, the government presented evidence that Stone urged Credico to confirm Stone's false testimony to HPSCI that Credico was his source of information for statements Stone made in early August 2016 about certain contacts with WikiLeaks and that Stone took steps to prevent Credico from contradicting his false statements to HPSCI. The government presented evidence that these steps included, among other things, threats Stone made to Credico as follows: "I'm going to take that dog away from you" and "I am so ready. Let's get it on. Prepare to die, cocksucker." Credico later declined HPSCI's request for a voluntary interview and invoked his Fifth Amendment privilege against self-incrimination in response to a HPSCI subpoena. During Stone's trial, Credico testified that he did not take Stone's threats seriously, but he worried that Stone's words, if repeated in public, might cause "other people [to] get ideas."

Also relevant to the issues described later in this report, after his indictment and before the trial, Stone posted an image online of the judge presiding over his case with a crosshair next to her head. At a hearing on the matter, the court found that "the effect and very likely the intent of the post was to denigrate this process and taint the jury pool," and that Stone's actions "posed a very real risk that others with extreme views and violent inclinations would be inflamed." The court modified Stone's conditions of release to prohibit any public statements by him about the investigation, the case, or any of the participants in the investigation or the case. However, Stone continued to make public comments about the pending case and related matters in violation of the court's orders.

On November 15, 2019, after an almost 2-week trial, Stone was convicted on all seven counts—obstruction of a proceeding (one count), making false statements (five counts), and witness tampering (one count).

## **B. Federal Sentencing Guidelines**

### **1. Sentencing Practice**

After a criminal defendant has been convicted of a federal offense, either through a guilty plea or trial verdict, a U.S. district judge for the federal judicial district in which the defendant is being prosecuted is responsible for sentencing the defendant. Under federal law, the judge must impose a sentence that is "sufficient, but not greater than necessary" to achieve the sentencing goals of retribution, deterrence, incapacitation, and rehabilitation. 18 U.S.C. § 3553(a). The court sentences the defendant at a sentencing hearing where the United States is represented by a federal prosecutor, who is typically an AUSA assigned to the matter by the local U.S. Attorney's Office, and the defendant is usually represented by counsel. The government's and the defendant's sentencing positions can be expressed in

writing in advance of the sentencing hearing through a sentencing memorandum and/or orally during the sentencing hearing.

To determine the sentence, the court's analysis begins with calculating the sentence for the defendant's offenses pursuant to the advisory U.S. Sentencing Guidelines.<sup>7</sup> The Guidelines, which apply in most federal sentencings, are intended to assist federal courts across the country in achieving sentencing uniformity for similar criminal conduct and proportionality for criminal conduct of different severity. Under the Guidelines, the offense guideline sections applicable to the defendant's offenses must first be identified. For each offense, the defendant's offense level is calculated by determining the base offense level in the relevant guideline section and increasing or decreasing that level to account for any applicable specific offense characteristics (SOC or specific offense characteristic) and/or adjustments. Specific offense characteristics and adjustments are aggravating and mitigating factors that may apply depending on the circumstances of the defendant's offenses. If the defendant has been convicted of multiple offenses, the offense levels for each offense are merged into one, combined offense level through the Guidelines' grouping rules. These rules group together those offenses that involve substantially the same harm and then, using a chart set forth in the Guidelines, account for the group with the most serious offense, and the number and seriousness of other groups, to reach a combined offense level. This offense level is then reduced if the defendant has clearly demonstrated acceptance of responsibility for his offenses, which is rare in cases where the defendant was convicted at trial. Separately, the Guidelines provide instructions for how to account for a defendant's criminal history. Using the total offense level and the defendant's criminal history category, the Guidelines identify the defendant's advisory sentencing range, which is presented in a range of months.

In advance of the sentencing hearing, the U.S. Probation Office, which works on behalf of the court, is required to prepare a presentence investigation report (PSR) that includes its calculation of the defendant's advisory Guidelines range. If the government and/or the defendant disagree with the Probation Office's calculation, they may submit objections to the PSR. After considering the advisory Guidelines range calculated by the Probation Office, and any objections or arguments by the government and/or the defendant, the court is required to correctly determine the Guidelines range.

In most cases, the government and the defendant recommend and advocate for a particular sentence, which can be a sentence within the advisory Guidelines range, a specific sentence within that range, or a sentence above or below that range by seeking a departure or variance from the Guidelines range. A departure is a sentence within the Guidelines' framework where a party argues that the case's circumstances are atypical and outside the intended "heartland" of the relevant offense guideline. See *Rita v. United*

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<sup>7</sup> In *Booker v. United States*, 543 U.S. 220, 245 (2005), the Supreme Court invalidated the statutory provision that made the Guidelines mandatory.



*States*, 551 U.S. 338, 344, 351 (2007). A variance is a sentence independent of the Guidelines where a party argues that application of the factors set forth in 18 U.S.C. § 3553(a) warrants a sentence higher or lower than the Guidelines range. The § 3553(a) factors include the offense’s nature and circumstances; the defendant’s history and characteristics; the need for the sentence imposed to reflect the offense’s seriousness, to promote respect for the law, and to provide just punishment for the offense; and the need to avoid unwarranted sentence disparities among defendants with similar criminal records who have been found guilty of similar conduct.

The Department has put in place various policies to guide federal prosecutors in deciding what the government’s position should be at sentencing. During the period relevant to this investigation, they included Attorney General Jefferson B. Sessions III’s May 10, 2017 Department Charging and Sentencing Policy (Sessions Policy).<sup>8</sup> The Sessions Policy provided in relevant part:

[P]rosecutors must disclose to the sentencing court all facts that impact the sentencing guidelines or mandatory minimum sentences, and should in all cases seek a reasonable sentence under the factors in 18 U.S.C. § 3553. In most cases, recommending a sentence within the advisory guideline range will be appropriate. Recommendations for sentencing departures or variances require supervisory approval, and the reasoning must be documented in the file.... Each United States Attorney and Assistant Attorney General is responsible for ensuring that this policy is followed, and that any deviations from the core principle are justified by unusual facts.

Additionally, during the relevant time period, the Department’s Justice Manual, 9-27.730, provided in relevant part:

The attorney for the government should make sentencing recommendations based on an individualized assessment of the facts and circumstances of each case and the history and characteristics of the defendant, without improper consideration of the defendant’s race, religion, gender, ethnicity, national origin, sexual orientation, or political association, activities, or beliefs.<sup>9</sup>

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<sup>8</sup> On January 29, 2021, Acting Attorney General Monty Wilkinson rescinded the Sessions Policy and reinstated, on an interim basis, Attorney General Eric H. Holder, Jr.’s May 19, 2010 Department Policy on Charging and Sentencing. On December 16, 2022, Attorney General Merrick Garland issued a new memorandum, “General Department Policies Regarding Charging, Pleas, and Sentencing,” which, among other things, sets forth current guidance to federal prosecutors on sentencing.

<sup>9</sup> In June 2023, this provision was revised slightly to state: “The attorney for the government should make sentencing recommendations based on an individualized assessment of the *nature and circumstances of the offense* and the history and characteristics of the defendant, without improper consideration of the defendant’s race, religion, gender, ethnicity, national origin, sexual orientation, or political association, activities, or beliefs.” (Emphasis added.)

After hearing the government's and the defendant's arguments regarding the appropriate sentence, the court "must make an individualized assessment based on the facts presented" and cannot presume that the advisory Guideline range is reasonable. *Gall v. United States*, 552 U.S. 38, 50 (2007). To guide its sentencing discretion, the court must consider the § 3553(a) factors. After considering the advisory Guideline range and the § 3553(a) factors, the court, using its discretion, determines the defendant's sentence and states its reasons for the sentence.

## 2. Application of Offense Guideline Section 2J1.2

Under the advisory Guidelines, the total offense level for Stone's offenses was calculated using offense guideline 2J1.2, which is titled "Obstruction of Justice." For all offenses under this guideline section, including obstruction of a proceeding and witness tampering, the base offense level is 14.

The Guidelines then prompt consideration of whether certain specific offense characteristics apply, which, as noted previously, can raise or lower the offense level. Relevant to Stone's offenses, the specific offense characteristics under Section 2J1.2 include an 8-level increase in the offense level if the offense involved causing or threatening to cause physical injury to a person, or property damage, to obstruct the administration of justice (8-level threats SOC). See USSG § 2J1.2(b)(1)(B). Courts have recognized that this specific offense characteristic does not have an "additional 'seriousness' requirement" regarding the defendant's conduct "beyond the fact of a violent threat." *United States v. Bakhtiari*, 714 F.3d 1057, 1061 (8th Cir. 2013), quoting *United States v. Plumley*, 207 F.3d 1086, 1090 (8th Cir. 2000). Separately, if the offense resulted in substantial interference with the administration of justice, including the unnecessary expenditure of substantial governmental resources, the offense level is increased by three levels (3-level substantial interference SOC). See USSG § 2J1.2(b)(2), comment (n.1). Additionally, if the offense was extensive in scope, planning or preparation, the offense level is increased by two levels (2-level extensive SOC). See USSG § 2J1.2(b)(3)(C).

Further, Section 3C1.1 of the Guidelines, which is titled "Obstructing or Impeding the Administration of Justice," provides for an adjustment that increases the offense level by two levels if the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction, and the obstructive conduct related to the defendant's offense of conviction (2-level obstruction adjustment). In cases where the defendant, like Stone, was convicted of an obstruction of justice offense covered by Section 2J1.2, the Guidelines provide that this adjustment should only be applied if a significant further obstruction occurred during the investigation, prosecution, or sentencing of the obstruction offense itself. See USSG § 3C1.1, comment (n.7).

### **III. Events Leading Up to the Government's First Sentencing Memorandum**

#### **A. Trial Team's Sentencing Guidelines Calculation, Meeting with Probation Office, and Submission of Draft Sentencing Memorandum to DC USAO Management on February 1**

After the November 15, 2019 guilty verdict, the judge set Stone's sentencing hearing for February 20, 2020. The judge further required that the DC USAO and defense counsel file any sentencing memorandum by Friday, February 7, 2020. That deadline was subsequently extended by the court to February 10 at the defense's request.

The trial team began preparing for Stone's sentencing hearing by calculating the Guidelines range, providing information to the U.S. Probation Office, and drafting a sentencing memorandum. Prosecutor 2, who took a lead role in the trial team's sentencing preparations, told the OIG that the team's sentencing position was developed through an "ongoing deliberative discussion" and not finalized until the team completed its draft of the memorandum, which Prosecutor 1 submitted to DC USAO management for review on February 1, 2020.

In calculating the Guidelines range, the team agreed that the 3-level substantial interference and 2-level extensive SOC likely applied. However, the team was initially less certain about whether the government should seek application of the 8-level threats SOC for Stone's offense conduct related to Credico and the 2-level obstruction adjustment for Stone's post-indictment conduct related to his online postings and public statements about the presiding judge and his pending case. Specifically, in November 21, 2019 emails between the trial team, Prosecutor 3 described the 8-level threats SOC as "more debatable" than the 2-level extensive SOC, and Prosecutor 2 expressed that he did not think the government should seek application of the 8-level threats SOC because it was "a reach" unless they could show "more than 'prepare to die' and the [dognapping] text." Prosecutor 2 also described the 2-level obstruction adjustment for Stone's post-indictment conduct as "more [of a] stretch" than the 2-level extensive SOC. Email communications reflect that Prosecutor 2 initially believed, and Prosecutor 4 agreed, that Stone's post-indictment conduct could instead be addressed in their analysis of the § 3553(a) factors in the sentencing memorandum.

The 8-level threats SOC and 2-level obstruction adjustment, therefore, were not included in the team's internal November 26, 2019 written Guidelines calculation that the team drafted in preparation for their December 4, 2019 meeting with the Probation Officer assigned to Stone's case. However, Prosecutor 2 told the OIG that the team reached a consensus before the Probation Officer meeting that both of these sentencing

enhancements likely applied.<sup>10</sup> Both Prosecutor 2 and Prosecutor 3 told the OIG that at the same time, the team did not have a settled Guidelines calculation because they wanted to see the Probation Office's calculation in the PSR.

During the December 4 meeting with the Probation Officer, Prosecutor 2, Prosecutor 3, and Prosecutor 4 provided information regarding the facts proven at trial. According to Prosecutor 2 and Prosecutor 3, they also shared the team's initial view that the 8-level threats, 3-level substantial interference, and 2-level extensive SOCs, and the 2-level obstruction adjustment potentially applied to the advisory Guidelines calculation.

On January 16, 2020, the Probation Office issued its draft PSR, which included in its advisory Guidelines calculation the 8-level threats and 3-level substantial interference SOCs, and the 2-level obstruction adjustment. The draft PSR did not include the 2-level extensive SOC which, as noted below, resulted in the trial team subsequently submitting an objection arguing that the 2-level extensive SOC applied.<sup>11</sup> Under the Sentencing Guidelines, the addition of the three enhancements to Section 2J1.2's base offense level of 14 results in a total offense level of 27 and, for a defendant with no criminal history, a 70 to 87 months sentencing range. After receiving the draft PSR, Prosecutor 2 emailed the team, "Wow, 70-87 months." Prosecutor 2 told the OIG that he was surprised that the Probation Office had largely agreed with the team's calculation.

A few days later, on January 20, Credico sent a letter to the court asking the court not to sentence Stone to prison. In the letter, Credico stated that he never felt that Stone "posed a direct physical threat" to him or his dog. According to Prosecutor 1 and others, the team had reasons to doubt Credico's credibility in the letter and believed the 8-level threats SOC was legally and factually supported even if Stone posed no physical threat.

On January 23, Prosecutor 2 emailed the team the first draft of the sentencing memorandum, which the team subsequently supplemented and revised. Prosecutor 2 told the OIG that, as "a starting point for [further] discussion" about the Guidelines calculation, this first draft included the same calculation as the draft PSR, which did not include the 2-

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<sup>10</sup> Although email communications reflect that Prosecutor 2 initially believed that the team would look "less credible" with the court if they sought application of the 8-level threats SOC, Prosecutor 2 told the OIG that he eventually became convinced that this sentencing enhancement applied after legal research, team conversations, and a review of Credico's grand jury testimony and interview summaries. He told the OIG, "[T]he argument that had increasing salience to me over time was [that the 8-level threats SOC is] not an enhancement that is based on necessarily the ability of the person making the threats to carry out the activity," but it requires only that the defendant made the threat. Prosecutor 1 told the OIG that he always believed the 8-level threats SOC applied. Prosecutor 3 told the OIG that, before the Probation Office meeting, his view was that the 8-level threats SOC likely applied, and he thought others on the team agreed.

<sup>11</sup> Information in this report about the contents of the draft PSR, which was not filed on the public docket, is described in Stone's sentencing memorandum, which was filed on the public docket. See Defendant Roger Stone's Sentencing Memorandum and Motion for Variance from Advisory Guidelines, *United States v. Roger Stone*, No. 1:19-cr-18-ABJ (D.D.C. Feb. 10, 2020).

level extensive SOC. However, after further deliberations and research, the trial team concluded that the 2-level extensive SOC also applied and, on January 30, submitted an objection to the draft PSR's Guidelines calculation making that argument. With the addition of the 2-level extensive SOC, the team's calculation resulted in a total offense level of 29 and an 87 to 108 months sentencing range.<sup>12</sup>

In addition to calculating the Guidelines range, the trial team considered and discussed the § 3553(a) factors relevant to Stone to determine an appropriate sentencing recommendation. These factors included "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." 18 U.S.C. § 3553(a)(6). According to the FPC Chief and other evidence, other defendants convicted of the same offenses as Stone typically received sentences lower than the 87 to 108 months Guidelines range calculated by the team. Through research, Prosecutor 4 attempted to identify other defendants who engaged in comparable conduct, but the task proved difficult, which the FPC Chief and trial team members told us was due to Stone's unique conduct.

Prosecutor 2 told the OIG that the "closest analogue" was the prosecution of Scooter Libby, who was the Chief of Staff to then Vice President Richard B. Cheney and was convicted at trial of obstruction of justice, making false statements, and perjury, and sentenced to 30 months' imprisonment. According to a November 26, 2019 email from Prosecutor 2 to the trial team, he initially believed that Libby's Guidelines range of 30 to 37 months "seem[ed] about right" for Stone. However, according to the trial team, and as reflected in the government's sentencing filings in the Libby case, unlike Stone, Libby did not threaten a witness or engage in obstructive, post-indictment acts. Prosecutor 1 told us that he suggested using Libby's 30-month sentence as a starting point and then adding Stone's different, more serious conduct using the § 3553(a) factors to reach an appropriate sentencing recommendation. Prosecutor 2 told us that this discussion ultimately persuaded Prosecutor 2 that a sentence of 87 months, which was the low end of the Guidelines range calculated by the team, was reasonable and complied with Department policy, including the Sessions Policy, which, as noted previously, provided that a Guidelines sentence recommendation is appropriate in most cases. Prosecutor 3 told the OIG that he thought that 87 months was high based on the comparable cases, but he said that he generally deferred to other members of the team regarding sentencing issues in part because he was focused at the time on another case. Prosecutor 1 told the OIG that the trial team thought 87 months was a reasonable recommendation, and he did not recall anyone on the team expressing any concerns with it.

According to Prosecutor 2, the trial team also discussed whether a variance below the Guidelines range would be appropriate, but they did not identify a compelling

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<sup>12</sup> In the trial team's Guidelines calculation, Stone's lack of criminal history resulted in the lowest sentencing range associated with the total offense level of 29.

argument under the facts, law, or Department policy to support such a recommendation. Team members told us that they did not seriously consider making no sentencing recommendation at all because that was not the DC USAO's practice. Further, team members told us that a Guidelines sentence recommendation aligned with the DC USAO's Fraud and Public Corruption Section's practice of seeking a Guidelines sentence following trial. Prosecutor 2 told us that this practice was also consistent with his other sentencing experience.

Before Prosecutor 1 submitted the memorandum to DC USAO management for review, he told the FPC Chief and the Criminal Chief (who was then the Acting Chief of the DC USAO's Criminal Division) about the team's Guidelines calculation and recommendation. According to Prosecutor 1, the FPC Chief and the Criminal Chief said that the recommendation of 87 months sounded right.

On January 31, Prosecutor 1 emailed the draft memorandum to the FPC Chief. The January 31 draft memorandum requested that Stone be sentenced to 87 months' imprisonment, the bottom of the team's calculated Guidelines range. The introduction outlined the reasons why Stone's conduct was "extensive and egregious," and a separate statement of facts detailed Stone's offense and post-indictment conduct. The memorandum then provided the team's Guidelines calculation—a total offense level of 29—with relevant case law support, and a discussion of the § 3553(a) factors that advocated for a "Guidelines-compliant sentence." Regarding the need to avoid unwarranted sentencing disparities, the memorandum provided that "a sentence within the Guidelines range would be consistent with sentences imposed on other defendants" and discussed the sentences imposed in other obstruction of justice, witness tampering, and false statement prosecutions, including Libby and former Trump campaign Chairman Paul Manafort, with the highest being 35 months' imprisonment. However, the team argued in the memorandum that these cases were distinguishable factually and none involved conduct as significant as Stone's.

The FPC Chief told us that he believed the Guidelines calculation was correct and the 87 months' imprisonment recommendation was reasonable. On January 31, the FPC Chief emailed a small number of edits to the memorandum to Prosecutor 1 that the FPC Chief characterized as "nits." The following day, February 1, after some additional minor edits, Prosecutor 1 emailed the draft memorandum to the Criminal Chief, the FPC Chief, and the Principal AUSA.

## **B. Timothy Shea Becomes Interim U.S. Attorney on February 3**

On December 10, 2019, President Trump announced his intent to nominate Jessie Liu, who was then the U.S. Attorney for the District of Columbia, to the position of Under Secretary for Terrorism and Financial Crimes at the Department of the Treasury. On January 6, 2020, the nomination was formally submitted to the U.S. Senate. At the request of then Attorney General Barr, Liu agreed to resign as U.S. Attorney while her Senate

confirmation for the Treasury position was pending. On January 10, 2020, Liu emailed DC USAO staff that she expected to transition to the Department of the Treasury on or about February 1.<sup>13</sup>

Liu told us that sometime before she left the DC USAO, likely in early January, she sent a text message to then Principal Associate Deputy Attorney General (PADAG) Seth DuCharme to notify him that the government's sentencing memorandum in the Stone case was due on Friday, February 7, 2020 (before it was extended to February 10, 2020). Liu told us that she did not recall receiving a response from DuCharme, and DuCharme said he did not recall this particular text message.<sup>14</sup> Liu told us that around this time, likely before she knew when her last day would be, she asked a DC USAO supervisor for the opportunity to review a draft of the government's sentencing memorandum by late January. According to Liu, it was common practice for her to review and edit a sentencing memorandum in a significant case. This particular draft, however, did not reach her level of review before she left the Department. Liu told us that she recalled learning through informal conversations that the Guidelines range was 87 to 108 months "or something very close to it." According to Liu, she recalled thinking at the time that the range sounded "higher than [she] would have thought" in a "false statements, perjury, and obstruction case" but not necessarily too high. She explained that she did not believe she could have formed an opinion about whether the Guidelines range was appropriate or excessive without "walking through the Guidelines analysis," which she had not done before she left.

On January 30, 2020, Barr announced the appointment of Timothy Shea as Interim U.S. Attorney for the District of Columbia, pursuant to 28 U.S.C. § 546, effective Monday, February 3, 2020. At the time of the announcement, Shea was a Counselor to the Attorney General, a position he had held since March 2019.<sup>15</sup> Email communications and witness testimony reflect that although there was an interview process for Liu's replacement involving multiple candidates, Barr had a strong preference at the start for Shea to fill the position. For example, on January 8, 2020, the day before the interviews began, Barr emailed his then Chief of Staff, Brian Rabbitt: "I want Tim [Shea] in place by the time I leave

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<sup>13</sup> After she left the Department, Liu briefly served as Counselor to the Treasury Secretary while her confirmation was pending.

<sup>14</sup> According to Liu, she did not recall attending any previous briefings with Barr about the Stone case or having previous discussions with DOJ leadership about the Stone sentencing, but it was fairly common for her to notify the Principal Associate Deputy Attorney General (PADAG) of significant events in significant cases. Barr's former Chief of Staff Brian Rabbitt also told us that he did not recall Barr being briefed on the Stone case.

<sup>15</sup> Shea previously served as an Associate Deputy Attorney General from 1991 to 1992 during Barr's earlier tenures as Deputy Attorney General and Attorney General. From 1992 to 1997, Shea served as an Assistant U.S. Attorney in the Eastern District of Virginia. Shea also served in roles for two congressional committees in 1984 to 1991 and 1997 to 1999, and for a Member of Congress in 1982 to 1984. Immediately before Shea became Counselor to the Attorney General in 2019, Shea was in private practice for approximately 20 years specializing in complex civil litigation.

for Mexico. ASAP.” Rabbitt told us that he likely knew as early as late December 2019 that Barr “strongly wanted” to appoint Shea as U.S. Attorney for the District of Columbia.<sup>16</sup>

The same day Barr publicly announced Shea’s appointment, Liu and the Principal AUSA met with Shea and Shea’s soon-to-be Chief of Staff, who at the time was Senior Counsel to the Deputy Attorney General, to brief them on the DC USAO and identify matters that would require Shea’s immediate attention. Although Shea told us that he did not remember any discussion of the Stone case, Liu and the Principal AUSA said that they recalled a very brief discussion during which they advised Shea that the most immediate priority was the Stone sentencing memorandum because it was due the Friday of his first week. Liu and the Principal AUSA said that they did not remember Shea’s reaction or whether he asked any questions relating to the case.

Email communications reflect that Shea’s Chief of Staff asked the Principal AUSA to meet with him and Shea again the following day, January 31. The emails do not indicate the purpose of this second meeting, and Shea’s Chief of Staff and the Principal AUSA told us that they did not remember having a second meeting. Shea recalled the meeting but said he did not remember any discussion of the Stone case. Aware that the Principal AUSA was meeting with Shea, on January 31, the FPC Chief emailed the Principal AUSA some details about the Stone sentencing memorandum in case the issue came up in discussion. The details included that the draft sentencing memorandum would be circulated later that day, the Guidelines range was 87 to 108 months or 70 to 87 months depending upon a “disputed adjustment” (the 2-level extensive SOC not included in the Probation Office’s PSR), and the FPC Chief anticipated that “some people will shudder at the Guideline[s] range.” The FPC Chief also said, “It is important that we not reserve a conversation about our sentencing position to the last minute.” Accordingly, the FPC Chief suggested to the Principal AUSA that Shea receive a briefing on the case on Tuesday, February 4, Shea’s second day in office.

### **C. Interim U.S. Attorney is Briefed on Stone Case, Disagreements Within DC USAO Emerge Over the Proposed Guidelines Calculation and Sentencing Recommendation**

Shea’s first involvement in the Stone case occurred on Tuesday, February 4, which was the day after he was sworn in as Interim U.S. Attorney. That day, Prosecutor 1 briefed Shea on the case, including the underlying conduct, the indictment, the trial, and the proposed sentencing recommendation. The Principal AUSA, the Criminal Chief, the FPC

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<sup>16</sup> Rabbitt told us that although he understood that Shea was “the favorite” for U.S. Attorney in Barr’s mind, Rabbitt recommended to the Attorney General that they conduct an interview process so that the Attorney General had the opportunity to consider other candidates as well. Rabbitt told us that he did not have any concerns about Shea’s qualifications, but he told Barr that he had some concern about appointing Shea as the U.S. Attorney of a high-profile office that may require him to make difficult decisions. According to Rabbitt, he thought highly of Shea but was not aware of him having previously served in a similar role.



Chief, and Shea's Chief of Staff also attended the briefing. By all accounts, there was no debate about the merits of the sentencing recommendation at this briefing; instead, the briefing was primarily informational.

Shea told the OIG that this briefing was his first introduction to the Stone case. We did not find documentary or testimonial evidence indicating that DOJ leadership discussed the Stone sentencing with Shea or his Chief of Staff before they joined the DC USAO on February 3 and received this initial briefing on February 4, and Shea told us that he did not join the DC USAO with a directive or understanding from DOJ leadership about how to handle the Stone sentencing. Shea's Chief of Staff provided similar testimony.

Shea told us that his initial reaction to the sentencing recommendation was that "it was very high," and that he needed to "dig a little deeper" into the case. Shea said that he prosecuted several perjury cases when he was an AUSA and had never seen those cases produce a sentence that high, and that he was aware of many violent crimes that did not result in sentences "anywhere near" the sentence the team was recommending for Stone. No decisions regarding the sentencing memorandum were made during this initial briefing, and, according to Prosecutor 1, Shea concluded it by stating that he (Shea) "would take a closer look at the sentencing memo[ramandum] and [that they] would probably talk about it again."

Shea and the Principal AUSA discussed the Stone sentencing memorandum again either later that Tuesday or the following day. According to the Principal AUSA, Shea described the sentencing range as "surprisingly high" and also stated that "he didn't like the rhetoric" in the factual summary portion of the sentencing memorandum. Shea told us that he had two concerns with the proposed sentencing position: (1) the 8-level threats SOC almost doubled the Guidelines range and he was not certain the SOC applied given Stone's "erratic nature" and Credico's letter to the court; and (2) the recommendation did not seem proportional to the sentences imposed in comparable cases and instead appeared "out of whack." The Principal AUSA told us that he and Shea were just "talking it through" at this point, and no decisions were made. During this conversation or shortly thereafter, Shea asked to see the materials referenced in the sentencing memorandum, such as the draft PSR, and those materials were forwarded to him.

As described in the next section, Shea reached out to DuCharme on at least two occasions during that first week, likely February 4 and 6 based on Department phone records, to seek DuCharme's advice on what to do. The OIG did not find evidence, as we detail in the next section, of DuCharme or DOJ leadership reaching out to Shea or the DC USAO to give direction on the sentencing position. Instead, the evidence shows that Shea took it upon himself to seek advice from DuCharme and later Barr.

The Criminal Chief told us that after the initial briefing the Principal AUSA spoke to him about the proposed sentencing recommendation. According to the Criminal Chief, although the Principal AUSA stated that the Guidelines range was most likely calculated

accurately, the Principal AUSA conveyed his view that the range was not just surprising but “excessive,” and he wanted to explore whether a Guidelines sentence was appropriate in this case. The Criminal Chief stated that for this reason, the Principal AUSA wanted to initiate a discussion within the office about the office’s position.

The Criminal Chief told us that after he spoke to the Principal AUSA, he met with the FPC Chief and Prosecutor 1 to convey the concerns the Principal AUSA expressed, and the Criminal Chief initiated a discussion in this meeting about whether a downward variance would be appropriate in this case. The FPC Chief told us that he expressed an unwillingness to change the sentencing position because a Guidelines sentence recommendation was the “right thing” to do, but he said Prosecutor 1 was more “vocal” during this meeting. According to both the FPC Chief and the Criminal Chief, Prosecutor 1 expressed strongly that a Guidelines sentence was appropriate, and Prosecutor 1 seemed to believe that the Criminal Chief was doing something “improper” by even broaching the issue. The FPC Chief stated that while he had no concerns about this meeting or the Criminal Chief’s motivations, he (the FPC Chief) began to grow concerned around this time “about what might be motivating the Department at this stage to intervene in the Stone case, given that there had been almost no scrutiny of it up to [this] point.” According to the FPC Chief, he had no information suggesting that anyone from Main Justice (i.e., DOJ leadership offices) was involved in the Stone sentencing at this time and no evidence pointing to improper motivations influencing these discussions. However, based on his experience in other matters, Stone’s relationship with then President Trump, and the recent appointment of Shea, who the FPC Chief understood by reputation to be “a good friend of the Attorney General,” the FPC Chief believed “that this was not going to be an internal U.S. Attorney’s Office decision,” and he worried about political motivations affecting the ultimate sentencing recommendation. The FPC Chief stated that, on Wednesday and Thursday, February 5 and 6, he and Prosecutor 1 began to share their concerns with each other, including that the FPC Chief “may have explicitly said to [Prosecutor 1], something like, ‘I really hope this doesn’t end with all of us quitting our jobs.’” Prosecutor 1 told the OIG that he did not recall these conversations with the FPC Chief, or the prior conversation with the FPC Chief and the Criminal Chief.

The FPC Chief told us that in response to the initial feedback he and the Criminal Chief received from the Principal AUSA, he took the time to carefully read the draft memorandum a second time to make sure he believed the Guidelines calculation and sentencing recommendation were “right” and that he was not simply “defaulting to the trial team.” On Wednesday evening, the FPC Chief emailed the trial team minor edits to the draft sentencing memorandum. In his email, which he forwarded to the Criminal Chief the next day, the FPC Chief described the memorandum as “an exceedingly strong product” and added that Stone “deserves every day of the 87 months you recommend that he be imprisoned.” The team incorporated the FPC Chief’s edits the following day.

On Thursday, February 6, the Principal AUSA met with the Criminal Chief, the FPC Chief, and Prosecutor 1 to discuss the Stone sentencing memorandum. The Principal AUSA stated that the main purpose of the meeting was to make Prosecutor 1 aware of Shea's concerns with the memorandum. We asked the Principal AUSA if he had the same concerns as Shea. The Principal AUSA told us that he shared Shea's initial surprise that the Guidelines range was so high, but he said he only became concerned with the range when he realized the 8-level threats SOC was primarily responsible for the high number. In particular, the Principal AUSA stated that he believed Credico's letter to the court "guttled, arguably, that enhancement or at least significantly mitigated" it. According to the Principal AUSA, he became "open to the idea of laying out the Guidelines analysis but arguing that some type of [downward] variance may be appropriate" and deferring to the court on the extent of the variance. Although the Principal AUSA did not agree with the sentencing position in the draft memorandum, he also told the OIG that he believed the position was reasonable. Shea's Chief of Staff told the OIG that before this Thursday meeting, which he did not attend, he met with Shea, the Principal AUSA, and the Criminal Chief, and they all agreed that the sentencing recommendation was too high. According to Shea's Chief of Staff, the purpose of Thursday's meeting was for the Principal AUSA and the Criminal Chief to evaluate the strength of the FPC Chief and team's "conviction" regarding their recommendation.<sup>17</sup>

According to participants at the Thursday meeting, the Principal AUSA asked whether the government would have more credibility with the court if it asked for a variance given the severity of the 8-level threats SOC and the mitigation of Credico's letter (which, as noted previously, stated that Credico never felt that Stone "posed a direct physical threat" to him or his dog). The Principal AUSA told us that the group also discussed the issue of maintaining the office's credibility with the public and how the sentence would "be viewed in the public eye." Prosecutor 1 told us that he recalled that when they discussed this issue, the Principal AUSA expressed that "people will say that we are a bunch of deep state liberals who hate the President, and that's why we're recommending such a high sentence." Prosecutor 1 said the Principal AUSA added, "We will get a lot of criticism for it." The Principal AUSA told us that he did not recall anyone using the phrase "deep state liberals" when discussing his credibility concern, but he said that they discussed the potential public narrative to the effect that the office was "piling on" to Stone's sentence because the office hates the President or hates Stone. The FPC Chief

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<sup>17</sup> Emails we reviewed from Thursday, February 6, suggest that some consideration was given to seeking a downward variance based on Stone's individual characteristics, specifically his age and health, pursuant to § 3553(a). Before the meeting with the Principal AUSA, the FPC Chief emailed the Criminal Chief examples of cases in which the DC USAO had opposed downward variances on the basis of a defendant's age and/or health pursuant to § 3553(a). The FPC Chief told the OIG that he was "troubled" by the consideration of Stone's age and health because the FPC Chief believed that there would not have been any conversation about Stone's age and health if Stone's Guidelines range had been lower. Prosecutor 1 stated that he discussed the topic with the FPC Chief, and they agreed that it would be inappropriate to request a variance on those grounds because the office normally would not make such a request.

and Criminal Chief told us they did not believe the Principal AUSA used the phrasing that Prosecutor 1 recalled, but the FPC Chief generally remembered that the Principal AUSA expressed a concern that seeking such a high sentence (as the FPC Chief and trial team recommended) could negatively impact the credibility of the Department or the DC USAO. The Criminal Chief told us he did not remember the Principal AUSA expressing this concern. Prosecutor 1 and the FPC Chief stated that they told the Principal AUSA that the Department should not consider the public's response when making sentencing recommendations and should instead treat Stone the same as any other defendant.<sup>18</sup>

Prosecutor 1 and the FPC Chief spoke with one another after this meeting and agreed that they found it unsettling. Prosecutor 1 stated that he told the FPC Chief that he was beginning to suspect inappropriate motives underlay the concerns about the recommendation. According to the FPC Chief, he told Prosecutor 1 he shared his suspicion, but he added that it was important that he and Prosecutor 1 continue to participate in these discussions and advocate for a Guidelines sentence.

The FPC Chief told us that sometime during Shea's first week, he recalled expressing to the Principal AUSA that they would not be discussing how high the draft sentencing recommendation was "if [Stone] wasn't the friend of the President." According to the FPC Chief, the Principal AUSA responded to the effect of, "I don't see why it has to be that politics are afoot here. Yes, this is a high-profile case. Yes, sometimes high-profile cases are what cause us to take a closer look at our position here...and that's what we're doing." The Principal AUSA told us that he generally remembered someone expressing the sentiment that maybe the reason they were discussing changing the sentence recommendation was because Stone was a friend of the President. He said he could not recall whether he responded to that sentiment, but that his reaction at the time was that Stone's relationship to the President was not in his own mind at the time, and that neither Shea nor anyone else told him that Stone's relationship to the President was influencing their thought process.

The Principal AUSA told us that during Shea's first week, the Principal AUSA learned from the FPC Chief that, in public corruption cases, the Fraud and Public Corruption Section had a policy of always seeking sentences within the Guidelines range to minimize the risk of being accused of making a sentencing recommendation based on the identity of the defendant. According to the Principal AUSA, he recalled the FPC Chief saying that consistent with this policy, the DC USAO should seek a Guidelines sentence for Stone. The Principal AUSA also recalled the FPC Chief expressing concerns about this policy not being followed in Stone's case and Stone being treated differently than other public corruption

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<sup>18</sup> Prosecutor 1 told us that he was particularly troubled by the invocation of public perception into the discussions about the sentencing recommendation. Although, as noted previously, the Criminal Chief had the impression that Prosecutor 1 thought even the act of discussing lowering the sentencing recommendation was improper, Prosecutor 1 told us that if he had expressed that sentiment, he only meant that he did not believe they should be discussing how the recommendation would be publicly perceived.

defendants. The Criminal Chief told us that both the FPC Chief and Prosecutor 1 asserted that week that the Fraud and Public Corruption Section always sought Guidelines sentences and should do so in Stone's case. The FPC Chief told us that unless the Fraud and Public Corruption Section was "overruled" or presented with an "extraordinary case," the section's approach to sentencing in public corruption cases was to seek Guidelines sentences in accord with "Department [sentencing] policy" (the Sessions Policy) and due to the importance of the public having confidence in how such cases are handled. He recalled the Principal AUSA expressing throughout the week that although a variance may seem unusual to the FPC Chief and Prosecutor 1, the DC USAO sought variances in drug and other cases all the time.

With no agreement as to the Guidelines calculation or sentencing recommendation, on Friday afternoon, February 7, Shea met with the Principal AUSA, Shea's Chief of Staff, the Criminal Chief, the FPC Chief, and Prosecutor 1 to discuss the Stone sentencing memorandum. Shea told the OIG that his purpose for holding the meeting was to ensure that all of the enhancements included in the Guidelines calculation were justified and then discuss the ultimate recommendation, on which he said he remained undecided. Shea also told the group that he did not like the tone of the draft memorandum and requested it be less argumentative.<sup>19</sup>

Each sentencing enhancement was discussed in detail during this meeting—a discussion that Shea described as him "challenging" Prosecutor 1 and the FPC Chief to defend their Guidelines calculation. The Principal AUSA told us that Shea had not worked with the Guidelines in a long time, and they "needed to walk him through [the Guidelines] calculations." This testimony is consistent with the testimony of the Criminal Chief and the FPC Chief who told us that in their discussions with Shea about the Guidelines calculation, Shea did not appear to have a good grasp or understanding of the Guidelines.

After discussion of the Guidelines calculation, Shea raised the possibility of recommending a downward variance from the Guidelines range. According to Shea, he was trying to balance two competing factors: (1) the office would lose credibility with the court if they requested a sentence that was too high and not "proportional" to comparable cases; and (2) Stone's crimes were "serious." Shea stated that he thought "deferring to the judge...made the most sense"; however, he emphasized that he did not make a decision about the calculation or the recommendation during this Friday meeting, which he described as "inconclusive." Others also told us that no consensus was reached, and the

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<sup>19</sup> Shea told the OIG that the tone of the memorandum was not in harmony with his general philosophy for arguments to the court—namely that "overkill" in how strenuously a lawyer proffers arguments to the court can hurt the government's credibility. He said that he prefers instead to provide information in court filings that is necessary but not to "characterize the facts." According to the Criminal Chief, the FPC Chief, and Prosecutor 1, Shea stated that the trial team should save these arguments for the allocution at the sentencing hearing.

meeting concluded without resolution. However, the Criminal Chief told the OIG that he left the meeting believing that Shea would ultimately decide to seek a downward variance.

Prosecutor 1 told us that he found the Friday meeting “sickening,” and, from his perspective, “Shea was looking for any way he could find to lower the Stone sentencing recommendation.” Prosecutor 1 said that he pushed back on efforts to lower the sentencing recommendation, explaining in this meeting that the trial team had given the issues relevant to the Guidelines calculation and sentencing recommendation a lot of thought. Prosecutor 1 said that he explained in this meeting why the trial team thought each argument to lower the Guidelines calculation did not have merit, and he also explained that typically “we would not be making a recommendation that departed downward from the applicable Guidelines range for a defendant who had gone to trial and [was] convicted, rather than accepting responsibility by pleading guilty.”

Prosecutor 1 told us that he suspected at the time that Stone was receiving special treatment because of improper political considerations and that he developed this suspicion because of the “extraordinary and unprecedented” number of meetings about the sentencing memorandum and the lack of any “good faith legal reasoning” in the “results-driven conversation” about Stone’s ultimate sentence. Prosecutor 1 stated that he had raised this concern earlier on Friday with the Criminal Chief, who told Prosecutor 1 that he had not seen or heard anything to suggest anyone was acting improperly. Shea told us that Stone’s relationship to the President, or the possibility that the President could publicly react to Shea’s decision making, did not factor into his thinking on the Stone sentencing.

In response to a question that arose at the Friday meeting about the 3-level substantial interference SOC, Prosecutor 1 sent an email to his supervisors with legal research supporting the application of that enhancement. The Principal AUSA told the OIG that sometime on Friday after this email, he had a brief conversation with Shea during which he updated Shea on Prosecutor 1’s research and reached consensus with Shea that the Guidelines calculation should not be changed. The Principal AUSA told us that his advice was that even if the calculation was a “somewhat technical” application of the enhancements, Shea should focus instead on the government’s recommendation, including whether to support a downward variance but defer to the court on the ultimate sentence. According to the Principal AUSA, Shea agreed to the Principal AUSA’s proposed approach. Shea told us that he specifically recalled Prosecutor 1’s additional research and feeling “satisfied” that the 3-level substantial interference SOC applied. He also told us that he remembered reaching consensus on accepting the Guidelines calculation, but that he did not specifically recall whether that occurred on Friday or at some later time.

Around 8:00 p.m. on Friday, the Principal AUSA sent the Criminal Chief a text message stating:

[L]et’s talk tomorrow about [the Stone team’s] reaction to the latest proposal. It’s unusual to advocate for a variance, but this is an unusual case. The

variance is simply to account for the fact [that] the 8 point enhancement is a very severe punishment for the conduct in light of Credico's letter and the type of conduct that would also result in the same 8 point enhancement ([i.e.,] a loaded gun in someone's face).

In another text message to the Criminal Chief, the Principal AUSA added that the team could defer to the court on the actual sentence. According to the FPC Chief, the Criminal Chief told him either Friday evening or Saturday morning that the Guidelines calculation was settled, and, from that point on, their conversation shifted almost exclusively to whether to seek a variance.

Also on Friday, February 7, Prosecutor 1 told the other members of the Stone trial team for the first time about the multiple meetings he had attended with office leadership that week and his concerns about improper political motivations. Prosecutor 2 told us that Prosecutor 1 specifically mentioned to him on February 7 that DC USAO leadership was placing pressure on the team not to seek all the Guidelines enhancements applicable to Stone's conduct and to seek a lower sentence for Stone. According to Prosecutor 2, Prosecutor 1 also told him that day (and in subsequent conversations) that Stone was being treated differently than every other defendant with respect to his sentencing, and Prosecutor 1 was concerned that this different treatment was the result of improper political considerations or influence. Prosecutor 3 told us that he did not recall receiving a summary or recap of the week from Prosecutor 1 on February 7, but that Prosecutor 2 or Prosecutor 4, or both, filled him in on some of the week's events. According to Prosecutor 2, the Stone team decided to sleep on it and then discuss their options on Saturday, February 8.

#### **D. Interim U.S. Attorney Consults with DOJ's PADAG**

During the first week of his new position, and as the discussions described above were taking place in the DC USAO over the proposed Guidelines calculation and sentencing position, Shea reached out to DuCharme on at least two occasions to seek DuCharme's advice on what to do. DuCharme told us that no one in the leadership offices had been tracking the upcoming sentencing before Shea called him.<sup>20</sup> Further, according to Shea, DOJ leadership would not have been involved in the Stone case if he had not reached out to them.

Although Shea told us that he did not recall how many discussions he had with DuCharme or the timing of those discussions, DuCharme placed the first conversation about a week before the government filed its first sentencing memorandum, likely either February 3 or 4, and a second conversation 1 or 2 days after the first. DuCharme said that

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<sup>20</sup> Rabbitt told the OIG that the Attorney General's Office was not tracking the Stone case other than "in the background," and that Attorney General Barr was not "especially focused on or interested in" the case.

both conversations with Shea took place over the phone, and Department phone records show calls between them on February 4 and 6.

According to Shea, he had reached out to give DuCharme a “heads up” that the government’s sentencing memorandum was due on February 7 (before the court extended the deadline to February 10) and also to see whether anyone in the DOJ leadership offices had experience with the Stone case. Shea said that DuCharme did not offer any special knowledge of the case.<sup>21</sup>

Another reason Shea told us he reached out to DuCharme was to get DuCharme’s opinion on the sentencing position, given DuCharme’s prosecutorial experience as the former Chief of the Criminal Division for the Eastern District of New York. According to Shea, by the time he reached out to DuCharme, he (Shea) had concerns about the intended sentencing position, and he “wanted to make sure that [his]...impression of the high sentencing range was...grounded in some experience.” Shea said he probably also asked DuCharme whether the Department generally “follow[s] the Guidelines ranges.”

DuCharme told us that he thought Shea was looking for a “steer” from him on whether he (DuCharme) also thought the sentencing range was high and regarding how Shea should proceed. DuCharme told us that he recalled being mildly surprised at the sentencing range and thought that it seemed “kind of high.” According to DuCharme, Shea told him that an enhancement had been applied that substantially increased Stone’s Guidelines range and asked for DuCharme’s opinion on whether he (Shea) was “stuck” with the Guidelines sentencing range. According to DuCharme, he counseled Shea that if Shea had reservations about the Guidelines producing a fair and appropriate sentence, he should leave the Guidelines calculation alone but explain his reservations in the analysis of the factors set forth in § 3553(a). DuCharme further counseled Shea that, in his experience, the § 3553(a) analysis allows for a “nuanced conversation” that can signal to the court that the government believes the Guidelines range is too high. DuCharme told us that he caveated this advice by explaining to Shea that he (DuCharme) did not have knowledge of the facts of the case, other than from public reporting and possibly informal conversations, and that he was not in a position to opine on what the ultimate recommendation should

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<sup>21</sup> Both Shea and DuCharme said that notifying the PADAG of an upcoming event that could generate media attention was within the normal course for a U.S. Attorney. Indeed, the Justice Manual, 1-13.100, requires U.S. Attorney’s Offices to submit “Urgent Reports” notifying DOJ leadership of certain matters, emergencies, or events, including “major developments in significant investigations and litigation” and matters “likely to generate national media or Congressional attention.” The Justice Manual, 1-13.120, states that sentencing should be considered a “major development.” The DC USAO advised the OIG that its office did not submit any urgent reports in the Stone case, and, according to the Principal AUSA, the DC USAO’s typical practice was not to submit formal urgent reports to DOJ leadership in cases that leadership was already aware of, like the Stone case.



be.<sup>22</sup> DuCharme estimated that his first call with Shea lasted about 5 minutes, and he did not necessarily expect to hear back from Shea or anticipate that DOJ leadership would become involved in the case.

After the first call between Shea and DuCharme, Shea's Chief of Staff had his own brief conversation with DuCharme about the upcoming Stone sentencing. On Wednesday, February 5, Shea and his Chief of Staff attended three meetings (unrelated to the Stone case) in the Main Justice building and, while there, Shea's Chief of Staff ran into DuCharme in the hallway. According to Shea's Chief of Staff, one of them mentioned the Stone sentencing coming up, and DuCharme said something to the effect of: "I'll tell you what I told [Shea]. Prosecutors are not experts on sentencing.... Your job as the...leaders of the office is to be reasonable." DuCharme told us he did not recall this hallway interaction with Shea's Chief of Staff.

Shea's Chief of Staff told us that on a separate occasion during the same day at Main Justice, Shea mentioned the upcoming Stone sentencing at the end of a meeting with Brian Rabbitt, stating that he had a few concerns after receiving the draft sentencing memorandum. According to Shea's Chief of Staff, Rabbitt made a "somewhat offhand" comment to "just go with the Guidelines." Shea's Chief of Staff said that although he recalled responding to Rabbitt that the Guidelines produced a range that was "inordinately high," he did not recall Rabbitt reacting substantively to his response. Rabbitt and Shea told us that they did not recall this conversation.

DuCharme said that Shea consulted him a second time later that same week—which phone records suggest was likely on Thursday, February 6—with Shea stating that he had encountered substantial resistance from "the prosecutors" to the idea of signaling to the court that a sentence below the Guidelines would be reasonable. According to DuCharme, during this second phone conversation, Shea wanted his reaction to two points the prosecutors raised, which DuCharme recalled were: (1) the DC USAO always seeks a Guidelines sentence, and (2) Department policy is always to seek a Guidelines sentence.<sup>23</sup> DuCharme told us he was "skeptical" of these points based on his own experience in New York, noting that in certain terrorism and narcotics cases, for example, sentences below the Guidelines were commonly sought. More generally, he recalled feeling a little frustrated at the time that the issue was coming back to him again, because he thought the solution did not necessitate a complicated analysis. His advice to Shea was that Shea had the ultimate authority as the head of the office, and that there was nothing precluding Shea from exercising discretion and doing what he thought was the right thing to do. According to

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<sup>22</sup> DuCharme told us that he was very cognizant at the time that, to reach his own opinion on the sentence, he would need to conduct a careful review of the Guidelines, case law, facts, and trial transcript.

<sup>23</sup> Upon further questioning, DuCharme said it was possible one of the two points from the prosecutors was that it was DC USAO's practice to always seek a Guidelines sentence after trial, but he was not certain.

DuCharme, his guidance to Shea regarding how to express this position in the sentencing memorandum was to provide the Guidelines calculation, consider each of the § 3553(a) factors “honestly and earnestly,” and state that the Guidelines are presumptively reasonable but advisory and that a sentence below the Guidelines range would also be reasonable.

According to DuCharme, he advised Barr of these conversations with Shea. He said that he believes he told Barr about the first conversation at the next regularly-scheduled senior staff meeting, which he estimated was a day or two after Shea first called him.<sup>24</sup> DuCharme said that he had a memory of sitting in Barr’s office and advising Barr that Shea let him know that the Stone sentencing was coming up and that Stone was looking at about 8 years, which Shea seemed to think was kind of high. According to DuCharme, Barr expressed mild surprise at the 8 years and said something to the effect of, “that does seem...kind of high.” DuCharme told us that he then explained that the number was the result of an enhancement for a threat to do harm, but that Shea was still working with the team and taking a closer look. According to DuCharme, Barr had “an immediate reaction” to how high Stone’s Guidelines range was given Stone’s age, but that they did not engage in “super rigorous analysis” at this time. DuCharme said that in the end, Barr did not give clear direction one way or another, and that their entire discussion lasted 1 or 2 minutes.

DuCharme told us that although he believes he updated Barr about his second conversation with Shea, he did not have as clear a recollection of this update as he did his first. He told us that he believes he probably would have said that he talked to Shea again and that Shea was working it out. DuCharme further stated that he thinks he also would have said that he had given Shea confidence that Shea had discretion and was not completely bound by policy or precedent. DuCharme said he believed Barr was “mildly interested” but not especially focused on the issue.

According to Rabbitt, neither he nor Barr recalled DuCharme advising them that he (DuCharme) had spoken with the DC USAO before the first sentencing memorandum was filed on February 10. Rabbitt told us that he was present during a conversation between DuCharme and Barr on February 11 or 12, 2020, during which DuCharme mentioned that he had been in contact with the DC USAO the week before the filing. According to Rabbitt, DuCharme said, “I may have mentioned it to you, sir...just in passing.” Rabbitt said that he and Barr both responded to DuCharme that they did not recall DuCharme mentioning that. According to Rabbitt, he and Barr did not dispute that DuCharme may have done so, only that he and Barr did not recall it.

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<sup>24</sup> Available information does not conclusively establish when Barr held senior staff meetings in the days following February 4, 2020, the day we believe Shea first contacted DuCharme. Based upon our review of the Attorney General’s calendar, it appears most likely that Barr held senior staff meetings on February 6, 7, and 10.

Barr declined our request for a voluntary interview. In a hearing before the House Judiciary Committee in July 2020, in response to questions about when Shea first raised the Stone sentencing with the Attorney General's Office, Barr testified that: "I think at a 9 o'clock meeting [senior staff] said that [Shea] was trying to work something out on sentencing, and [Shea] was actually optimistic that something could be worked out, so I didn't think of it as an issue until that Monday..."<sup>25</sup> Rabbitt told us that he believed Barr was referring to DuCharme and what DuCharme may have told the Attorney General the week before the filing of the government's sentencing memorandum on Monday, February 10. Rabbitt told us that he interpreted Barr's July 28, 2020 testimony as trying to convey the "possibility" that DuCharme had advised him of the DC USAO discussions the week before.

Other than an email from DuCharme on Friday, February 7, asking Shea whether filing deadline extensions were requested in "both cases," one of which the OIG believes was a reference to the Stone case, the OIG did not find evidence of DuCharme or anyone else from the DOJ leadership offices reaching out to Shea or the DC USAO the week before the filing to obtain more information about the Stone case or give direction.

#### **E. FPC Chief Attempts to Broker a Resolution between Trial Team and DC USAO Management, While Interim U.S. Attorney Revises Sentencing Memorandum to Support a Downward Variance**

Throughout the weekend of February 8 and 9, 2020, DC USAO managers and the Stone trial team members continued discussions on the sentencing memorandum. Phone records from that weekend show dozens of calls among involved DC USAO personnel as well as some text messages, which witnesses told us related to the Stone case. These calls and text messages began on Saturday morning and continued throughout the day and the following day, with the Principal AUSA communicating with the Criminal Chief, the Criminal Chief communicating with the FPC Chief, and the FPC Chief serving as a conduit between DC USAO managers and the team. As discussed below, during this time, the DC USAO managers discussed alternative approaches to sentencing that the FPC Chief shared with the team, while trial team members discussed amongst themselves and with the FPC Chief their growing concerns over efforts to change the sentencing recommendation and other aspects of the sentencing memorandum.

##### **1. Alternative Approaches to Sentencing Raise Concerns Within Trial Team About the Motivations Behind Seeking a Lower Sentence**

As described previously, according to the Principal AUSA, he and Shea eventually reached a consensus by Friday evening, February 7, that the enhancements technically

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<sup>25</sup> See William P. Barr, Attorney General, U.S. Department of Justice, before the Committee on the Judiciary, U.S. House of Representatives, concerning "[Oversight of the Department of Justice](https://judiciary.house.gov/committee-activity/hearings/oversight-of-the-department-of-justice-2)" (July 28, 2020), available at <https://judiciary.house.gov/committee-activity/hearings/oversight-of-the-department-of-justice-2> (accessed May 17, 2024).

applied, but Shea's idea of seeking a downward variance was left unresolved going into the weekend. Text messages between the Principal AUSA and the Criminal Chief on Friday evening and between the Criminal Chief and the FPC Chief on Saturday morning indicate that DC USAO managers continued to discuss the possibility of seeking a downward variance. By Saturday, their focus had turned to the idea of an open-ended downward variance recommendation, that is, advising the court that the government believed a sentence below the Guidelines range was appropriate but deferring to the court as to how far below that range Stone should be sentenced. According to the FPC Chief, he advised the Criminal Chief during a phone call on Saturday that he thought a recommendation below the Guidelines range was a mistake, but that he would confer with Prosecutor 1 about whether "we're comfortable...following this guidance."

Prosecutor 1 recalled the possible alternatives under discussion somewhat differently. He told us that he remembered the FPC Chief advising him on Saturday that DC USAO managers were considering three options for lowering the sentence: (1) arguing that the 8-level threats SOC did not apply; (2) stating that the 8-level threats SOC did apply, but because the eight levels overstate the seriousness of the defendant's conduct, a downward variance is appropriate; and (3) not making a sentencing recommendation at all and simply deferring to the court.<sup>26</sup> Prosecutor 1 said he told the FPC Chief that he would have to confer with the other members of the trial team to get their reactions, but that he personally could not agree to any of these options. Prosecutor 1 suggested to the FPC Chief that he (Prosecutor 1) be permitted to withdraw from the case to allow someone else to file a sentencing memorandum containing one of these options, but the FPC Chief wanted Prosecutor 1 to stay on the case.

After this discussion with the FPC Chief, Prosecutor 1 began contacting members of the trial team, with the intention of reporting back to the FPC Chief. During these calls, Prosecutor 1 told the trial team about the meetings he had attended with DC USAO managers the week before. Prosecutor 2 provided the OIG with the most detailed summary of what Prosecutor 1 shared about those meetings.<sup>27</sup> According to Prosecutor 2, during a call with the entire team early Saturday evening, Prosecutor 1 told the team that he was pressured, at various times, to remove every single enhancement in the team's Guidelines calculation, based upon arguments that Prosecutor 1 did not find reasonable, credible, or in good faith. Prosecutor 1 told the team that management did not engage in "the substance of [the] prosecution," the legal or factual arguments in the sentencing

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<sup>26</sup> Regarding the first option, Prosecutor 1 told the OIG that the trial team did not know that the Guidelines calculation was settled until Sunday evening, February 9, when, as described later in this report, the Criminal Chief sent the FPC Chief a new revised draft of the memorandum, which the FPC Chief forwarded to the team.

<sup>27</sup> Although Prosecutor 2 recalled more details, Prosecutor 1's and Prosecutor 3's testimony to the OIG was generally consistent with Prosecutor 2's description of what Prosecutor 1 shared with the team about his previous meetings and conversations with DC USAO managers.

memorandum, or the counterpoints that Prosecutor 1 proffered in response to the points they raised in the meetings. Prosecutor 1 also told the team that he had concerns that what was happening was unethical, based not only upon what he observed during these meetings, but also based on Prosecutor 1's experience that the DC USAO's Fraud and Public Corruption Section had never before sought a sentence below the Guidelines after a defendant was convicted at trial.

According to Prosecutor 1, Prosecutor 2, and Prosecutor 3, these concerns led the team to suspect that the desire to lower the sentencing recommendation was being improperly influenced by political considerations. More specifically, the team had a growing concern that because of Stone's relationship to then President Trump, and because they believed Stone's obstructive conduct ultimately favored the President, Stone was getting "cut breaks" and being treated differently than any other defendant. According to Prosecutor 1 and Prosecutor 2, at some point the team also discussed seeing troubling parallels between what was happening in their case to then recent actions taken in other high-profile cases, including, for example, the case against former National Security Advisor Michael Flynn where the government filed a reply memorandum in January 2020 clarifying its sentencing position to include that probation without incarceration was appropriate. When asked whether the parallels they perceived influenced the team's thinking on how the Stone sentencing was being handled, Prosecutor 2 said that the parallels may have had some influence, but that they did not cause their concerns relating to the Stone sentencing. Prosecutor 1 said that the Flynn parallels did not add to his concerns regarding what was happening with the Stone sentencing.

As discussed below, the team and the FPC Chief had a conference call on Saturday evening. According to Prosecutor 2, the team wanted to better understand the concerns of DC USAO management, so that they could come up with a solution that might satisfy all involved—address the concerns of DC USAO management while simultaneously allowing the team to file a memorandum that they believed complied with their ethical obligations and was the "right thing" to do.

## **2. Shea Provides Handwritten Edits and Comments for the Sentencing Memorandum to his Chief of Staff and the Principal AUSA**

On Saturday afternoon, not long before the trial team's call with the FPC Chief, Shea emailed handwritten edits and comments for the sentencing memorandum to his Chief of Staff and the Principal AUSA. Phone records do not show conversations between Shea and either his Chief of Staff or the Principal AUSA over the weekend, and both the Chief of Staff and the Principal AUSA told us that they did not recall talking to Shea on Saturday or Sunday about his handwritten feedback.

Among his edits, Shea removed three paragraphs from the memorandum's introduction describing the severity of Stone's obstruction crimes and his post-indictment conduct to interfere with the court proceedings. Shea told us that he removed these

paragraphs because, as described previously, his preference generally in written submissions was to provide the information necessary for the judge to decide the sentence but not to “characterize the facts.” The Principal AUSA and the Criminal Chief later conveyed to the trial team that they could instead make these arguments orally at the sentencing hearing, which the Principal AUSA told us Shea had authorized.

Shea did not make any edits to the section that set forth the Guidelines calculation, but he asked whether a reference to Credico’s letter should be added to the discussion of the 8-level threats SOC. Shea told us that he had already discussed the enhancements the week before, and that, by Saturday, he was not challenging the team and the FPC Chief’s position on them. However, Shea noted on the draft that the ultimate sentencing recommendation of 87 months “needs to be revised,” and that the summary paragraph at the end of the memorandum explaining why the government believed a Guidelines-compliant sentence was appropriate “needs to be re-drafted.” Shea told us that he could not remember what revisions he wanted made at the time he wrote these two notes. However, he also told us that an open-ended downward variance recommendation reflected what he had been considering at that time, adding “we pushed at that.” At the same time, he said that he did not make a final decision on the recommendation on Saturday, and that he was still thinking about the sentencing position over the entire weekend. According to Shea, he is “a little bit of a procrastinator” who makes decisions “last minute,” and he intended to see where they were on Monday.

Shea’s edits provided other feedback, including that he disagreed with the memorandum’s assertion that a sentence within the Guidelines range for Stone was consistent or comparable to sentences imposed on other defendants (who had been charged with the same offenses). He also removed language stating that Stone’s efforts to tamper with Credico succeeded, noting that the government did not know whether Credico declined to provide congressional testimony because of Stone’s threats or on the advice of counsel. Shea’s feedback further stated that he wanted to add language in two places indicating that the court did not revoke Stone’s bail when he violated the court’s orders before his trial. He also asked whether there was support for the memorandum’s claim that the impact of Stone’s obstruction on the congressional investigation was “significant.”

Early Saturday evening, the Principal AUSA responded by email to Shea that the Criminal Chief would make sure Shea’s edits were incorporated into the next draft of the sentencing memorandum, which they expected to receive from the trial team sometime on Sunday. Text messages show that the Principal AUSA had shared the edits with the Criminal Chief and asked him to make the necessary changes to “reflect the current approach,” which the Principal AUSA told us was to seek a downward variance from the Guidelines range but defer to the court on the ultimate sentence. The Principal AUSA told us that he interpreted Shea’s handwritten comments on Saturday as an indication that Shea had decided to take the sentencing approach that they had discussed on Friday after the meeting with Prosecutor 1—keeping the Guidelines calculation as is but seeking a

downward variance and deferring to the court on the ultimate sentence. According to the Principal AUSA, Shea's comments that the sentencing recommendation needed to be "revised" and "redrafted," the day after they discussed seeking an open-ended downward variance, made it "pretty clear where he stood."

We found no evidence that the FPC Chief was provided with, or aware of the content of, Shea's edits before the FPC Chief's call with the trial team on Saturday evening. The FPC Chief told us that on Saturday, he understood that a decision on the recommendation had not been made, but that Shea wanted to seek a variance. According to the FPC Chief, he understood that DC USAO leadership wanted him or the team to recommend a variance so that Shea did not have to overrule the position of the career prosecutors on the case. The Criminal Chief told us that on Saturday, the FPC Chief was aware of Shea's view that a variance would be appropriate, but the FPC Chief did not like the position. The Criminal Chief told us that although the FPC Chief did not like the idea of a downward variance recommendation, the Criminal Chief understood that on Saturday evening, the FPC Chief would try to reach agreement with the team on a memorandum recommending a variance that the team could "live with." According to the FPC Chief, however, he did not think it was possible that the Criminal Chief or others believed that the FPC Chief would try to reach agreement with the team on a downward variance because the FPC Chief had not communicated to anyone that he supported a variance. Although the FPC Chief understood that his role was to communicate between DC USAO leadership and the team, the FPC Chief told us that the Criminal Chief did not tell the FPC Chief what to say to the team that evening, and the FPC Chief's goal remained a Guidelines sentence recommendation.

### **3. The FPC Chief Discusses and Validates the Trial Team's Concerns, Varying Testimony by Witnesses During OIG Interviews on What the FPC Chief Urged the Team to Do or Accept**

On Saturday evening, the FPC Chief and the trial team had a conference call during which the trial team sought to better understand the concerns of DC USAO management, and the FPC Chief sought to determine whether there was any flexibility in the team's position on the sentencing recommendation.<sup>28</sup> Specifically, according to the FPC Chief, the calls he had with Prosecutor 1 earlier in the day confirmed for him (the FPC Chief) that both he and the trial team should continue to advocate for a Guidelines sentence recommendation, but he was hoping on this call to convince the team to develop some compromise language for the memorandum that would be acceptable to the team and DC USAO management.

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<sup>28</sup> Prosecutor 1, Prosecutor 2, and Prosecutor 3 participated in this conference call with the FPC Chief. Prosecutor 4 had a scheduling conflict and did not participate.

Early into the call, the trial team expressed their concerns to the FPC Chief about what had taken place over the last few days, including that they believed the desire to lower the sentencing recommendation was being improperly influenced by political considerations. According to Prosecutor 1, the FPC Chief responded to their concerns by stating that the U.S. Attorney was entitled to “kick the tires” or evaluate the sentencing recommendation, and that there was nothing improper about doing so. Prosecutor 1 said that when he asked the FPC Chief if that was what the FPC Chief thought was happening, the FPC Chief responded in the negative and said that he thought that Shea was trying to lower the sentencing recommendation because of politics. Prosecutor 1 said that he asked the FPC Chief why a decision based on political considerations would be “okay,” and he told us that the FPC Chief responded that, from his (the FPC Chief’s) perspective, “this is not the hill to die on.” Prosecutor 1 interpreted these words to mean that they should not pick this fight because, as the FPC Chief had expressed to the team, the “number” reflected in the government’s sentencing recommendation was not going to make a difference in how the court ultimately decided to sentence Stone. Prosecutor 2 and Prosecutor 3 provided similar descriptions of the FPC Chief’s response to the team’s concerns and similar interpretations of the sentiment that the sentencing recommendation was “not the hill to die on.” In addition, Prosecutor 2 told us that he recalled that after the FPC Chief said that politics was motivating the desire to lower the sentence, the FPC Chief said that political pressure is just what happens in big cases, regardless of administration.

The FPC Chief told the OIG that he believed that he did acknowledge on this call that he thought Shea’s desire to lower the sentence was being influenced by politics, and that he may have agreed with the team that a decision based on politics would be unethical. According to the FPC Chief, he was trying to validate the concerns that the trial team expressed, as well as acknowledge his own suspicions and belief that Shea was acting out of fear of then President Trump and, more particularly, fear of the consequences of not seeking a lower sentence for an influential friend of then President Trump. The FPC Chief told us that, at the time of this call, he had not reached the point of concluding that what was happening was, in fact, unethical such that he would not follow the instructions of his supervisors. He explained that he did not have any direct knowledge as to Shea’s motivations to conclude that Shea was, in fact, being influenced by something other than the facts of the case.

The FPC Chief told us that when he said, “this is not the hill to die on,” he meant that being required to add some compromise language to the sentencing memorandum was not worth the trial team quitting their jobs over. Specifically, the FPC Chief told us that he urged the team to propose new language for the sentencing memorandum that would both (1) “tip a cap” to the § 3553(a) factors in a way that would acknowledge to the court that there were circumstances that might mitigate in favor of a downward variance, and (2) still maintain the recommendation of a Guidelines sentence. Such language, in his view, was not a hill worth dying on. According to the FPC Chief, he believed that the court would not impose a Guidelines range sentence on Stone, and therefore, the FPC Chief may have



told the team that adding such language to the memorandum was “not the hill to die on” because “the court is going to do what the court is going to do.”

Prosecutor 1, Prosecutor 2, and Prosecutor 3 told us that they did not recall the FPC Chief asking the trial team to “tip a cap” to mitigating factors or otherwise asking them to draft new compromise language for the sentencing memorandum. They told us that they recalled that the trial team took it upon themselves before the call with the FPC Chief to work on new language that might serve as a potential compromise.<sup>29</sup>

According to Prosecutor 3, Prosecutor 1 told the FPC Chief on this call that the team was working on new compromise language, and the FPC Chief warned them not to draw “a line in the sand” about what they were willing and not willing to accept, or to state in writing their concerns about improper political influence. Prosecutor 3 told us that Prosecutor 1 expressed concern before the team call with the FPC Chief that negotiations with DC USAO management could push the trial team further and further beyond their comfort level, and this concern led to discussions about whether to “draw a line in the sand” in any proposal communicated to the front office about how far the trial team would be willing to go to reach a compromise.

Prosecutor 1, Prosecutor 2, and Prosecutor 3 told us that the FPC Chief urged the team on this call to go along with what the DC USAO management wanted. Although Prosecutor 3 said that he did not recall exactly what proposal from DC USAO managers was under consideration at this particular time, Prosecutor 2 told us that he recalled that the FPC Chief urged the team to go along with a lower sentencing recommendation either by changing the Guidelines calculation or by recommending a downward variance. Prosecutor 1 told us that he recalled that the FPC Chief mentioned that DC USAO management was going to be making changes to the memorandum and that the FPC Chief was urging the team to go along with whatever changes were coming. Prosecutor 1 said that the FPC Chief did not explain what changes were coming, but that Prosecutor 1 generally expected them to lower the sentencing recommendation through one of the alternatives the FPC Chief discussed with him earlier in the day. According to the FPC Chief,

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<sup>29</sup> According to Prosecutor 1 and Prosecutor 3, Prosecutor 3 was the one to suggest to Prosecutor 1, before the call with the FPC Chief, that the trial team draft revised language for the memorandum. Prosecutor 3 told us that although he had concerns, he was not certain that DC USAO managers had improper motivations or were asking the trial team to do something improper and that he, therefore, wanted to see whether an understanding could be reached between the trial team and DC USAO management on the language in the memorandum.

Also, before the trial team’s call with the FPC Chief, a text message between the Criminal Chief and Principal AUSA indicated that the Criminal Chief asked the FPC Chief to “draft some language for the memo.” The Criminal Chief and the Principal AUSA told us that they did not recall the language to which this text was referring. The FPC Chief told us that he remembered the Criminal Chief asking him for some language for the memorandum that would describe how the § 3553(a) factors mitigate in favor of a sentence lower than the Guidelines range and that the Criminal Chief did not offer specific language but appeared to be leaving the specifics to the trial team.

however, he did not urge the team—on this call or at any other time—to agree to a lower sentencing recommendation. The FPC Chief said he told the team that Shea wanted to seek a variance and the team should not insist on filing the memorandum exactly the way they had drafted it.<sup>30</sup>

Prosecutor 1 told us that at some point during this call, the FPC Chief stated that the “stakes could not be higher” and that “people’s jobs are on the line,” the meaning of which Prosecutor 1 was not certain. Prosecutor 2 and Prosecutor 3 told us that they recalled the FPC Chief stating that jobs were on the line, or something to that effect. Prosecutor 2 said he understood the FPC Chief to mean that the jobs of Shea and perhaps other DC USAO managers were on the line, whereas Prosecutor 3 told us that he found the statement ambiguous as to whose jobs were on the line. According to Prosecutor 2, the FPC Chief separately said on this call that if the U.S. Attorney “loses faith in you...you’re not going to be able to...do your job.” Prosecutor 2 said that he interpreted this statement as a threat that the trial team needed to sign a memorandum that soft-pedaled Stone’s conduct and recommended a lower sentence for Stone or else they could lose their jobs.

The FPC Chief told us unequivocally that he never threatened the trial team with job loss or otherwise told them that they could lose their jobs if they did not do something. The FPC Chief said that, at most, he may have asked them “why would we put ourselves in a position where, over some lines in a sentencing memorandum, or [by] not trying to work this out, we’re all going to quit our jobs? Because that’s where this is headed.” According to Prosecutor 1, he did not recall if the exact words the FPC Chief used were that the team “could lose their jobs” or “could be fired” if Shea “lost faith in them,” but that he did recall the FPC Chief conveying the sentiment that the trial team members could lose their jobs or be demoted if they did not go along with a lower sentencing recommendation. Prosecutor 3 told us that he also did not specifically recall the FPC Chief stating that the team “could be fired” if “Shea lost faith in them.” Prosecutor 3 said that he thought the trial team losing their jobs would not be “inconsistent” with what the FPC Chief said to the team on this call but that, as noted above, he personally found the FPC Chief’s statements to be ambiguous as to whose jobs were on the line. Prosecutor 3 also told us that after the team’s call with the FPC Chief, members of the trial team discussed whether the FPC Chief had threatened their jobs on the call. Prosecutor 3 said that he remembered that there were members of the team (he said he didn’t recall which ones) who viewed what the FPC Chief said on the call as a threat to their jobs, but that at least he (Prosecutor 3) was not sure what the FPC Chief meant.

The call ended without resolution and with the trial team taking the FPC Chief’s statements under advisement. According to Prosecutor 3’s testimony and notes, the FPC

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<sup>30</sup> In comments the FPC Chief’s counsel submitted after reviewing a draft of this report, counsel stated that, on this call, the FPC Chief “urged [the team] to evaluate the reasonableness of the proposed revisions with an open mind when they came in, and to not reflexively reject them and withdraw from the case.”

Chief told the team at the end of the call to “do what you think is right” and “send what you are going to send.”

#### **4. Trial Team and DC USAO Management Exchange New Edited Drafts, Prosecutor 1 Raises His Concerns Directly to the Criminal Chief**

Phone records and a text message between the FPC Chief and the Criminal Chief indicate that, later on Saturday evening, after the conference call with the trial team, the FPC Chief updated the Criminal Chief, and the Criminal Chief updated the Principal AUSA. The FPC Chief told us that he did not specifically recall the details of his conversation with the Criminal Chief, but the Criminal Chief recalled that the FPC Chief conveyed to him, and he (the Criminal Chief) conveyed to the Principal AUSA, that the trial team was adamantly against a downward variance, but that the FPC Chief and the team were still talking and trying to make progress. Further, the Criminal Chief said that at some point over the weekend, possibly on this call with the FPC Chief, the Criminal Chief learned that among the trial team members, Prosecutor 1 and Prosecutor 2 were most opposed to the notion of a downward variance.

The Principal AUSA told us that although there was no agreement with the trial team, the Principal AUSA considered the edits from Shea as “more concrete instructions” from the Interim U.S. Attorney on what to do and that it was time to turn around a draft that reflected Shea’s views. Therefore, on Sunday morning, the Principal AUSA sent the following text to the Criminal Chief:

You and [the FPC Chief] should not kill yourselves trying to get [Prosecutor 1] and [Prosecutor 2] “on board” today.... If they really don't think reasonable minds could disagree about whether increasing Stone's applicable guidelines range from 37 to 46 months (level 21) to a range of 87 to 108 (level 29) which is an increase of 50 months at the bottom and 62 months at the top, based solely on his conduct [regarding] Credico, might be a little excessive and mitigated by Credico's letter to the judge, then there is not much to discuss.

...We are talking about going from a minimum of 3 years to [a] minimum of 7+ years in prison for the Credico conduct. All we are asking them to do is to add a paragraph acknowledging that a variance would be appropriate in light of the significant impact the [8-level threats SOC] enhancement has on the applicable guidelines range and the mitigating effect of Credico’s letter, but we are deferring to the Court as to how much of a variance from the applicable guidelines range is appropriate. And [Shea] is asking to eliminate some of the rhetoric in the pleading because his name is on it too and he does not necessarily agree with all of it, and it is not his style to include such rhetoric in sentencing memos anyway. The fact that he is OK with the team employing that rhetoric at the sentencing hearing strikes me as a reasonable

way to show his respect for their views and accommodate their request to express them in connection with this sentencing.

Not long after this text message, Prosecutor 1 sent two separate emails to the Criminal Chief—the first containing new compromise language the trial team developed for the memorandum and the second describing Prosecutor 1's concerns with the way DC USAO management was handling the sentencing memorandum. Prosecutor 1 said that the trial team decided to send these emails to the Criminal Chief because the Criminal Chief was the most experienced career official involved in the discussions. The trial team's new compromise language stated:

The government recognizes that [the 8-level threats SOC] covers a range of conduct, from making threatening statements to actually causing harm to a witness. The government further recognizes that several of the enhancements discussed above—in particular [the 3-level substantial interference SOC] and [the 2-level extensive scope SOC]—cover similar aspects of the offense conduct. In recognition of this, the government has requested a sentence at the bottom of the applicable sentencing guidelines range. The Court may take these considerations into account in determining a just sentence.

In his second email, Prosecutor 1 referenced the meetings that took place the week before and noted:

I have been asked to attend three meetings this week in which I have been encouraged to request a lower sentence for Roger Stone. At one time or another in these meetings, the application of every enhancement recommended by the presentence report writer has been questioned, the sentencing memo[andum] has been criticized as too argumentative, and a downward variance for Stone has been proposed.

Before last week, I have never attended a meeting in which it was suggested that a defendant who was convicted at trial should not receive a guidelines-compliant sentence. Nor have I ever attended a meeting in which it was suggested that the government should not seek sentencing enhancements that plainly apply to a defendant convicted at trial. Moreover, I believe that it has been the consistent practice of the [DC USAO's] Fraud and Public Corruption Section to seek guidelines-compliant sentences in all its cases. Based on the events of the past week, I am concerned that this practice is not being followed in the Stone case because of the identity of the defendant.

Other email communications show that before he sent both emails, Prosecutor 1 deleted language he originally drafted for the emails that would have indicated that he and the rest of the trial team were willing to withdraw from the case rather than sign a

memorandum that lowered the sentencing recommendation or made no recommendation at all. Prosecutor 1 told us that he ultimately deleted the language because “different people on the team were in different places on this.” According to Prosecutor 2, the team had discussed on Saturday and Sunday morning the possibility of withdrawing from the case, and Prosecutor 1 and Prosecutor 2 were most certain about withdrawing from the case if necessary, Prosecutor 4 was least certain, and Prosecutor 3 was somewhere in the middle. Prosecutor 1 gave a consistent description of where each team member was at this point in time, except that Prosecutor 1 placed himself somewhere in the middle between Prosecutor 2 and Prosecutor 4.<sup>31</sup>

The Criminal Chief did not directly respond to the first email containing the trial team’s proposed compromise, but he responded to Prosecutor 1’s second email on Sunday evening after conferring with the Principal AUSA. In the response, the Criminal Chief stated that he did not believe Prosecutor 1 had been encouraged to request a lower sentence but instead had been asked to consider whether a downward variance was appropriate in whatever amount the court deemed sufficient—based not on the defendant’s identity but primarily on the circumstances involving Credico and Credico’s letter to the court. The Criminal Chief also defended Shea’s desire to adjust the tone of the memorandum and review the legal and factual basis for the Guidelines calculation, noting that Shea ultimately decided not to question the application of any of the enhancements.<sup>32</sup>

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<sup>31</sup> As noted earlier, Prosecutor 4 declined our request for a voluntary interview. Prosecutor 3 told us that he recalled that the team discussed the possibility of refusing to sign the sentencing memorandum, with varying degrees of certainty among individual team members about where they stood at this particular time (he said he was somewhere in the middle), but that he did not recall whether the team had also discussed on Saturday and Sunday morning the possibility of withdrawing from the case. Email communications suggest that, as Prosecutor 1 and Prosecutor 2 said they recalled, the trial team also considered the possibility of withdrawal.

<sup>32</sup> Before he sent this response, the Criminal Chief consulted two DC USAO colleagues who were not involved in the Stone sentencing but, through prior supervisory positions in the DC USAO, had knowledge of the case. According to the Criminal Chief, he did not agree with the Principal AUSA that a sentence below the Guidelines was warranted, but he (the Criminal Chief) also believed that reasonable minds could disagree about the appropriate sentence for Stone. The Criminal Chief told us that he wanted a “reality check” to see whether these two colleagues, whom he trusted and considered his peers, agreed that a downward variance recommendation would not be unethical. According to the Criminal Chief, both colleagues agreed.

Further, the Criminal Chief told us that he also consulted Jesse Liu over the February 8-9 weekend or possibly sometime during the previous week. He said that he was both commiserating with Liu, who had recently left the office and knew all of the people involved in the Stone case, and seeking advice on how to keep the situation “on the rails.” According to the Criminal Chief’s testimony and notes, he generally remembered telling her that the Stone sentencing memorandum was “causing a lot of controversy and dissension and could just blow up,” and that Prosecutor 2 and Prosecutor 3 were “inflaming [Prosecutor 1],” which he told us was his impression at the time. The Criminal Chief said that he shared with her that there was internal disagreement about whether to recommend a Guidelines sentence or a downward variance. The Criminal Chief also shared with her that he had his own concerns at the time about whether a downward variance recommendation would

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After sending this response, the Criminal Chief sent a new draft of the sentencing memorandum to the FPC Chief that the Criminal Chief had prepared with the Principal AUSA. The new draft incorporated the edits from Shea the day before, including removing the introduction that described the severity of Stone’s conduct, revising the end of the § 3553(a) analysis that had originally argued in favor of a Guidelines sentence, and making other changes consistent with Shea’s previous edits. In particular, the revised paragraph at the end of the § 3553(a) analysis borrowed from the compromise language the trial team submitted earlier in the day on February 9 but changed the government’s sentencing position from a sentence at the bottom of the Guidelines range to an open-ended downward variance. Specifically, the revised paragraph stated:

The government recognizes that [the 8-level threats SOC] covers a range of conduct, from making threatening statements to actually causing harm to a witness, and that the resulting increase in the applicable guideline range is significant. In this case, the enhancement increases the low end of [the] applicable guidelines range by 50 months and the high end by 62 months. The government further recognizes that several of the enhancements discussed above—in particular [the 3-level substantial interference SOC] and [the 2-level extensive SOC]—cover similar aspects of the offense conduct. In recognition of these circumstances, the government submits that a downward variance from the applicable guidelines range of 87-108 months would be appropriate in this case, but defers to the Court as to the extent of that variance.

This new draft also removed the recommendation of a Guidelines-compliant 87-month sentence in the conclusion and instead asked for a “substantial period of incarceration” and stated in the § 3553(a) analysis that a substantial period of incarceration would be consistent with sentences imposed on other defendants.

The FPC Chief forwarded the new draft to the trial team, and almost immediately Prosecutor 2, Prosecutor 1, and then Prosecutor 3 expressed (in emails only within the trial team) that they intended to withdraw from the case. Prosecutor 4 did not express the same, but he asked how the team was supposed to respond if the court asked what “substantial period of incarceration” means.

The changes in this new draft formed a basis for Prosecutor 2’s testimony before the House Judiciary Committee on June 24, 2020.<sup>33</sup> In advance of this testimony,

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be unethical and had consulted a DC USAO peer who gave him some reassurance that a variance would not be unethical. According to the Criminal Chief, he did not provide Liu with a lot of details, and he did not remember any advice she had given. He said that but for notes he had written close in time to speaking with Liu, he could not be sure he would have recalled any specific conversation with her during this time period.

<sup>33</sup> Committee on the Judiciary, U.S. House of Representatives, “Oversight of the Department of Justice: Political Interference and Threats to Prosecutorial Independence” (June 24, 2020).

Prosecutor 2 submitted a written Statement for the Record (SFR) that described not only efforts to change the government's Guidelines calculation and sentencing recommendation, but also revisions to the facts and arguments in the sentencing memorandum. Specifically, Prosecutor 2's SFR stated that the trial team had been pressured to water down and, in some cases, outright distort the events that transpired in Stone's trial and the criminal conduct that gave rise to Stone's conviction. During his OIG interview, Prosecutor 2 told us that he was referring to the revisions in the new draft that the FPC Chief forwarded to the team on Sunday evening that removed the introductory paragraphs describing the severity of Stone's offenses and added new language that the trial court did not revoke Stone's bail when he violated the court's orders before his trial.<sup>34</sup> As described previously, Shea made these two revisions in the handwritten edits he sent his Chief of Staff and the Principal AUSA on February 8, 2020. According to Prosecutor 2, the Principal AUSA and the Criminal Chief participated in the improper pressure Prosecutor 2 described in his congressional testimony by incorporating these revisions into the sentencing memorandum. Prosecutor 2 told us that the Criminal Chief also exerted pressure on the team through the Criminal Chief's Sunday email to Prosecutor 1 responding to Prosecutor 1's concerns, on which the team was copied.

#### **5. Trial Team Offers New Proposal to Avoid Withdrawals from the Case, Communications with the FPC Chief Break Down, No Agreement Going into the Morning of the Filing Deadline**

As described above, by Sunday evening, at least three trial team members expressed amongst themselves that they were prepared to withdraw from the case rather than sign the new draft recommending an open-ended downward variance. Further, the trial team had become frustrated with the discussions over the weekend, and at least Prosecutor 1, Prosecutor 2, and Prosecutor 3 questioned whether the Criminal Chief's response to Prosecutor 1's concerns was in good faith. Among other things, Prosecutor 1, Prosecutor 2, and Prosecutor 3 expressed concerns with the Criminal Chief's representation that, "I don't believe that you have been encouraged to request a lower sentence in this case. Instead, I think you have been asked to consider whether a variance...might be appropriate." Prosecutor 1 and Prosecutor 3 told us that they believed that representation was misleading, and Prosecutor 2 told us that he believed it was "false" and "in bad faith" because the team was under pressure all along to lower the sentencing recommendation either by removing enhancements or requesting a downward variance. According to the Criminal Chief, his response to Prosecutor 1 was not as clear as it could have been and that what he meant was that the trial team had not been asked to lower the

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<sup>34</sup> In addition to these revisions, Prosecutor 2 told us that he was referring in his SFR to the revisions in the final draft, described later in this report, that minimized Stone's threats to Credico. Prosecutor 2 told us that he was also referring to an argument in the second sentencing memorandum described later that the 2-level obstruction adjustment overlapped to a degree with Stone's offense conduct.

sentence “by fiat,” but rather that there were appropriate reasons to consider a lower sentencing recommendation.

According to Prosecutor 1, despite the trial team’s frustrations, Prosecutor 1 encouraged the team to make one last proposal to DC USAO management to resolve the matter and avoid team members withdrawing from the case. Prosecutor 1 told us that after considerable discussion, the trial team came up with a proposal to present to the FPC Chief that represented the “bottom line” of what the team, as a whole, could live with.

Recollections varied as to the terms of the proposal the trial team presented to the FPC Chief over the phone on Sunday evening. According to Prosecutor 1, he told the FPC Chief that the trial team would accept a memorandum that neither recommended a Guidelines-compliant sentence nor a downward variance and instead would: (1) remove the introduction describing the severity of Stone’s conduct, (2) make no recommendation as to a specific sentence, and (3) state that a substantial period of incarceration was appropriate. According to Prosecutor 1, he told the FPC Chief that the trial team did not think this proposal was the right thing to do, but that they would “hold their noses” as long as DC USAO management agreed, in writing, that the trial team would handle the sentencing hearing and be permitted to state then that 87 months would be a reasonable sentence. Prosecutor 2 told us that these terms may have been the “fallback” proposal, but that the original terms he remembered were that the trial team would accept almost all of the line edits in the Criminal Chief’s new draft, except those specifically stating that a downward variance would be appropriate, and that the team would reinsert the recommendation of a low-end Guidelines sentence and be permitted to handle the sentencing hearing. Prosecutor 3 told us that he did not recall whether the trial team made one last proposal to resolve the matter, though the terms Prosecutor 1 outlined sounded vaguely familiar to him.

The FPC Chief told us that he did not recall many details of this Sunday night phone conversation with the trial team, including whether the team presented him with a proposal and whether he shared the proposal later with his management chain, but he left open the possibility that they discussed a proposal similar to the terms Prosecutor 1 recalled. Both Prosecutor 1 and Prosecutor 2 told us that the FPC Chief quickly dismissed the proposal as a non-starter, stating that DC USAO management would never agree to those terms. Prosecutor 1 told us that the FPC Chief instead tried to persuade the team to accept the changes reflected in the Criminal Chief’s new draft. Prosecutor 2 told us that he felt pressured by the FPC Chief to accept the changes Shea wanted, including the downward variance recommendation. Prosecutor 3 told us that he thought, but did not recall with certainty, that the FPC Chief attempted to persuade the team to accept the changes.

As described previously, the FPC Chief told us he never urged the trial team to agree to a downward variance recommendation. He told us that he recalled going into this call knowing that there was no serious discussion to be had with the team about a downward



variance. He said that his plan instead was to convince them not to immediately withdraw because the memorandum was not yet final, and he and the team had another day to try to “get to a better place.”

During this call, trial team members restated the concerns they expressed on Saturday evening about political considerations influencing the decision making on the sentencing memorandum. Prosecutor 1 and Prosecutor 2 told us that the FPC Chief initially responded that what was happening was really not about politics and that Shea was acting in good faith, statements that they said were at odds with what the FPC Chief had told the team Saturday evening. Prosecutor 1 and Prosecutor 2 told us that as the discussion continued, the FPC Chief eventually acknowledged that, “We are going to treat Roger Stone differently from every other defendant.” Prosecutor 3 emailed his team members during the call with the FPC Chief noting, “[the FPC Chief] appears to be saying things that are the dead opposite of what he previously said” and, shortly thereafter, “I appreciate [that] he just said, ‘we are going to treat [Roger Stone] differently from every other defendant.’” The FPC Chief told us that he may have made that statement on this call, but that if he did, he would have made it in the context of agreeing with the team that that would be the outcome if the office filed the latest version of the memorandum with Shea’s edits.

Although Prosecutor 2 and Prosecutor 3 told us that they did not have a clear recollection of how the call ended, Prosecutor 1 told us that the call ended with the FPC Chief stating that he would take the team’s proposal to DC USAO management, but that he did not think that they would ever agree to it. The FPC Chief did not recall how the call ended, but he said that he likely would have told them not to withdraw, and that there was still a chance that he and the team could get the sentencing memorandum where it needed to be on Monday.

Prosecutor 1 told us that, immediately after the call, he called the FPC Chief to apologize for personal criticisms Prosecutor 2 directed at the FPC Chief during the call. According to Prosecutor 1, not long into the team’s call with the FPC Chief, the conversation became heated when Prosecutor 2 expressed his personal disappointment in the FPC Chief’s leadership for being (what Prosecutor 2 viewed as) complicit in DC USAO management’s improper handling of the sentencing memorandum. Prosecutor 1 stated that the FPC Chief responded in kind, venting his own frustrations with Prosecutor 2 and, more generally, with being in a difficult situation.<sup>35</sup> According to Prosecutor 1, during his private conversation with the FPC Chief, he told the FPC Chief that he did not “hold this against [him],” but that he was not going to sign a sentencing memorandum with which he did not agree. Prosecutor 1 said that it was a short call, and that he did not believe they

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<sup>35</sup> During his OIG interview, Prosecutor 2 agreed that he helped raise the temperature during this call, but he recalled that he was reacting to the FPC Chief’s quick dismissal of the team’s proposal as a non-starter, after the team had offered changes that went well beyond their comfort level.

discussed anything else. The FPC Chief provided a similar description of this call with Prosecutor 1 but thought it was possible that he also urged Prosecutor 1 not to withdraw yet from the case. Phone records reflect that Prosecutor 4 also called the FPC Chief shortly after the call with the entire team. According to the FPC Chief, Prosecutor 4, like Prosecutor 1, apologized for the personal criticisms directed at the FPC Chief and told the FPC Chief that he did not agree with them.

Later that evening, Prosecutor 2 drafted a formal notice withdrawing his appearance in the case. Prosecutor 2 told us that he was motivated to withdraw on Sunday evening because he was afraid that DC USAO management might do or say something on Monday to disparage or discredit him or the trial team, and he wanted to withdraw before that happened. Although he was prepared to file it that evening, he decided, at Prosecutor 1's request, to hold off until Monday to see whether DC USAO managers would agree to make changes that would be acceptable to the team. Available documentation indicates that Prosecutor 1 made this request to Prosecutor 2 after Prosecutor 1 had a private conversation with the FPC Chief, during which the FPC Chief asked Prosecutor 1 and the rest of the team not to withdraw from the case.<sup>36</sup>

Phone records and text messages indicate that the FPC Chief updated the Criminal Chief after the call with the team, the Criminal Chief then updated the Principal AUSA, and the Principal AUSA suggested that the three of them meet with Shea first thing the next morning, Monday, February 10. Although the FPC Chief told us that he did not specifically recall the update he provided to the Criminal Chief, the Criminal Chief said that he recalled that the trial team had found the new draft unacceptable and that discussions had reached an impasse. The Criminal Chief said that he did not remember the FPC Chief sharing a new proposal from the trial team, and other available information does not indicate whether the FPC Chief shared the new proposal with other DC USAO managers the following day.

#### **F. Advised of Possible Trial Team Withdrawals, Interim U.S. Attorney Meets Briefly with the Attorney General on the Day of the Filing Deadline**

On Monday morning, February 10—the day of the filing deadline and sometime before Shea attended a previously scheduled meeting that day with Barr on an unrelated matter—the FPC Chief met with Shea to discuss the status of the sentencing memorandum.<sup>37</sup> The FPC Chief told us that he reported to Shea that the trial team was not comfortable signing a sentencing memorandum recommending a downward variance. The

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<sup>36</sup> A note to file that Prosecutor 2 prepared that evening states that Prosecutor 1 told him that in a separate conversation Prosecutor 1 had with the FPC Chief, the FPC Chief asked that Prosecutor 1 and the team hold off on withdrawing their appearances from the case that evening.

<sup>37</sup> The FPC Chief said that he recalled that the Principal AUSA and the Criminal Chief attended this meeting. The Principal AUSA and the Criminal Chief told us that they did not have a specific recollection of a meeting with Shea on Monday morning, though the Criminal Chief added that there must have been discussions that morning about the Stone sentencing memorandum.

FPC Chief told Shea that if he (Shea) was determined to seek a downward variance, at least Prosecutor 1, Prosecutor 2, and Prosecutor 3 would not sign the memorandum. The FPC Chief told us he believed he also conveyed to Shea that these three team members were prepared to withdraw their appearances from the case. The FPC Chief told us that he was less certain as to Prosecutor 4's position and conveyed to Shea that it was possible Prosecutor 4 would sign a memorandum recommending a downward variance if that was Shea's final decision. The FPC Chief told us that he did not recall whether he presented the trial team's Sunday night proposal to Shea.

The FPC Chief said that on the day of the filing his focus was on urging Shea to make a final decision and taking "one last stab" at convincing Shea to support a Guidelines-compliant sentencing recommendation. According to the FPC Chief, Shea did not make a final decision during this meeting and instead expressed an intention to discuss the situation with the Attorney General or possibly the Attorney General's staff (the FPC Chief could not recall which). The FPC Chief said that when the meeting ended, Shea stated that he would "do the best" he could. The FPC Chief said that although he did not know what Shea meant by this statement, the FPC Chief thought that Shea was conveying that he appreciated that they had only a few hours left before the filing deadline and that the situation was "serious." The FPC Chief said that Shea did not indicate which sentencing position Shea was planning to support when he spoke to DOJ leadership.

Shea told us that he recalled "rehash[ing]" the sentencing issues with the FPC Chief on Monday morning and that he had some memory of the FPC Chief advocating for a Guidelines sentence recommendation. Shea said that he (Shea) remained concerned at that time about the "harshness" of the Guidelines range as compared to other cases, and he still thought the basis for the 8-level threats SOC was "kind of...weak." However, Shea said that his "procrastination kicked in again," and he did not make a decision about what to recommend to the court by the end of his meeting with the FPC Chief. Shea told us that the decision he made that morning was that he should advise DOJ leadership of the situation given the possibility that trial team members may "resign." Shea said that he did not know at the time whether the trial team members had stated that they would resign from the Stone case only or, more broadly, from their employment with the Department. He told us that he did not ask for clarification because "it would [have been] the same thing" to him.

After meeting with Shea, the FPC Chief went to see Prosecutor 1. Prosecutor 1 told us that he (Prosecutor 1) started the conversation by asking the FPC Chief again to let him withdraw quietly from the case and have someone else sign the memorandum. According to Prosecutor 1, the FPC Chief told him to wait on withdrawing because the office was "still working on it." Prosecutor 1 said that when he asked the FPC Chief what was going on, the FPC Chief replied that "this is coming from Main Justice. Tim Shea is getting pressure from Main Justice about the Stone sentencing recommendation, and Tim Shea is terrified of the President." According to Prosecutor 1, the FPC Chief did not specify who from Main Justice

was applying pressure or otherwise provide further details. Prosecutor 1 told us that this conversation with the FPC Chief on Monday morning was the first time he had heard anyone mention Main Justice in the Stone sentencing discussions.<sup>38</sup>

The FPC Chief told us that he did not have a clear memory of meeting with Prosecutor 1 after his meeting with Shea, though he believes he would have met with either Prosecutor 1 or the entire team to update them.<sup>39</sup> The FPC Chief told us that he did not recall telling them that Shea was under pressure from Main Justice or that Shea was planning to meet with the Attorney General that morning, but that he would not be surprised if he had conveyed that Shea was under pressure from Main Justice. The FPC Chief said that although he did not have specific knowledge, he had thought throughout that Shea must have been “getting pinged frequently” or otherwise under pressure from Main Justice officials who wanted a downward variance given the amount of questions and time spent discussing the recommendation. The FPC Chief also said that he would not question having expressed the view that Shea was afraid of the President. By “afraid of the President,” the FPC Chief told us he meant that Shea was afraid of being the subject of a public comment from the President or otherwise receiving public criticism from the political right or left depending upon his decision making.

In addition to Shea meeting with the FPC Chief that morning, and prior to his meeting with Barr, it appears that Shea may have given an update to DuCharme. Although we have been unable to determine the timing, both Shea and DuCharme recalled a

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<sup>38</sup> Although Prosecutor 2 told us that he remembered the FPC Chief stating on the Saturday night call (in addition to similar statements on Monday) that Main Justice was pressuring the DC USAO to lower the sentencing recommendation, available information suggests Prosecutor 2 may be mistaken on the timing of the FPC Chief's first reference to Main Justice involvement. According to Prosecutor 2, the FPC Chief referenced the Deputy Attorney General's Office in particular and may have also mentioned the Attorney General's Office during the Saturday night call. Further, Prosecutor 2 said that he had a distinct memory that the FPC Chief mentioned, either on Monday or over the previous weekend, that Shea was “getting a lot of calls” from Main Justice. However, Prosecutor 2's notes memorializing the Saturday night call, which he prepared the next day, do not include any reference to the FPC Chief (or someone else) mentioning Main Justice, and both Prosecutor 1 and Prosecutor 3 told us that they did not recall the FPC Chief mentioning Main Justice on the Saturday night call.

<sup>39</sup> Prosecutor 2 told us that on Monday, with the agreement of the trial team, he proposed to the FPC Chief a meeting between the trial team, FPC Chief, Criminal Chief, Principal AUSA, and Shea to discuss the sentencing memorandum directly in order to avoid “a game of telephone” and reach a final resolution. Prosecutor 2 told us that the FPC Chief said that DC USAO leadership did not want to meet with the team and communications about the sentencing memorandum needed to go through him. After reviewing a draft of this report, Prosecutor 2 said that the trial team was “repeatedly rebuffed” in their efforts to directly discuss the sentencing issues with Shea, which supported his belief that there was “no legal basis for the pressure to change our recommendation, and it was purely political in nature.” The FPC Chief told us it was possible that Prosecutor 2 asked to meet with Shea on Monday, but the FPC Chief did not recall such a request. The FPC Chief also said that if Prosecutor 2 had asked for such a meeting, the FPC Chief probably would have tried to avoid one because he was already communicating the team's views, which were consistent with the FPC Chief's views, to Shea.

conversation during which Shea expressed to DuCharme an intention to discuss the sentencing memorandum with the Attorney General, suggesting the conversation occurred before Shea met with the Attorney General.<sup>40</sup> DuCharme told us that after Shea informed him that Shea was going to speak directly with the Attorney General, DuCharme turned his attention to other matters and did not engage further with Shea or the Attorney General on the issue.<sup>41</sup> Shea told us that his desire to talk to the Attorney General was “mostly motivated” by the threatened resignations and that, but for the possibility of resignations, he probably would not have raised the sentencing memorandum to the Attorney General.

Department records show that Shea arrived at the Main Justice building approximately 10 minutes before a previously scheduled meeting with Barr at 11:00 a.m. regarding matters relating to the Federal Bureau of Prisons (BOP). Rabbitt told us that prior to Shea’s meeting with Barr, Shea caught Rabbitt in between Rabbitt’s meetings and showed Rabbitt an email from one of the Stone trial team members. Rabbitt’s description of the email matches the email Prosecutor 1 sent to the Criminal Chief the day before expressing his concerns with the way the sentencing memorandum was being handled. Rabbitt showed us typewritten notes he told us he prepared on February 12, 2020, memorializing his Stone-related conversations on February 10 and 11 (hereinafter referred to as “Rabbitt’s notes”). Rabbitt’s notes state the following concerning this first meeting with Shea on February 10:

I am surprised. I had not been tracking Stone case, or sentencing filing. I ask when it is due. Shea says at end of day. I am annoyed that this is being dropped on me. Shea says line prosecutors disagree with supervisors [and Shea] and are threatening to leak to press if USAO leadership doesn't go along with their sentencing recommendation. Told Shea I was busy, would need to discuss after meetings, not happy that this is being dropped on us at the last minute. Shea says OK, but we really need to discuss. I agree.<sup>42</sup>

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<sup>40</sup> Shea’s Chief of Staff told us that he heard Shea discussing the Stone sentencing memorandum with DuCharme over a cell phone speaker in Shea’s office on Monday morning, though he was not sure whether this call took place before or after Shea’s meeting with the FPC Chief. Phone records of Shea’s and DuCharme’s Department phones do not show any calls between them that morning. However, Shea and DuCharme were personal friends, and DuCharme provided the OIG with evidence that the two sometimes used their personal cell phones to communicate with one another on work-related issues. The OIG did not obtain phone records of their personal phones.

<sup>41</sup> It is unclear whether Shea informed DuCharme about the potential of trial team members withdrawing from the case. Although Shea told us that he thought he may have done so, DuCharme said that he did not remember learning of this possibility until the next day, February 11.

<sup>42</sup> Based on available evidence, Rabbitt’s reference to being told that prosecutors were “threatening to leak to press” most likely did not occur during this conversation but rather in a later one that day because email communications, phone records, and other documents indicate that DC USAO managers did not learn of potential or apparent media disclosures regarding the government’s sentencing memorandum until after this

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Shea told us that he did not specifically recall this conversation.

At 11:00 a.m., Shea attended the BOP meeting with Barr. Shea told us that after this meeting, he raised the Stone sentencing memorandum with Barr in Barr's office. Shea said that this conversation was the only conversation he had with Barr about the Stone sentencing before the first sentencing memorandum was filed later that day and estimated the conversation lasted about 5 to 10 minutes. According to Shea, he described the Guidelines range and told Barr that he thought the range was high, disproportionate to the comparable cases, and "inflated" by an 8-level enhancement. Shea said that he also told Barr that it was possible that trial team members would resign depending upon the ultimate recommendation and that "it was going to be a publicity thing." Shea told us that he did not recall how Barr reacted to the possibility of resignations.

According to Shea, Barr agreed that the Guidelines range seemed high and said, "we should defer to the court" on the appropriate sentence. Shea told us that he interpreted "we should defer to the court" as Barr's belief as to what should be done, but Shea also said that Barr "gave [him] no direction to do that." Shea told us that he was nevertheless "sure" that Barr thought at the time that "that's what [Shea] was going to do." However, Shea told us that he still wanted to make sure that he was comfortable with this approach and that he had to go back to the DC USAO to determine whether his office would agree to the approach. When asked whether Barr's approach of deferring to the court included requesting a downward variance (but deferring to the court on the amount), Shea told us that it was possible that a downward variance was part of the approach Barr expected him to take, but that he did not recall them discussing a downward variance. According to Shea, although it was clear Barr wanted to defer to the court, Shea did not recall them discussing the details about what that would look like "on paper."

Shea told us that he did not recall what he said to Barr at the end of the meeting. According to Shea, the discussion with the Attorney General was "a little murky" because it was a "quick conversation" following a different meeting, and Barr did not ask him to report back. Shea said that, in hindsight, he now believes there was a miscommunication between them in that he (Shea) left this meeting thinking he still had discretion in terms of determining the right sentencing position to take, whereas Barr told him days later that he (Barr) had thought he had given Shea a directive to defer to the court.

Brian Rabbitt told us that he joined this discussion between Shea and Barr after walking by and observing the two talking in Barr's office. According to Rabbitt's notes and his OIG testimony, Shea was in the midst of describing for Barr a debate or dispute in the DC USAO over the sentencing recommendation, with the prosecutors being firmly on one

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interaction between Shea and Rabbitt occurred. Rather, it is likely that, during this first conversation on February 10, Shea referred to the threats by prosecutors to resign or withdraw from the case because that is what Shea went to tell Barr that morning.

side and Shea and a number of supervisors on the other. Rabbitt said that Shea did not describe all of the details during this conversation but rather laid out the situation at “an executive level” for Barr. According to Rabbitt, Shea explained that the prosecutors calculated the guidelines range as 7 to 9 years and were pushing very hard for a sentencing recommendation within that range, but one enhancement that almost doubled the range arguably did not apply or was borderline. According to Rabbitt, Shea said that he and some others in the office thought that a sentence within the 7 to 9 years range was unreasonable and that certain § 3553(a) factors probably did not support it, namely that Stone was a first-time offender, older than most offenders, and convicted of a nonviolent crime, and the comparable cases were in the range of about 24 to 36 months.

According to Rabbitt, Shea then offered the possibility of going along with a Guidelines sentence recommendation and relying upon the court to decide an appropriate sentence. Rabbitt said that Shea presented that approach as the easiest option but not necessarily the one that Shea wanted. According to Rabbitt, Barr responded that he did not believe it was appropriate to leave the decision to the court without the government taking a position. According to Rabbitt, Shea then offered another option that included: (1) providing the proposed Guidelines calculation; (2) stating that the range is high due to one enhancement; (3) explaining that the enhancement technically applies but is borderline; (4) citing the comparable cases; (5) suggesting a significant sentence below the Guidelines range would be appropriate; and (6) deferring to the court as to the ultimate sentence. According to Rabbitt, Barr responded, “[W]ell, that sounds very reasonable to me. I like that. I think that is good. Let’s try to do that.’ And [Shea] said, ‘all right. Let me go see if I can sell that.’” Rabbitt told us that he believed at the end of this conversation Barr had made a decision that the government should follow this approach, such that if Shea later decided to do something differently, Shea would need to report back before doing so.<sup>43</sup>

In the July 2020 hearing before the House Judiciary Committee, Barr testified that Shea had come to him stating that four prosecutors were threatening to resign unless they could recommend a 7- to-9-year sentence.<sup>44</sup> According to Barr’s testimony, Shea told him that there were no comparable cases to support a sentence within that range, and that all the comparable cases clustered around 3 years. Barr testified that Shea told him that the prosecutors reached 7 to 9 years by applying enhancements, one of which had traditionally been applied to “mafioso” cases, but the prosecutors were applying the enhancement based on a phone call where Stone told a witness, “if you wanted to get it on, let’s get it on,

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<sup>43</sup> On June 23, 2020, while working on an official public statement in anticipation of Prosecutor 2’s testimony before the House Judiciary Committee, Rabbitt revised a sentence in the draft public statement that said that Barr “directed” that Shea leave the sentencing to the discretion of the judge by replacing the word “directed” with “agreed.” During his OIG interview, Rabbitt told us that he did not recall any discussions about this word choice or the reasons for one over the other, and that both words—“directed” and “agreed”—would have been accurate. The final version of the public statement approved by the Attorney General’s Office used the word “directed.”

<sup>44</sup> Barr, “Oversight of the Department of Justice.”

and I will take your dog.” Barr testified that he did not believe that the underlying conduct really supported the enhancement’s application. He testified that the prosecutors “were trying to force the U.S. Attorney, who was new in the office, to adopt” 7 to 9 years, and that he (Barr) made the decision, no, “we are going to leave it up to the judge.”<sup>45</sup>

According to Shea, after he left Barr’s office, he went back to the DC USAO with the intention of reaching a “compromise” with the trial team. He said he hoped to reach a compromise because he did not want them “abandoning ship.” In terms of what the compromise might look like, Shea said that he was hoping that they would agree to something that would make sure the sentence was “proportional” (to the comparable cases), which Shea believed a recommendation of 87 months would not accomplish. Shea said that he may have stopped by DuCharme’s office before he left Main Justice and updated DuCharme on his conversation with the Attorney General. DuCharme told us he did not recall such a conversation.

Although Shea told us he did not recall any other discussions about the Stone case before leaving Main Justice, the then Principal Deputy Assistant Attorney General for the Office of Legislative Affairs (OLA PAAG), told us that she ran into Shea in the hallway on February 10, 2020, and that the two briefly discussed the Stone case. She estimated that this interaction occurred around “midday” and that Shea appeared to have come from Barr’s office immediately before they stopped to talk to one another in the hallway. According to the OLA PAAG, Shea told her in passing that he had attended a meeting about the Stone case and said something to the effect of, “I now just got to go back and deal with folks in my office.” She added that she had a vague recollection that he may have also said that “he was between folks in his office and the [Attorney General], and he [had] to go back [to the DC USAO] and...tell [his office] what to do on that.” The OLA PAAG told us that Shea did not get into the details or specify what he meant by having to deal with the people in his office. She said she had the impression, however, that Shea had to deliver some news that people in his office “weren’t going to love.”

Barr’s February 10, 2020 appointment calendar reflects that he had a scheduled lunch meeting at the White House beginning at noon. According to Rabbitt’s testimony and notes, Barr and he had lunch that day with the White House Counsel and Deputy White House Counsel and discussed matters unrelated to the Stone case. According to Rabbitt, after the lunch, President Trump asked to see Barr, which Rabbitt said was not unusual, and Barr went to see the President while Rabbitt stayed behind. Rabbitt told us that he had no information that Barr and the President discussed the Stone case. In the July 2020 hearing before the House Judiciary Committee, Barr testified that he “had not discussed

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<sup>45</sup> Barr made similar public statements in media interviews. See [Interview with ABC News](https://abcnews.go.com/Politics/transcript-attorney-general-bill-barrs-exclusive-interview-abc/story?id=68975178), February 13, 2020 (hereinafter “ABC News Interview”), available at <https://abcnews.go.com/Politics/transcript-attorney-general-bill-barrs-exclusive-interview-abc/story?id=68975178> (accessed May 17, 2024); [Interview with NPR](https://www.npr.org/2020/06/25/883273933/transcript-nprs-full-interview-with-attorney-general-william-barr), June 25, 2020 (hereinafter “NPR Interview”), available at <https://www.npr.org/2020/06/25/883273933/transcript-nprs-full-interview-with-attorney-general-william-barr> (accessed May 17, 2024).



[his] sentencing recommendation with anyone at the White House...[o]r anyone outside the [D]epartment.”<sup>46</sup>

### **G. Interim U.S. Attorney Changes Course and Agrees to Recommend a Guidelines Sentence**

According to Department records, Shea left the Main Justice building at 12:49 p.m. on February 10 and returned to the DC USAO shortly before 1:00 p.m. As described below, sometime after he returned and before the DC USAO’s filing of the sentencing memorandum at 6:01 p.m., Shea agreed to recommend a Guidelines sentence despite his previous concerns and discussion with Barr.

#### **1. Reporter Contacts the Criminal Chief and Others in DC USAO, Office of Public Affairs Director Directs the Criminal Chief to Provide Information to Reporter Off the Record**

Department phone log records show that at 11:42 a.m. on February 10, a reporter called and spoke to the Criminal Chief for approximately 3 minutes. According to the Criminal Chief and his contemporaneous notes from the call, the reporter said he was hearing that there was a draft sentencing memorandum recommending 87 months of imprisonment in the Stone case, former U.S. Attorney Jessie Liu had approved this recommendation before her departure, Liu was removed from her position without notice, and the trial team was told something about how Stone should be treated differently because he was the President’s friend.<sup>47</sup> The Criminal Chief told the OIG that he did not provide the reporter with any information during this phone call.

According to Department phone log records and Department email communications, reporters from the same news organization also attempted to contact Prosecutor 2, Prosecutor 3, Prosecutor 4, and the DC USAO’s former Criminal Chief between 10:35 a.m. and 11:53 a.m.<sup>48</sup> Both Prosecutor 2 and Prosecutor 3 told the OIG that

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<sup>46</sup> Barr, “Oversight of the Department of Justice.” Barr made similar statements in media interviews. See ABC News and NPR Interviews.

<sup>47</sup> The Criminal Chief told the OIG that the reporter also asked about information the reporter had heard regarding other matters the DC USAO’s National Security Section was handling.

<sup>48</sup> The former Criminal Chief told us that he did not respond to the reporter and instead forwarded a voicemail from the reporter to the current Criminal Chief to let him know of the contact. Prosecutor 1, Prosecutor 2, and Prosecutor 3 told the OIG that they did not disclose information about the Stone case to the media. According to Prosecutor 2, he spoke with a non-DOJ attorney, with whom he said he had an attorney-client relationship, about the Stone case on February 10 but they did not discuss “the substance” of the case. Prosecutor 2 said he has no reason to believe that his attorney contacted the media about the Stone case. According to Prosecutor 3, between February 8 and the morning of February 10, he discussed the Stone case with four non-DOJ attorneys. According to Prosecutor 3, all of these discussions are protected by attorney-client privilege, and he never came to learn that any of these attorneys disclosed information about the Stone case to the media.

on the same day, they heard that someone had received an email or voicemail message from a reporter from the same news organization who had information that “Main Justice,” rather than the DC USAO, was trying to significantly reduce the Stone sentencing recommendation, but the OIG was unable to locate a record of such a message.

In the early afternoon, the Criminal Chief informed the Principal AUSA, Shea’s Chief of Staff, and the then Director of the Department’s Office of Public Affairs (OPA Director), that information had been disclosed to the media without Department authorization regarding internal DC USAO deliberations about the Stone sentencing recommendation (media disclosure). According to the Criminal Chief and his notes, the OPA Director told the Criminal Chief to tell the reporter “off the record” that Liu had not approved anything before she left, there were ongoing discussions about the Stone sentencing, the trial team wanted a higher sentencing recommendation than the supervisors, such a disagreement is part of the normal process and not a “big deal,” and Shea had not reached a final decision. The Criminal Chief told the OIG that he shared this information off the record with the reporter in a second phone call. Department phone log records indicate that the Criminal Chief called and spoke with the reporter at 1:28 p.m. for approximately 21 minutes, the reporter called and spoke with the Criminal Chief at 2:34 p.m. for approximately 4 minutes, and the Criminal Chief called and spoke with the reporter at 2:57 p.m. for approximately 12 minutes.

The Criminal Chief told us that he believes that he told Shea about the media disclosure after the Criminal Chief’s second call with the reporter at 1:28 p.m. Shea told us that he did not specifically recall who told him, but that he probably learned about the media disclosure from the Criminal Chief and the Principal AUSA. According to Shea, the media disclosure was disturbing and “an attempt to intimidate” him. Shea said he was trying to make a decision on the Stone sentencing recommendation, and someone was trying to “influence” or “intimidate” him by going to the media before the decision was made. The Criminal Chief told us that Shea was angry and wanted to identify anyone in the DC USAO who had discussed the Stone case with anyone outside of the office.<sup>49</sup>

## **2. Shea Meets with the FPC Chief and Prosecutor 1, Shea Tells the FPC Chief that Sentencing Recommendation Will be a Guidelines Sentence**

According to the FPC Chief and other evidence, the FPC Chief met with Shea shortly after his return to the DC USAO at about 1:00 p.m., but we were unable to determine

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<sup>49</sup> The Criminal Chief told us that in response to Shea’s desire to know who had discussed the case with anyone outside the DC USAO, he and the Principal AUSA acknowledged to Shea that they had spoken to Liu (separately) about the Stone case after her departure. As noted previously, according to the Criminal Chief and his notes, he had talked to Liu about the “pending controversial filing” in the Stone case and the disagreement about whether to recommend a variance or a sentence within the Guidelines range. The Principal AUSA told us that, although possible, he did not recall having a conversation with Liu about the Stone case after her departure or discussing such a conversation with the Criminal Chief and Shea.

whether Shea knew about the media disclosure at the time of this meeting. The FPC Chief told us that Shea came to the FPC Chief's office, told the FPC Chief that he had spoken with Barr, and said that the Stone sentencing recommendation would be a Guidelines sentence. The FPC Chief said that Shea gave him the impression that the Attorney General knew that the recommendation would be a Guidelines sentence and "had signed off on" it. The FPC Chief said that he did not recall the exact words Shea used but that Shea conveyed, "we're going to go with the Guideline[s] sentence, but I don't want to put 87 months on it as a firm number." The FPC Chief told us that he took this statement to mean that Shea wanted the memorandum to state that the government recommends a sentence at the "low end" of the Guidelines range, rather than stating a specific number of months (like the 87 months recommended in the initial draft memorandum). The FPC Chief also recalled that Shea wanted an acknowledgement of the mitigating § 3553(a) factors in the memorandum and a "trimmed down" introduction section, but Shea expressed that the trial team could say what they wanted at the sentencing hearing.

Shea told us that it was possible he stopped by the FPC Chief's office shortly after returning from Main Justice and that the two had the conversation the FPC Chief described to the OIG. However, Shea said that he did not have a specific recollection of this conversation with the FPC Chief or remember precisely when he communicated that afternoon that he was ready to move forward with a Guidelines sentence recommendation. He also told us that he did not recall whether he was aware of the media disclosure at the time he and the FPC Chief would have had this conversation, but that he ultimately decided to move forward with a Guidelines sentence recommendation because he determined that it was "the right thing to do."

The FPC Chief told us that he did not recall any mention of the media disclosure in his conversation with Shea, and the FPC Chief did not know whether Shea was aware of it at that time. However, the FPC Chief recalled telling Shea that he (the FPC Chief) thought that Shea "got to the right place" with the recommendation and hoped that Shea felt good about the way he did it and not "strong-armed" by members of the trial team threatening to withdraw. According to the FPC Chief, Shea definitely did not convey that he felt like he was "pressed up against a wall" and that he had no choice.

The FPC Chief told us that Shea wanted to talk to Prosecutor 1, and, at 1:18 p.m., the FPC Chief emailed Prosecutor 1 asking him to see the FPC Chief when he got the chance. Prosecutor 1 told us that he met with the FPC Chief who told him that Shea wanted to talk to him. Neither the FPC Chief nor Prosecutor 1 recall the FPC Chief telling Prosecutor 1 that Shea had authorized a Guidelines sentence recommendation before Prosecutor 1 went to see Shea.

According to Prosecutor 1, he went to Shea's office and Shea asked what "the problem" was. Prosecutor 1 told Shea that he did not want to sign a filing with which he did not agree. Prosecutor 1 said he also told Shea that the sentencing recommendation of 87 months of imprisonment was "the right recommendation" and noted that Prosecutor 1

had spent a lot of time on the Stone case, sat through the trial, met with the witnesses, and knew all the evidence. Prosecutor 1 said he acknowledged to Shea that Shea was in charge of the office, and it was “fine” if Shea wanted to make a different recommendation, but Prosecutor 1 told Shea to “let [Prosecutor 1] out” because he worked too hard on the case to be asked to sign a memorandum that recommended a sentence that he did not think was right.

Prosecutor 1 told us that they did not discuss moving forward with a low-end Guidelines sentence recommendation during this meeting. According to Prosecutor 1, Shea asked what he (Shea) needed to do to get Prosecutor 1 to sign the memorandum. Prosecutor 1 said that he told Shea about the language the trial team had drafted “to acknowledge some of the issues that [had] been expressed,” which Shea said he had not seen. Prosecutor 1 also outlined the team’s last proposal from Sunday, February 9, which was to not include a sentencing recommendation in the memorandum but permit the team to state at the sentencing hearing that 87 months of imprisonment was reasonable. According to Prosecutor 1, Shea responded by saying something like, “why don’t we just do that” and “it sounds like we can work this out.” Prosecutor 1 said that Shea also expressed that “politics doesn’t have anything to do with this,” and that he had never talked to anyone at Main Justice about the Stone sentencing recommendation.

Shea told us that he did not remember what he discussed with Prosecutor 1 during this meeting but he believed that, before making “a final decision,” he wanted to discuss Prosecutor 1’s views because Prosecutor 1 had “advocated well for the case.”

### **3. The FPC Chief Asks Prosecutor 2 Not to Withdraw from Stone Case Because of Potential Compromise**

Prosecutor 2 told us that he had decided to withdraw from the case if a decision was not communicated to the team by 1:30 p.m. Prosecutor 2 said that he made this decision because he was concerned that DC USAO management might do or say something to disparage or discredit him or the trial team, and he wanted to withdraw before that happened. Consequently, at approximately 1:30 p.m., Prosecutor 2 went to talk to the FPC Chief. Prosecutor 2 told us that the FPC Chief asked him to wait on withdrawing because “there might be a compromise...here,” and Prosecutor 2 decided to wait. According to Prosecutor 2, during this conversation, the FPC Chief told him that Shea did not care about Stone or the Stone case, but that Shea was “afraid of the President” and that this fear was driving Shea’s actions. According to Prosecutor 2, the FPC Chief said multiple times the day of the filing that Shea was afraid of the President and said it “with substantial conviction.”

The FPC Chief told us that, although he did not have a clear memory, he may have had a conversation with Prosecutor 2 on Monday afternoon where they discussed withdrawal, with the FPC Chief telling him not to withdraw because “we’re not there” yet. Although he said he did not have a clear recollection of the conversation, as noted previously, the FPC Chief told us that he would not question having said that Shea was

afraid of the President. The FPC Chief said that this statement represented his speculation and belief only; he said he was not aware of specific evidence to that effect and did not convey otherwise to Prosecutor 2 or the team.

#### **4. The FPC Chief and Prosecutor 1 Edit Sentencing Memorandum and Change Recommendation**

According to document metadata, between 1:22 p.m. and 1:46 p.m., the FPC Chief edited the most recent version of the memorandum, which was the version the Criminal Chief had emailed him on February 9. The FPC Chief changed the recommendation from a downward variance to a sentence “at the low end of the applicable Guidelines range” and, consistent with Shea’s desire to acknowledge mitigating factors, added the following language regarding Credico and the impact of the 8-level threats SOC:

The government acknowledges that it is appropriate for the Court to consider the impact that the 8-point upward adjustment Section 2J1.2(b)(1)(B) has on the overall sentencing range, alongside Credico’s own acknowledgement at trial that he and Stone routinely exchanged text messages with hyperbolic language and Credico’s post-trial contention that he did not seriously believe that Stone intended to do him physical harm.

Although the FPC Chief told us that he did not see anything wrong with this language, Prosecutor 2 told us that the language suggested that Credico had not been afraid, which was factually inaccurate and a distortion of the trial record.

At 1:55 p.m., the FPC Chief emailed the revised memorandum to Prosecutor 1, who forwarded the email and memorandum to the team. According to Prosecutor 1, given the team’s last proposal to not include a sentencing recommendation in the memorandum, he was a “little puzzled” when he saw the team’s original recommendation of a sentence at the low end of the Guidelines range in this draft. Prosecutor 1 told us that he did not remember the FPC Chief telling him about his (the FPC Chief’s) conversation with Shea, and the FPC Chief told us that he believed he would have shared that conversation with Prosecutor 1, but he could not say for sure that he had. The FPC Chief told us that Prosecutor 1 did not like the mitigating language that the FPC Chief had added to the memorandum (quoted above), but the FPC Chief persuaded Prosecutor 1 to accept the language by emphasizing the importance of achieving a Guidelines sentence recommendation. According to the FPC Chief, Prosecutor 1 ultimately agreed and communicated with the team, all of whom agreed to sign the revised memorandum.

About 30 minutes after the FPC Chief emailed the revised memorandum to Prosecutor 1, at 2:23 p.m., the FPC Chief emailed the memorandum to the Principal AUSA and Criminal Chief, and the Principal AUSA emailed in response, “Has [Prosecutor 1] signed off on this language?” The FPC Chief responded at 2:33 p.m., stating:

Yes—the entire team would sign this. I think that this accurately reflects my last conversation with [Shea] and what [Prosecutor 1] told me that he and [Shea] discussed. But that’s what I want to make sure of before we send up. I told [Prosecutor 1] that [there] might still need to be some language noodling. Of course, the less the better.<sup>50</sup>

According to the FPC Chief, “before we send up” reflected his expectation, after learning from Shea that the Attorney General was involved, that the Attorney General’s Office and/or the Deputy Attorney General’s Office would review the memorandum. At 3:02 p.m., the Principal AUSA emailed the Criminal Chief and the FPC Chief that Shea was reviewing the memorandum.<sup>51</sup>

At 3:44 p.m., the FPC Chief emailed the Principal AUSA and the Criminal Chief stating that Prosecutor 1 was editing the document and asking whether they or Shea wanted “one last review” before filing. Prosecutor 1 changed the memorandum’s recommendation, which the FPC Chief wrote earlier that afternoon, from a sentence at the low end of the applicable Guidelines range to a sentence “consistent with the applicable advisory Guidelines.” Prosecutor 1 also removed a sentence that stated a Guidelines sentence would be consistent with sentences imposed on other defendants and made other minor edits.

According to Prosecutor 1, he made these changes because, shortly before he circulated the final version of the memorandum, the FPC Chief told Prosecutor 1 that he had just talked to Shea, and Shea wanted the recommendation to be a sentence within the applicable Guidelines range. The FPC Chief told us that he recalled getting some direction to “be less specific” in the recommendation, so Prosecutor 1 edited the memorandum accordingly. Prosecutor 1 said that when he told the trial team about his conversation with the FPC Chief, they accepted the Guidelines range recommendation but were “kind of stunned” because it was “stronger” than their original recommendation. Shea told us that he did not recall this change in the recommendation, but he said that it “doesn’t seem like a major difference.”<sup>52</sup>

At 3:58 p.m., the Principal AUSA emailed the FPC Chief that Shea wanted to look at the memorandum “one last time.” At 4:22 p.m., Prosecutor 1 emailed the memorandum’s “final draft” to the Principal AUSA, the Criminal Chief, the FPC Chief, and the trial team, and

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<sup>50</sup> Although Prosecutor 1 said that at some point during that afternoon he had updated the FPC Chief on the conversation he had with Shea, he believed something may have been “lost in translation” because a low-end sentencing recommendation was not what he and Shea had discussed.

<sup>51</sup> According to the Principal AUSA and the Criminal Chief, they had little involvement in the February 10 discussions about changing the sentencing recommendation and the edits to the memorandum.

<sup>52</sup> If the court agreed with the government’s Guidelines range calculation and recommendation, Stone potentially could have been sentenced to 108 months at the high end of the range, which was 21 months more than the team’s original recommendation of 87 months at the low end of the range.

he asked for authorization to file it. The sentencing memorandum was forwarded to Shea at 4:33 p.m. No further substantive changes were made to the memorandum.

Prosecutor 1 told us that he was still bothered by the removal of the memorandum's introductory paragraphs regarding the seriousness of Stone's offenses but that he and the rest of the trial team wanted to get the memorandum filed without a confrontation. He said that the mitigating language regarding the threats to Credico was very hard for him to accept but not factually inaccurate. Prosecutor 2 told us that he was not "happy" with the edits to the memorandum, but he accepted them because, based on the Justice Manual and the Sessions Policy, the trial team's requirements had been an accurate calculation of the Guidelines range and a Guidelines sentence recommendation (which the final draft reflected). According to Prosecutor 2, it would "look petty" to withdraw from the case and make "a huge public spectacle" over the removal of "a couple of paragraphs on the seriousness of the offense" and the addition of "some sentences about Randy Credico, even if those actually shouldn't be there." Prosecutor 3 told us that he accepted the memorandum because with a Guidelines sentence recommendation, Stone was being treated like any other defendant who was convicted following a trial.

#### **5. Shea Contacts the OPA Director and DuCharme Before Authorizing Filing of Sentencing Memorandum, Shea Makes Final Decision to Recommend Guidelines Sentence**

At 4:55 p.m., prior to the sentencing memorandum being filed at 6:01 p.m., Shea sent an email to the OPA Director with the subject "background info." In the email, Shea provided talking points regarding the position taken in the memorandum and portions of the memorandum that addressed mitigating factors and sentences imposed in other cases. The talking points emphasized that the Guidelines are advisory, noted that the court could impose a sentence lower than the Guidelines range, and highlighted factors that the court could rely upon to do so; however, the talking points did not state that the government's recommendation was a sentence consistent with the Guidelines range. Following a short call from the OPA Director, at 4:59 p.m. Shea emailed the sentencing memorandum to the OPA Director stating that it was "NOT FINAL" but "close." Shea told us that he provided the memorandum and talking points to the OPA Director because reporters "already...[had] been sniffing around about the internal deliberations of the office."

Phone records and email communications indicate that Shea reached out to DuCharme at 5:28 p.m., and the two spoke by phone at 5:31 p.m. and again at 5:53 p.m. Both Shea and DuCharme told us that they did not recall what they discussed during these calls. Shea told us that he may have called DuCharme to tell him that the sentencing memorandum was going to be filed. DuCharme said that they had "a couple of things going on at the same time," including dinner plans that evening, but that it was possible that Shea contacted him to let him know that Shea was going to file the Stone sentencing memorandum "along the lines of what [they previously] talked about." DuCharme told us

that if they did talk about the Stone filing on one or both of these calls, it would not have been a “substantive” conversation about the content of the memorandum.<sup>53</sup>

The FPC Chief told us that approximately a half hour before the 6:01 p.m. filing, the FPC Chief went to Shea’s office to determine the status of the filing and observed Shea on the phone with his Chief of Staff standing nearby. The FPC Chief said that someone told him, probably Shea’s Chief of Staff, that Shea was reading, or had read, portions of the Stone sentencing memorandum to DuCharme over the phone. Shea’s Chief of Staff told us that he did not remember telling the FPC Chief that Shea was reading language from the memorandum to DuCharme or being aware of that fact at the time. Similarly, Shea and DuCharme told us that they did not remember Shea ever reading any portion of the memorandum over the phone.

Shea’s Chief of Staff told us that in the hours before the filing, he had a conversation with Shea during which Shea conveyed that he had recently spoken to DuCharme and told DuCharme what the final sentencing recommendation was going to be. Shea’s Chief of Staff’s February 19 notes regarding this February 10 conversation include, in part, “[Shea] claimed he spoke w[ith] [DuCharme] who ok’ed, but unclear whether nuance of (1) suggesting variance for mitigating facts; vs (2) actual variance was captured.” Shea’s Chief of Staff said that Shea did not explain what he told DuCharme about the final sentencing recommendation. Shea told us that it was possible that he explained some of his revisions to DuCharme over the phone, but he did not recall telling DuCharme what his final recommendation was going to be or seeking DuCharme’s approval. DuCharme told us that it was possible that Shea told him generally that he found a way to do what he wanted to do with the sentencing position, and DuCharme responded with “great,” but DuCharme said that the conversation would have been short of him “okaying or agreeing” with Shea’s final sentencing position.

At 5:56 p.m., with Shea’s authorization, Shea’s Chief of Staff emailed the FPC Chief, “File away.” At 6:01 p.m., Prosecutor 1 filed the sentencing memorandum. The final memorandum incorporated the changes the FPC Chief and Prosecutor 1 made earlier that afternoon, including the revisions Shea wanted to the paragraph of mitigating factors and the recommendation that Stone “should be punished in accord with the advisory Guidelines.”

Shea’s Chief of Staff remembered expressing concern to Shea before the filing that his sentencing position was going to be misunderstood. According to Shea’s Chief of Staff, Shea believed at the time that the sentencing position he was taking was “tantamount to asking for a downward variance without asking for one.” Shea’s Chief of Staff said that he

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<sup>53</sup> Shea’s phone call with another Department official in between his calls with DuCharme and other evidence suggest that one or both of Shea and DuCharme’s calls may have included discussion of another pending DC USAO matter. However, DuCharme told us that he did not think he discussed this other matter during his calls with Shea because at that time DuCharme had become less involved in that matter.



expressed to Shea that the nuances of what Shea intended in the sentencing recommendation “were going to be lost on everybody.” Shea told us that he did not recall anyone expressing a concern that the nuances of his sentencing recommendation were not going to be understood, but he said that it was possible that someone had done so.

According to Shea’s Chief of Staff, during this same conversation with Shea, Shea made clear that he felt pressured by the media disclosure earlier in the day to accept the proposed sentencing recommendation of a Guidelines sentence. According to his Chief of Staff, Shea expressed that he could explain the sentencing recommendation to the Attorney General and DuCharme and deal with them more easily than the trial team who would run to the press. According to his Chief of Staff, in Shea’s attempts “to please the prosecutors” yet “satisfy” Shea’s and DuCharme’s “understanding of what the sentence should be,” Shea “tried to thread a needle that couldn’t be thread” by arguing for a Guidelines sentence in the memorandum but including mitigating factors that would support a downward variance. According to Shea’s Chief of Staff, this “compromise position...got everyone on board.” He said that he told Shea this position was a bad idea and discouraged Shea from “acceding” to it “mostly because of the means by which it was procured.” However, he told us that based on Shea’s recent conversation with DuCharme, Shea expressed that everything was going to be fine. Shea told us that he did not recall anyone counseling against signing the final memorandum.

According to Shea’s Chief of Staff and his February 19 notes, after the filing, the FPC Chief apologized to Shea that the trial team “got their way” through “extortion.” Shea’s Chief of Staff told us that his interpretation of the FPC Chief’s reference to “extortion” was that Shea effectively had been “blackmailed” and “threatened” by a trial team member who had “leaked to the media” and would do so again if he “didn’t get his way.” According to the FPC Chief, he did not feel that Shea’s authorization of a Guidelines sentence recommendation was “the product of...extortion,” and he said he did not tell Shea that he believed that the trial team was extorting him. According to the FPC Chief, he told Shea that he hoped that Shea did not feel “strong-armed” to recommend a Guidelines sentence, and Shea responded that he did not. The FPC Chief told us that he was not aware of the media disclosure having any influence over Shea’s decision making regarding the sentencing recommendation. The FPC Chief also told us that in his view, he had persuaded Shea (on the merits) to recommend a Guidelines sentence.

According to Shea, “at the end of the day,” he decided to authorize the memorandum that the DC USAO filed on February 10 because: (1) he believed it was “the right thing to do” given the seriousness of Stone’s conduct; and (2) because the Guidelines range was “advisory” and “[not] mandatory,” and “the [j]udge was likely to [impose] a substantially lower sentence.” When asked if the media disclosure had any impact on his decision making regarding the sentencing memorandum, Shea said, “I don’t know. I mean, subconsciously, I don’t know.” Similarly, when we asked Shea whether the possibility of trial team members resigning had an effect on his decision making, he said that he “tried

consciously not to have” the possibility of resignations affect him, but he did not know if he could say that it did not have any effect because it would have been “not good” to “have that kind of thing your first week.” However, Shea told us that he did not remember stating to anyone or believing at the time that he could deal with the Attorney General and DuCharme more easily than with the trial team.

#### IV. Events Surrounding the Government’s Second Sentencing Memorandum

##### A. Shortly After Public Reporting Regarding the Government’s Sentencing Recommendation on the Evening of the Filing, Barr Makes Multiple Calls to his Senior Staff and the Interim U.S. Attorney

Within minutes of the government’s filing, media outlets began reporting that the Department had asked the court to sentence Roger Stone to 7 to 9 years.<sup>54</sup> At 7:09 p.m., about an hour after the filing, an article was posted online providing details about the internal deliberations within the DC USAO before the government’s sentencing memorandum was filed.<sup>55</sup> These details included that the filing came after “days of tense debate” in the DC USAO about the appropriate sentence, with “front-line prosecutors” arguing for “a sentence on the higher end for Stone than some of their supervisors were comfortable with.” The article further stated:

Hours before the filing was due Monday, the new head of the D.C. office, interim U.S. attorney Timothy Shea—a former close adviser to Attorney General William P. Barr—had not made a final decision on Stone’s sentencing recommendation, according to the people, who were granted anonymity to discuss internal deliberations. Disagreements among prosecutors about sentencing recommendations are not uncommon, especially when it comes to politically sensitive high-profile cases. It would have been unusual, however, for the U.S. attorney’s office to endorse a sentence below the

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<sup>54</sup> See, e.g., [“DOJ Asks Judge To Sentence Roger Stone To 7-9 Years in Prison,”](https://thehill.com/regulation/court-battles/482418-doj-asks-judge-to-sentence-roger-stone-to-7-9-years-in-prison) *The Hill* (February 10, 2020 6:25 p.m.), available at <https://thehill.com/regulation/court-battles/482418-doj-asks-judge-to-sentence-roger-stone-to-7-9-years-in-prison> (accessed May 17, 2024); [“Trump Ally Roger Stone Should Go To Prison For Up To 9 Years, Prosecutors Say,”](https://www.cnbc.com/2020/02/10/roger-stone-deserves-prison-sentence-of-up-to-9-years-prosecutors-say.html) *CNBC* (February 10, 2020 6:41 p.m.), available at <https://www.cnbc.com/2020/02/10/roger-stone-deserves-prison-sentence-of-up-to-9-years-prosecutors-say.html> (accessed May 17, 2024); [“Roger Stone Should Serve 7 To 9 Years In Prison For Lying To Congress, Prosecutors Say,”](https://www.usatoday.com/story/news/politics/2020/02/10/roger-stone-sentencing-feds-want-7-9-years-trump-ally/4455032002/) *USA Today* (February 10, 2020 7:00 p.m.), available at <https://www.usatoday.com/story/news/politics/2020/02/10/roger-stone-sentencing-feds-want-7-9-years-trump-ally/4455032002/> (accessed May 17, 2024).

<sup>55</sup> [“Roger Stone Deserves 7 To 9 Years Prison For Lying To Congress In Russia Probe, U.S. Says In Sentencing Recommendation For Trump Confidant,”](https://www.washingtonpost.com/local/legal-issues/trump-confidant-roger-stone-deserves-7-to-9-years-in-prison-for-lying-to-congress-prosecutors-say-in-new-filing/2020/02/10/90bc6e9a-4906-11ea-9164-d3154ad8a5cd_story.html) *The Washington Post* (Feb. 10, 2020), available at [https://www.washingtonpost.com/local/legal-issues/trump-confidant-roger-stone-deserves-7-to-9-years-in-prison-for-lying-to-congress-prosecutors-say-in-new-filing/2020/02/10/90bc6e9a-4906-11ea-9164-d3154ad8a5cd\\_story.html](https://www.washingtonpost.com/local/legal-issues/trump-confidant-roger-stone-deserves-7-to-9-years-in-prison-for-lying-to-congress-prosecutors-say-in-new-filing/2020/02/10/90bc6e9a-4906-11ea-9164-d3154ad8a5cd_story.html) (accessed May 17, 2024).

guideline range after winning conviction at trial, according to former federal prosecutors.

Rabbitt called Shea at around 6:30 p.m. on Monday evening, before he saw the media coverage reporting on the government's sentencing recommendation, to ask "how things turned out." Rabbitt told us that he decided to check in with Shea because the OPA Director had informed him earlier in the day that a news organization had a story that the Stone prosecutors "were unhappy." According to Rabbitt, Shea told him that the prosecutors had agreed to the approach Shea discussed earlier with Barr, and Shea had assured him that everything was "fine." In Rabbitt's notes, Rabbitt stated that Shea responded that "they got [the] filing done, [and] line prosecutors signed on, as we discussed with [the Attorney General]." Rabbitt told us that because it sounded like Shea was in a public place during this call, they did not have a long conversation or discuss the specifics of the filing. Shea told us that he may have told Rabbitt that everything had turned out fine, but he did not remember stating that the trial team had agreed to what he and Barr had discussed earlier in the day, though he could not rule out having given Rabbitt that impression.

DuCharme told us that he and Shea were at a restaurant together the evening of the filing when they were alerted (though he did not remember exactly how) to the media reports that the Department was asking the court to sentence Roger Stone up to 9 years of incarceration. DuCharme told us that he was very surprised and "kind of stunned" when he saw the media reports because it was not the direction that he understood Shea was going to take. According to DuCharme, before the filing, Shea had never expressed an intent to recommend a Guidelines sentence. DuCharme told us that he thought Shea had adopted DuCharme's suggested position and expected that Shea would state in the sentencing memorandum "in one form or another" that a sentence below the Guidelines range would be sufficient. DuCharme said that after scrolling through the media reports on his phone, he expressed concern to Shea that possibly the prosecutors had gone "rogue or something." According to DuCharme, Shea "looked at [him] in surprise, and he said, no, no. Like, what do you mean?" DuCharme said he then told Shea, "They're asking for the Guidelines range sentence," and Shea responded, "Yeah, no, I know. I approved that."

DuCharme told us that he then looked to Shea for assurance that Shea had discussed his approach with Barr, and Shea told him that he had. According to DuCharme, Shea said that the sentencing memorandum had carried out the plan discussed with Barr and separately with DuCharme because it had signaled to the court that a sentence below the Guidelines range would be "okay." DuCharme told us that while Shea was speaking, DuCharme stared at a quote from the sentencing memorandum in an article he was reading and thought to himself that "if that's what he had intended to do, it was pretty subtle." DuCharme said he was left wondering what exactly Shea told the Attorney General he was going to do in the memorandum and expressed some uneasiness to Shea on the walk home from dinner as to whether Shea and Barr truly had a meeting of the minds.

According to Shea, when DuCharme expressed surprise at the media reporting, Shea told DuCharme that he thought the approach he took in the sentencing memorandum “was the right thing to do.” Shea explained to the OIG that he believed that there were two ways to carry out the approach he discussed with Barr. He said that one way was the approach he had taken in the first sentencing memorandum he filed, referring to the comparable cases that had sentences below 7 to 9 years and adding the new paragraph at the end of the § 3553(a) analysis referring to mitigating factors. He said that the other way was the more explicit way that Barr directed the next day. Shea said that he chose the first approach because he could get the trial team to agree to it, and because he thought the judge would impose “a lot less” at sentencing regardless of which approach the government took in its memorandum. Shea said that he was surprised, however, by the amount of media attention the filing received, which he said was an “underestimation” on his part.

According to Department email communications and phone records, at 7:55 p.m. that evening, the OPA Director received a news alert email containing a news story about the government’s sentencing memorandum recommending 7 to 9 years, and, at 8:08 p.m., the OPA Director called Barr and had a brief conversation with him. Minutes later, at 8:12 p.m., Barr called Rabbitt and asked him about the sentencing memorandum. Barr and Rabbitt had another call regarding the sentencing memorandum about 30 minutes later. Rabbitt’s February 12 notes memorializing the discussions he had with Barr on February 10 state:

**Approx. 8:12 PM:** [The Attorney General] calls me. Asks why media is reporting DOJ recommended 7-9 years for Stone. Tell him I don't know, I haven't really been involved, have not read filing, but that doesn't sound like what Shea described.

**Approx. 8:40 PM:** [The Attorney General] calls again. Asks if I know anything more. Tell him I don't have filing, don't know what's going on, haven't done any follow up. [The Attorney General] says that if filing isn't as we discussed, we need to fix it. Tells me he is calling Shea. I say OK. (I do not speak to [the Attorney General] again that night).

**Approx. 9:00 PM (or later):** Obtain filing online and read. Note that it is different than what was discussed with [the Attorney General].

Rabbitt told us that at the time of these calls, it did not appear that Barr had access to the actual sentencing memorandum that had been filed because Barr seemed “very much in the dark” about what the memorandum said. Rabbitt told us that he did not realize during the first call that Barr had wanted him to investigate further. According to Rabbitt, when the Attorney General called him a second time, Barr was a little “frustrated” and “miffed” that Rabbitt did not have more information.

The OIG asked Rabbitt about what Barr told him that evening regarding “fix[ing]” the filing. Rabbitt told us that he did not remember what Barr’s exact words were on the call, including whether the Attorney General used the word “fix” to describe what they may need to do with the filing. Regardless of the exact words used, according to Rabbitt, Barr conveyed during this brief conversation that if the media reports were true about what the government recommended, then the sentencing memorandum would need to be corrected. Rabbitt told us that he did not understand at the time of these calls that there was a “concrete” plan of action about what to do because they were still trying to figure out what had happened and what was in the filing. However, Rabbitt told us that after he read the entire sentencing memorandum online later that evening, he thought to himself that they were “going to have a problem in the morning.” He told us that “it took reading the whole thing to realize that it was not what [they] had discussed” earlier in the day.

Phone records reflect that Barr attempted to reach Shea on his work cell phone at 8:45 p.m., almost immediately after ending his second call with Rabbitt. The records suggest that Barr did not reach Shea, leading Barr to call the OPA Director; the OPA Director thereafter reached Shea on his personal cell phone. According to the then Assistant Attorney General for Legislative Affairs (OLA AAG), the OPA Director told the OLA AAG the following morning about her communications with Barr on the night of February 10 and said that Barr was very angry that the Stone sentencing memorandum had been filed in a manner that he had not approved and that Barr had called the OPA Director several times in the evening and had tried to reach someone else, who the OLA AAG thought may have been either Shea or DuCharme, in an effort to get someone to do something about the filing.

Phone records reflect that Shea called Barr around 9:18 p.m. Shea said that Barr asked him what was in the sentencing memorandum and, specifically, what the recommendation was. Shea said that he told Barr that he added language to address the concerns that they had talked about earlier in the day, but he also confirmed that he decided to keep the recommendation of a Guidelines sentence. According to Shea, as he explained the contents of the memorandum, Barr seemed surprised but was mostly silent and said that he wanted to see a copy of the filing. Shea told us that he did not remember Barr asking him for anything else that evening, and Shea said he did not recall whether Barr indicated during this call that he wanted the memorandum revised or some other action taken.

Email communications reflect that immediately after his call with Barr, Shea emailed DC USAO managers asking that someone send him the final version of the sentencing memorandum. Before midnight, Shea emailed the filing to DuCharme, stating that the Attorney General “was looking for this. For your information as well.” Shea told us that he sent the filing to DuCharme because he (Shea) never used email to communicate with Barr, and he assumed DuCharme would be seeing the Attorney General at the senior staff meeting the following morning.

In the hearing before the House Judiciary Committee in July 2020, Barr testified that he made the decision on Monday evening, February 10, to “fix” the sentencing memorandum after confirming that the government’s sentencing position did not reflect what he had decided earlier in the day.<sup>56</sup> Specifically, Barr testified:

I made the decision that we shouldn't take a position as to the precise sentence but should leave it up to the judge, and we should not affirmatively advocate for 7-to-9 years. And I made that on Monday, the 10th, and that—that night we filed—the Department filed and it didn't reflect what I had decided. So, that night I told people we had to fix it first thing in the morning. So, we did. As soon as I got in, we [went] forward with the plan to file.<sup>57</sup>

A few hours after Barr’s February 10 calls to his senior staff, President Trump posted the following tweets criticizing the government’s sentencing position in the Stone case. Specifically, in the early morning hours of February 11, President Trump tweeted:

12:57 a.m. Disgraceful!

1:48 a.m. This is a horrible and very unfair situation. The real crimes were on the other side, as nothing happens to them. Cannot allow this miscarriage of justice!<sup>58</sup>

Phone records do not show any calls or texts to or from Barr or Rabbitt on Department phones after these tweets and before Barr’s senior staff meeting on February 11 at approximately 9:00 a.m. We also did not find any email communications regarding the President’s comments or the government’s sentencing memorandum during this timeframe.

## **B. Attorney General Barr Meets with Senior Staff the Next Morning and Directs the Filing of a Second Sentencing Memorandum**

On Tuesday, February 11, Barr held a regularly-scheduled senior staff meeting that began at approximately 9:00 a.m. Before others arrived, Barr had a brief conversation with Rabbitt about the sentencing memorandum. According to Rabbitt’s notes and his OIG testimony, Barr told him that: (1) the final memorandum did not take the approach Shea

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<sup>56</sup> Barr, “Oversight of the Department of Justice.”

<sup>57</sup> Barr made similar statements in a media interview on February 13, 2020: “I was very surprised. And once I confirmed that that’s actually what we filed, I said that night, to my staff, that we had to get ready [because] we had to do something in the morning to amend that and clarify what our position was.” See ABC News Interview. As noted previously, Rabbitt told us that Barr expressed to him on Monday evening an intent to fix the sentencing memorandum in the event the government’s sentencing position did not reflect the approach the Attorney General and Shea had discussed earlier in the day.

<sup>58</sup> See <https://twitter.com/realDonaldTrump/status/1227109357726445568?s=20> and <https://twitter.com/realDonaldTrump/status/1227122206783811585?s=20> (accessed May 17, 2024).

explained the day before; (2) he did not understand Shea to say that he would be recommending 7 to 9 years; and (3) the Department needed to “fix it.” Thereafter, others entered the room, including DuCharme, then Deputy Attorney General Jeffrey Rosen, and the then Principal Deputy Associate Attorney General (Principal Deputy Associate AG). Although the OPA Director and OLA AAG attended part of the meeting, the OLA AAG told us that his impression when he and the OPA Director entered the room was that they had joined the “tail end” of the discussion about the sentencing memorandum.

Rabbitt, DuCharme, and the Principal Deputy Associate AG, all of whom attended the meeting from the beginning, provided consistent testimony regarding key aspects of the discussion, namely that Barr: (1) expressed surprise and strong disagreement with the approach taken in the sentencing memorandum; (2) expressed frustration that Shea proceeded with an approach that was different from the approach the two discussed the day before; (3) expressed his desire to correct the government’s position; and (4) conveyed all of these points before anyone in the room mentioned the President’s tweets. According to Rabbitt, Barr was in the middle of listening to what others thought about the idea of a second filing when someone mentioned the tweets, and then “the air almost went out of the room.” Rabbitt told us that based on Barr’s reaction in the meeting and what Barr later told him, Barr had not seen or been informed of the President’s comments until it was mentioned in the middle of this meeting.

According to Rabbitt, DuCharme, and the Principal Deputy Associate AG, after the President’s tweets were mentioned, the group discussed how the tweets complicated the situation because they expected that people would say that the Attorney General’s actions were in response to the President’s criticism. DuCharme told us that he suggested “modulat[ing]” the government’s position at the sentencing hearing instead, but this approach was “flatly rejected.” According to Rabbitt, the group briefly discussed not revising the sentencing memorandum, but Barr rejected that idea, stating that Stone should not receive negative or favorable treatment because of tweets. Similarly, DuCharme said that he had a very clear memory of Barr reacting strongly to the idea that the tweets should be relevant to his decision making. According to DuCharme, Barr “got visibly angry and he said, ‘you don’t understand. If we don’t [submit a second filing], it will be because we’re reacting to the tweet. I don’t care about the tweet. We’re ignoring the tweet.’” The Principal Deputy Associate AG told us that she recalled that the tweets gave everyone in the room pause but that Barr was of the view that the sentencing memorandum needed to be “pulled” despite the President’s tweets.<sup>59</sup>

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<sup>59</sup> The Principal Deputy Associate AG told us that before having her recollection refreshed during her OIG interview as to the timing of the President’s tweets, her memory of the tweet discussion was that the President posted the tweets while they were having the senior staff meeting, and that everyone in the room reacted to the effect of, “shoot, now what?”

Barr gave similar testimony to the House Judiciary Committee in July 2020, stating that he “hesitated” with the plan to file a second sentencing memorandum after learning of the tweets because he knew that people would argue that his actions were in response to the President’s criticism. He testified that he decided “at the end of the day that [he] really had to go forward with [the second] filing because it was the right thing to do.”<sup>60</sup>

Rabbitt’s notes reflect that Barr said during the senior staff meeting that a 7 to 9 years recommendation was “ridiculous” for the conduct at issue and expressed concerns that Stone was being singled out because he was high-profile and the trial team was too invested in the case. During his OIG interview, Rabbitt said that he did not recall whether Barr’s concerns were based on specific information that the Stone trial team was unduly influenced by the high-profile nature of the case or too invested in the case. However, according to Rabbitt, Barr believed generally that prosecutors have a tendency to let the high-profile nature of a defendant “creep” into their analysis, and, for that reason, certain decisions are reviewed by the Department’s supervisory structure.

DuCharme told us that Barr expressed some frustration during the senior staff meeting that Shea had brought the Stone sentencing to his attention in the first place. According to DuCharme, Barr had not been looking for opportunities to affect the direction of the case but expressed that once the sentencing issue was elevated to his attention, and he thought he had reached an understanding with Shea on the approach, Barr believed he then “owned” the decision and needed to have the record accurately reflect what his position was.

Towards the end of the senior staff meeting, the group discussed whether to contact the White House or the media to update them on the situation. Rabbitt’s notes state the following about this discussion:

Agree that we need to not talk to anyone at the [White House] about situation and that [the Attorney General] cannot talk to [the President.] [The Attorney General] tells [the OPA Director] to let press know that DOJ will be making supplemental filing so that they aren't surprised later on.

According to DuCharme, Rabbitt expressed in the meeting that communicating with the White House before filing the second sentencing memorandum would aggravate the “optics issue.” Rabbitt told us that there was broad agreement in the meeting that—as a general matter and particularly in light of the President’s tweets—they needed “to be purer than the driven snow” in terms of White House contacts and, therefore, needed to “firewall” themselves from any such contacts until after the second memorandum was filed. Rabbitt

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<sup>60</sup> Barr, “Oversight of the Department of Justice.”



said that sharing information with the media about the Attorney General's plan was not intended as a way to communicate the plan to the White House indirectly.<sup>61</sup>

Phone records show that after the senior staff meeting, Barr, Rabbitt, and the OPA Director each called the White House before the filing of the second memorandum. Although we have no information regarding the substance of Barr's and the OPA Director's calls, according to these records, Barr called then Senior Advisor to the President Jared Kushner at 10:13 a.m. and then White House Counsel Pat Cipollone at 12:06 p.m. and 1:28 p.m. The records show that these calls were very brief, and, therefore, it is unknown whether Barr spoke to Kushner or Cipollone. According to these records, between 12:18 p.m. and 3:13 p.m., the OPA Director called Principal Deputy White House Press Secretary John (Hogan) Gidley four times and a Special Assistant to the President once. Between 2:32 p.m. and 3:16 p.m., the OPA Director also emailed them and Deputy White House Press Secretary Steven Groves the information about the Stone sentencing recommendation that she had shared with the media.

Rabbitt told us that he did not know about Barr's or the OPA Director's calls to the White House on February 11 until we asked him about these calls during his interview. According to Rabbitt, he was "a little surprised" to learn about Barr's calls because Barr had endorsed, if not initiated, the idea of avoiding contacts with the White House until after the filing of the second memorandum.<sup>62</sup> According to Rabbitt's contemporaneous notes, OIG testimony, and phone records, Rabbitt had left a phone message that morning for Deputy White House Counsel Kate Todd and spoke to her at approximately 3:00 p.m., which Rabbitt said was about matters unrelated to Stone. Rabbitt told the OIG that "maybe" he "should have just kept those calls to the next day," but he stated that Todd "had a very narrow lane, which was nominations," and they had been trying to connect for a while.

At the end of the meeting, it was DuCharme who was tasked with carrying out Barr's direction and making sure that the second sentencing memorandum was prepared quickly and implemented Barr's desired sentencing approach. Instead of directing that the DC USAO prepare the new memorandum under DuCharme's supervision, Barr assigned drafting responsibility to DuCharme with assistance from Shea's Chief of Staff who, as

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<sup>61</sup> At approximately 11:40 a.m., the news media began reporting that the government's 7 to 9 years sentencing recommendation in the Stone case was changing because, according to an unnamed Department official, that was "not what had been briefed" to the Department and was "extreme and excessive and is grossly disproportionate." According to Rabbitt's notes, at approximately 12:30 p.m., he received a phone call from Deputy White House Counsel Patrick Philbin. Rabbitt told the OIG that he believed Philbin was calling because of the media reports, and Rabbitt was cognizant of the decision to not have conversations with the White House about the Stone sentencing recommendation. According to Rabbitt's notes and testimony, Philbin started to talk, but Rabbitt interrupted him and said that they should not talk then but that Rabbitt would call him that evening, which Philbin said he understood.

<sup>62</sup> Rabbitt told us that on February 11, Barr had a number of issues that he wanted to discuss with then President Trump, but the issues were unrelated to any pending cases, including the Stone prosecution.

discussed in the next section, was asked to report to Main Justice on February 11 for this purpose. According to Rabbitt, Barr did not instruct the DC USAO to draft the new filing because the DC USAO had not carried out the Attorney General's wishes the first time, and Barr wanted to make sure "it was done right the second time." Rabbitt said that the Attorney General chose DuCharme because of his extensive prosecutorial experience and Shea's Chief of Staff because, having recently left the Deputy Attorney General's Office to become Shea's Chief of Staff, he could serve as a bridge between Main Justice and the DC USAO.

DuCharme told us that he did not receive very specific instructions in the meeting about what to include in the new filing. DuCharme said that he generally understood that the second memorandum should make clear that the Department believed that a sentence below the Guidelines range would be reasonable but ultimately defer to the court to determine the appropriate sentence. He said that he also understood that the material points supporting Barr's sentencing position included the defendant's age, the nature of the threat to Credico, and whether application of the enhancement would serve the spirit of the 8-level threats SOC.<sup>63</sup> According to DuCharme and the Principal Deputy Associate AG, during the senior staff meeting, the group discussed whether the 8-level threats SOC even applied, but DuCharme told us that he argued strongly that the second sentencing memorandum should not change the Guidelines calculation set forth in the memorandum filed the day before. According to DuCharme, he told the Attorney General that he had no reason to doubt that the trial team had reasonably calculated the Guidelines range and expressed the view that even if the 8-level threats SOC only arguably applied, the Department should not create confusion about the Guidelines. According to DuCharme, he advocated for focusing instead on the factors under § 3553(a) to make Barr's points, and Barr agreed.

Sometime during the discussions that morning, possibly after DuCharme left the Attorney General's Office to begin work on the second sentencing memorandum, DOJ leadership discussed removing Shea as Interim U.S. Attorney due to his handling of the sentencing memorandum. Although Rabbitt was not sure whether the topic came up during the senior staff meeting or afterwards, the Principal Deputy Associate AG told us that she had a specific memory of Barr bringing it up during this meeting.<sup>64</sup> According to the Principal Deputy Associate AG, at some point in the discussion about the sentencing memorandum, Barr said in a very sad tone, "I guess [Shea] is going to have to go." The Principal Deputy Associate AG told us that she remembered that Barr did not elaborate or explain his reasoning. However, Rabbitt told us that he and Barr quickly realized that the

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<sup>63</sup> According to DuCharme, these and other arguments made in the second sentencing memorandum came into greater focus during the drafting process, described later in this report.

<sup>64</sup> The Principal Deputy Associate AG told us that she recalled that she was still in the Attorney General's office when he brought up the topic, but that the group had moved to a table in his office, possibly after the OPA Director and OLA AAG had joined the discussion.

anticipated controversy over the new filing was going to negatively impact Shea's ability to receive the President's nomination and Senate confirmation for U.S. Attorney, and earn the trust and support of the district court.<sup>65</sup> According to Rabbitt, they determined that they needed to figure out a way to get someone else in the position so that a new interim U.S. Attorney would have enough time to stabilize the office, develop a track record, and hopefully receive nomination from the President and confirmation from the Senate or, if not, to at least receive a new appointment from the district court until the vacancy was filled.

Email communications reflect that shortly after 12:00 p.m. on February 11, the then Assistant Attorney General for the Office of Legal Counsel (OLC AAG), sent an email to Rosen and the Principal Deputy Associate AG describing the Attorney General's options for removing and replacing the Interim U.S. Attorney for the District of Columbia. Minutes later, the Principal Deputy Associate AG forwarded the email to Rabbitt. The email did not expressly state what prompted the OLC AAG to send the email. The OLC AAG told the OIG that he believes Rosen came to see him that morning, after the senior staff meeting, seeking to determine the Attorney General's options for firing Shea. The OLC AAG told us that he did not recall his conversation with Rosen, including whether Rosen specifically mentioned Shea and what happened in the Stone case or whether he (the OLC AAG) put "two-and-two together." According to the OLC AAG, after he sent his email to Rosen and the Principal Deputy Associate AG, no one ever came back to OLC on the issue.<sup>66</sup>

### **C. Second Sentencing Memorandum Is Drafted Under Close Direction of DOJ Leadership**

After the February 11 morning meeting with Barr, DuCharme called Shea and told him that the Attorney General decided to file a second sentencing memorandum that deferred to the court on Stone's sentence, and Shea accepted this decision. At DuCharme's direction, Shea's Chief of Staff went to Main Justice and met with DuCharme. DuCharme told Shea's Chief of Staff that the government's sentencing memorandum did not reflect the Department's position and a corrected memorandum seeking a variance below the advisory Guidelines range needed to be filed quickly. DuCharme tasked Shea's Chief of Staff with drafting this second memorandum and, according to the Chief of Staff, provided

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<sup>65</sup> An interim U.S. Attorney appointed by the Attorney General may serve for 120 days, after which the interim U.S. Attorney vacates the position unless he or she receives nomination from the President and confirmation from the Senate, or the district court appoints the interim U.S. Attorney to serve until the vacancy is filled. See 28 U.S.C. § 546.

<sup>66</sup> Rabbitt told us that he began the process of identifying potential replacements, but that the plan to replace Shea was not executed before Rabbitt left the Attorney General's Office to become the Acting Assistant Attorney General for the Criminal Division in early March 2020. Shea told the OIG that he was never asked to resign his position as Interim U. S. Attorney. On May 19, 2020, Barr publicly announced that Shea would be leaving his role as Interim U.S. Attorney to serve as the Acting Administrator of the U.S. Drug Enforcement Administration.

“specific instructions” on the content. This content included an argument about the mitigating effect of Credico’s letter and a citation to a well-known quote from a Supreme Court case involving prosecutorial misconduct, *Berger v. United States*, 295 U.S. 78, 89 (1935), which stated that a prosecutor’s responsibility is to ensure that justice is done. Shea’s Chief of Staff told us that he then began drafting the second memorandum with DuCharme “literally working over [his] shoulder” and with Rabbitt repeatedly checking on the draft’s progress.<sup>67</sup>

DuCharme said he spoke to Barr “a half a dozen” times throughout the day and communicated indirectly through Rabbitt to update the Attorney General on the second memorandum’s content and manage expectations regarding when it was going to be filed. As described earlier in this report, according to DuCharme, in the conversations he had with Barr the week before, the Attorney General had “an immediate reaction” to how high Stone’s Guidelines range was given Stone’s age, but DuCharme said that they did not engage in “super rigorous analysis.” However, on February 11, DuCharme recalled that he and Barr looked “much more closely at particular facts,” including Stone’s threats against Credico and Stone’s personal circumstances, to determine if there was support for the Attorney General’s position. According to DuCharme, as the memorandum was being drafted, Barr provided some “input...reinforcing the strategy” decided that morning, concluded that the facts supported a sentence below the Guidelines range, and found no reason to deviate from the prior position that he had taken with Shea. Rabbitt told us that he “periodically” provided updates to Barr on the second memorandum’s status, but Rabbitt did not recall discussing the content with the Attorney General or receiving feedback from him.

DuCharme told us that he was “pretty confident” that Barr reviewed the second memorandum before it was filed, but Rabbitt said he did not recall the Attorney General reading any version of the memorandum. Rabbitt said that he did not remember reviewing the final version himself before it was filed, but Shea’s Chief of Staff told the OIG that at some point, Rabbitt “gave the thumbs up,” which the Chief of Staff communicated to Shea. At 2:55 p.m., Shea’s Chief of Staff emailed the latest draft of the second memorandum to Shea and the Principal AUSA for filing, with Shea, the Criminal Chief, the FPC Chief, and Prosecutor 4 listed in the signature block.

This draft version of the second memorandum stated that the first memorandum did not accurately reflect the Department’s position and, while imprisonment was

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<sup>67</sup> Shea’s Chief of Staff said that he did not consider himself to be the second memorandum’s author because “substantial” edits were made, initially by DuCharme and then later by Rabbitt. DuCharme recalled sitting in front of the computer and said that he may have drafted or edited parts of the memorandum. However, DuCharme described Shea’s Chief of Staff as the memorandum’s “principal drafter” who received “real time oversight” from DuCharme and to some degree Rabbitt to ensure that the memorandum was consistent with what the Attorney General wanted. Rabbitt recalled providing non-substantive, “organizational” feedback on a draft of the memorandum.

warranted, “the range of 87 to 108 months presented as the applicable advisory Guidelines range would not be appropriate or serve the interests of justice in this case.” Quoting *Berger*, the second memorandum then stated, “It is well established that the prosecutor ‘is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.’” *Berger*, 295 U.S. at 88. Although the second memorandum did not include a different Guidelines calculation, it stated that the sentencing enhancements calculated in the first memorandum were “perhaps technically applicable” and the total offense level was “arguably 29,” which “typically applies in cases involving violent offenses.” The second memorandum concluded that a sentence of 87 to 108 months “could be considered excessive and unwarranted under the circumstances,” and a sentence “far less” than that range would be reasonable. Rather than recommending a specific sentence, the second memorandum deferred to the court as to what sentence would be appropriate.<sup>68</sup>

The second memorandum included four arguments in support of its position that a sentence far less than the Guidelines range would be reasonable. First, although Credico’s “subjective beliefs” were “not dispositive” regarding the 8-level threats SOC, he “did not perceive a genuine threat” from Stone, which could be considered “when determining whether to apply the enhancement—particularly given the significant impact that the enhancement has on the defendant’s total Guidelines range.”<sup>69</sup> Second, regarding the 2-level obstruction adjustment, Stone’s obstructive conduct “overlap[ped] to a degree with the offense conduct” and the extent to which it “actually prejudiced the government at trial” was unclear. Third, the sentences imposed in other cases involving the same charges as the Stone case “constituted a fraction of the penalty suggested by” Stone’s Guidelines range, although the second memorandum acknowledged that these cases “involved lesser offense conduct.” Lastly, the memorandum noted Stone’s “advanced age, health, personal circumstances, and lack of criminal history,” and asserted that a sentence in the range of 87 to 108 months was more typically imposed on defendants who had “higher criminal history categories or who obstructed justice as part of a violent criminal organization.”

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<sup>68</sup> Between 2:31 p.m. and 2:47 p.m., Shea’s Chief of Staff emailed Shea and the Principal AUSA three other versions of the second memorandum. In one of these earlier versions, it was stated that a “significant sentence of incarceration” was warranted, but the word “significant” was not included in the version emailed to Shea and the Principal AUSA at 2:55 p.m.

<sup>69</sup> The second memorandum noted that Stone’s Guidelines range would have been 37 to 46 months without the 8-level threats SOC, which “is more in line with the typical sentences imposed in obstruction cases.”

**D. Members of Trial Team Withdraw from the Case, Prosecutor 1 Resigns in Protest, and DC USAO Criminal Chief Signs the Second Sentencing Memorandum**

The Principal AUSA, the Criminal Chief, the FPC Chief, and the trial team first learned about the Department's plan to change the sentencing position in the Stone case after media inquiries and/or news reports on Tuesday stated, among other things, that the Department was "shocked" by the position taken in the sentencing memorandum and was planning to clarify the Department's position later that day. The Principal AUSA told us that after he learned about the second memorandum, he spoke to Shea who seemed to be "realizing that he had not done what the Attorney General had expected him to do." According to the Principal AUSA, Shea said to him that DuCharme had told Shea to do what Shea thought was right or reasonable. The Principal AUSA said he did not know when this conversation between Shea and DuCharme occurred, but, as described earlier, Shea and DuCharme discussed the Stone sentencing recommendation on multiple occasions before the first memorandum was filed.

Prosecutor 1 told us that in the early afternoon, the FPC Chief confirmed that the Department was filing a second memorandum and also told Prosecutor 1 that the DC USAO planned to refer the media disclosure to DOJ's Office of Professional Responsibility (OPR).<sup>70</sup> Prosecutor 1 shared this information with the team, and he, Prosecutor 2, and Prosecutor 3 then withdrew their appearances from the Stone case before the second memorandum's filing. Prosecutor 3 told us, "[I]t would be very strange for us to maintain an appearance in this case, where they filed a thing saying that our prior filing was wrong."

With respect to the timing of their withdrawal, according to Prosecutor 1, Prosecutor 2, Prosecutor 3, and other evidence, they wanted to withdraw before the second filing because they were concerned that the Department was planning to criticize them in the filing and involuntarily withdraw their appearances. Prosecutor 1 told us that he did not have an understanding from the FPC Chief at the time about the second memorandum's content. However, Prosecutor 2 said that he learned from the FPC Chief, possibly through Prosecutor 1, that the DC USAO's front office was considering stating in the second memorandum that the Stone sentencing recommendation was being reassessed because of the media disclosure and implying that the team was responsible for the disclosure by removing them from the case. According to Prosecutor 2, the FPC Chief could not promise that the trial team would see the memorandum before it was filed, so Prosecutor 2 felt like a "sitting duck" not knowing what the memorandum would say about the team. Prosecutor 2 told us, "If they're going to file something that says...we have withdrawn these attorneys from the case because of the leaks yesterday and smear my reputation, I want[ed] to make clear that I'm out of the case before that happens."

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<sup>70</sup> The DC USAO ultimately did not refer the media disclosure to OPR.

In addition to withdrawing his appearance from the case, Prosecutor 1 simultaneously resigned from the Department. Prosecutor 1 told us that he resigned because Department decisions are not supposed to be based on a defendant's identity, political beliefs, or connections, and he believed the Department was "completely walk[ing] away from that principle" here and taking "unprecedented steps to benefit" an unremorseful defendant who had "essentially thumbed his nose at not one but two branches of government along the way."

Before receiving a draft version of the second memorandum, the Principal AUSA emailed proposed language to DuCharme and Shea's Chief of Staff stating that the government had reevaluated its sentencing recommendation due to the "improper disclosure" of information to the media about non-public, DC USAO deliberations regarding the government's sentencing recommendation. The proposed language also referenced the possibility that trial team members had "caused" this disclosure.<sup>71</sup> DuCharme told us that, with the Attorney General's concurrence, the media disclosure was not addressed in the second memorandum because the issue was a "distraction" and "wasn't material to the position" being taken.

As noted previously, Shea and the Principal AUSA received a draft of the second sentencing memorandum shortly before 3:00 p.m. In an email to Shea's Chief of Staff, copying Shea and the Criminal Chief, the Principal AUSA proposed three changes, two of which affected the final version of the second memorandum. First, the Principal AUSA told us that he disagreed with the second memorandum's statement that "the range of 87 to 108 months presented as the applicable advisory Guidelines range would not be appropriate or serve the interests of justice in this case" because the language was "too strong." The Principal AUSA suggested the following alternative language, which mirrored existing language in another part of the memorandum: "the range of 87 to 108 months...could be considered excessive and unwarranted under the circumstances" (emphasis added). However, the original language was retained in the final version of the second memorandum without this edit. Second, the Principal AUSA proposed an edit to the argument regarding the "significant impact" of the 8-level threats SOC. Rather than stating that the court could consider Credico's subjective beliefs "when determining whether to apply the enhancement," the Principal AUSA suggested stating that the court could consider such beliefs "when determining the impact of the enhancement." This language was changed to "when assessing the impact of applying the enhancement" in the

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<sup>71</sup> The FPC Chief drafted the first version of this language, which stated that the Department would reevaluate and file its sentencing position by February 14 due to the media disclosure, but the FPC Chief's draft did not reference the trial team potentially being responsible for the disclosure. According to the FPC Chief, the purpose of his language was to buy more time to convince the Department that the first memorandum's position was correct but, in hindsight, he said it was a "bad recommendation" to suggest this language. The FPC Chief's language was ultimately not included in the version the Principal AUSA emailed to DuCharme, which the Principal AUSA said he did not remember editing.

second memorandum's final version.<sup>72</sup> Lastly, the Principal AUSA removed the FPC Chief's and Prosecutor 4's names from the memorandum's signature block, which is reflected in the final version.

According to Rabbitt's testimony and notes, Barr asked at different points that day what was taking so long and who would be signing the second memorandum. Rabbitt told us that he called Shea, who indicated that the DC USAO was in the process of figuring out who would sign the memorandum. According to several witnesses, Prosecutor 4 was given the option to sign the second memorandum, but he declined. The FPC Chief told us that he was asked to review and sign the memorandum, but he also declined to sign because he believed the DC USAO had done "the right thing" in the first memorandum, he had concerns about what was motivating the change in position, and the memorandum's citation to *Berger*, a prosecutorial misconduct case, suggested the "team did something wrong." According to the Principal AUSA, the FPC Chief suggested that it would be better if he (the FPC Chief) did not sign because it would impact his relationship with the section he still had to run, and people there were very upset and supportive of Prosecutor 1.

Ultimately, the Criminal Chief agreed to sign the second sentencing memorandum. According to the Criminal Chief and other evidence, he first consulted with DC USAO colleagues, including the DC USAO ethics advisor, to determine if it would be improper or unethical to sign the second memorandum. They advised the Criminal Chief that they did not believe it would be improper or unethical if there had been a miscommunication between the Attorney General and Shea regarding the sentencing position, which resulted in a filing that needed to be corrected. The Criminal Chief told us that he did not agree with the second memorandum's position and was very troubled by what was happening, including the appearance that the position was being changed for political reasons and the intense time pressure to file the memorandum with little time for review and no ability to edit. The Criminal Chief told us that he had changes that he wanted to make to the second memorandum, but he was told "it wasn't going to happen." Like the FPC Chief, the Criminal Chief said that he was "profoundly concerned" by the second memorandum's quotation of *Berger*, which he felt was "a veiled, at best, and maybe not even a veiled, shot at the trial team" by suggesting they had acted in "bad faith."

At 4:44 p.m., the Criminal Chief filed the second memorandum.<sup>73</sup> The Criminal Chief said that he decided to sign and file the memorandum because, as a supervisor, he

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<sup>72</sup> The Principal AUSA told the OIG that he suggested this edit because he understood from DuCharme that the second sentencing memorandum would not question the Guidelines calculation in the first memorandum. However, according to DuCharme, the original and final language in the second sentencing memorandum was intended to question the applicability of the 8-level threats SOC.

<sup>73</sup> The Criminal Chief signed the second memorandum as a representative of Shea, the U.S. Attorney, which is how USAO documents are typically submitted to courts. Shea told us that he thought the Department "would get the same result" with the first memorandum, but the second memorandum "wasn't offensive" to him, and he did not think there was "anything wrong" in it "with respect to the law or the facts."



required AUSAs to take positions with which they did not agree, and he believed that if it was not improper or unethical to do so, he had to do what he expected of others. In retrospect, the Criminal Chief said that he thought he had “made a mistake” by not demanding more time to determine whether all the arguments were “legitimate.” The Criminal Chief described the memorandum to us as “poorly reasoned and written.”

At 5:30 p.m., Prosecutor 4 withdrew his appearance from the case, but, according to several witnesses and other evidence, Prosecutor 4 first met with Shea to determine if there would be any consequences in the event he withdrew. Prosecutor 1 and Prosecutor 2 told us that Prosecutor 4 told them that Shea expressed that he would not fire Prosecutor 4, but that Shea could not promise Prosecutor 4 that Main Justice would not do something. According to Shea, he told Prosecutor 4 that Prosecutor 4 would not lose his job as long as Shea was the U.S. Attorney, but Shea had no control over what would occur if Shea got fired.

On the evening of February 11, it was reported that President Trump had rescinded his nomination of Jessie Liu to the Treasury undersecretary position. Between the evening of February 11 and the early morning of February 12, President Trump posted tweets that criticized the DC USAO trial team and judge, and supported the Department’s change in sentencing position, including a tweet in which the President stated, “Congratulations to Attorney General Bill Barr for taking charge of a case that was totally out of control and perhaps should not have even been brought.”<sup>74</sup> In a media interview of Barr, which was broadcast on Thursday, February 13, Barr said that the President’s public comments about the Department, Department employees, pending cases, and judges made it “impossible” for Barr to do his job and assure the courts and Department employees that the Department’s work was done with integrity.<sup>75</sup>

## V. Sentencing Hearing and Subsequent Events

Stone’s sentencing hearing occurred on February 20, 2020. The Criminal Chief and the FPC Chief appeared for the government, with the Criminal Chief addressing the court. The Criminal Chief apologized “for the confusion that the government has caused with respect to this sentencing” and clarified that “this confusion was not caused by the original trial team.” The Criminal Chief added that the trial team was authorized to file the first sentencing memorandum, he knew of nothing that was “incorrect” in that filing, and that it had been filed “in good faith.” The Criminal Chief told the court that Shea had approved the first memorandum, and it was the Criminal Chief’s understanding that “a miscommunication” had occurred between Shea and Barr “as to what the expectations were from the Attorney General and what the appropriate filing would be.” When the court

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<sup>74</sup> See <https://twitter.com/realDonaldTrump/status/1227561237782855680?s=20> (accessed May 17, 2024).

<sup>75</sup> See ABC News Interview.

asked if he wrote the second memorandum, the Criminal Chief stated that he was unable to discuss the internal deliberations of the DC USAO or the Department. The Criminal Chief told the court that the government stood by each of the sentencing enhancements identified in the first memorandum and explained why the government believed each applied. The Criminal Chief told the court the government believed “the court should impose a substantial period of incarceration” but deferred to the court as to “what the specific sentence” should be in the case.

The court sentenced Stone to 40 months of incarceration. The court concluded that each of the enhancements applied—except for the 2-level extensive SOC—and calculated a Guidelines range of 70-87 months. In addressing the § 3553(a) factors, the court specifically observed, among other things, that the 8-level threats SOC “while applicable, tends to inflate the guideline level beyond where it fairly reflects the actual conduct involved.” The court also noted the need for the sentence to be “proportionate” with comparable cases as a reason for the below-Guidelines sentence.

On July 10, 2020, before Stone surrendered to begin service of this sentence, Stone’s sentence was commuted by an Executive Grant of Clemency by President Trump.<sup>76</sup> On December 23, 2020, Stone received a full and unconditional Presidential pardon from President Trump.<sup>77</sup>

## VI. Analysis

The Department’s handling of the sentencing in the *United States v. Roger Stone* case was highly unusual—filing a sentencing memorandum recommending that the court impose a Guidelines sentence of 87 to 108 months of incarceration and then, the following day, submitting a “supplemental and amended” sentencing memorandum to the court stating that (1) a sentence within the Guidelines range of 87 to 108 months was “excessive and unwarranted” and “would not be appropriate or serve the interests of justice,” and (2) a sentence “far less than” 87 to 108 months would be reasonable under the circumstances. Further, the Department’s second sentencing memorandum was submitted just hours after a tweet by then President Trump criticizing the Department’s first memorandum, and the subsequent filing resulted in all four members of the Stone trial team withdrawing from the case and one resigning from the Department. This sequence of events resulted in serious allegations being raised, including that: (a) improper political considerations influenced the Department’s handling of the Stone sentencing recommendation; (b) the public comments of then President Trump influenced the Department’s second memorandum; and (c) then Attorney General Barr intervened in the sentencing proceeding as a result of White House pressure. Further, one of the members of the Stone trial team,

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<sup>76</sup> See <https://www.justice.gov/pardon/page/file/1293796/download>.

<sup>77</sup> See <https://www.justice.gov/file/1349096/download>.

Prosecutor 2, testified before Congress that, among other things, DC USAO management had contributed to the improper political pressure imposed on the trial team and made statements acknowledging that political considerations played a role in the Department's decision making. During his testimony, Prosecutor 2 identified three supervisors in the DC USAO—two by name and one by title—as having made these statements or been involved in the relevant discussions. In response, all three supervisors alleged that Prosecutor 2's testimony was false.

As discussed below, the OIG considered these allegations as part of this investigation. We determined, based on our assessment of the documentary evidence and the interviews we conducted of approximately two dozen individuals, that the sequence of events that led to the extraordinary filing of the second sentencing memorandum was largely the result of Interim U.S. Attorney Timothy Shea's ineffectual leadership, which was marked by indecisiveness and poor communication. For example, we determined that after raising concerns about the proposed sentencing memorandum, Shea still had not decided what to do by the morning of the filing deadline, February 10. Then, just hours before the filing deadline, Shea went to Barr, who until that point in time had no involvement in the Stone sentencing, discussed the sentencing issue with Barr, and left Barr with the understanding that the government would defer to the court on the appropriate sentence. However, later that day, Shea authorized the U.S. Attorney's Office to file a sentencing memorandum that did not defer to the court and that recommended a Guidelines sentence that was actually *harsher* than the Guidelines sentence the Stone trial team and the FPC Chief had proposed recommending—without advising Barr of the reversal.

Shortly after this filing, Barr learned from media reports that Shea had filed a sentencing memorandum that was inconsistent with what he and Shea had discussed earlier that day. Barr had several conversations that night with his staff, and his Chief of Staff told us that Barr discussed correcting the filing during at least one of those conversations. The following morning, Barr had his staff begin drafting the second memorandum, consistent with his discussion with his Chief of Staff the prior evening, and it was filed later that day. This "supplemental and amended" filing sought a below-Guidelines sentence. We found that Barr first expressed his intention to correct the DC USAO's initial filing before then President Trump's tweets shortly after midnight.

We also found that the FPC Chief's speculative comments in meetings with the trial team about the political motivations of DC USAO and DOJ leadership in connection with their handling of the Stone sentencing contributed to an atmosphere of mistrust in the DC USAO, which unnecessarily further complicated an important decision in the case. Lastly, we determined that the FPC Chief's speculative comments to the trial team, combined with internal discussions regarding the sentencing filing, formed a substantial basis for the testimony Prosecutor 2 provided to the House Judiciary Committee on June 24, 2020. We

therefore concluded that the evidence did not support a finding that Prosecutor 2 provided false testimony to the House Judiciary Committee.

We recognize that Shea's and Barr's involvement in the Stone sentencing, given their status as Administration political appointees and Stone's relationship with the then President, resulted in questions being asked and allegations being made about the Department's decision making, including by members of the trial team. However, absent a law, rule, regulation, or Department policy that prohibits their participation (none of which exist here), whether the U.S. Attorney and/or the Attorney General should personally participate in such a matter is ultimately left to their discretion and judgment, including their assessment of how such involvement will affect public perceptions of the federal justice system and the Department's integrity, independence, and objectivity. With regard to the actions of the U.S. Attorney and the Attorney General, our investigation found no documentary or testimonial evidence that improper political considerations or influence affected either the DC USAO's or DOJ leadership's decision making. The available evidence is that all the discussions between Shea and Barr, and between Barr and his staff, concerned whether the advisory Sentencing Guidelines range was just and whether the Department should support a variance from it. We noted that even career lawyers at the DC USAO believed at the time that reasonable minds could differ about the sentencing recommendation.<sup>78</sup>

**A. We Found No Evidence That DOJ Leadership's or Shea's Handling of First and Second Sentencing Memoranda Was Affected by Improper Political Considerations or Influence**

We found no documentary or testimonial evidence that the actions and decisions of DOJ leadership (i.e., the Attorney General, the Deputy Attorney General, and their senior staff) and Interim U.S. Attorney Shea in the preparation and filing of the first and second sentencing memoranda were affected by improper political considerations or influence. We therefore concluded that DOJ leadership and Shea did not engage in misconduct or violate Department policy in connection with the Stone sentencing.<sup>79</sup> Rather, we found that Shea's ineffectual leadership set in motion a sequence of events that contributed to the trial team viewing his actions with suspicion and resulted in DOJ leadership taking the extraordinary step of changing a filed sentencing recommendation.

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<sup>78</sup> As noted previously, the court determined that the applicable Guidelines range was 70-87 months and sentenced Stone to 40 months of incarceration.

<sup>79</sup> As described in Section II.B.1., Department policy requires attorneys for the government to make sentencing recommendations "without improper consideration of the defendant's...political association, activities, or beliefs." See Justice Manual 9-27.730.

## 1. DOJ Leadership

We did not find documentary or testimonial evidence indicating that DOJ leadership discussed the Stone sentencing with Shea or his Chief of Staff before they joined the DC USAO, and Shea and his Chief of Staff told us that they did not receive any directive or understanding from DOJ leadership about how to handle the Stone sentencing when they joined the DC USAO. According to then Principal Associate Deputy Attorney General Seth DuCharme, no one in the leadership offices had been tracking the upcoming sentencing before Shea called him during Shea's first week as Interim U.S. Attorney. DuCharme's testimony is consistent with testimony from Shea's predecessor, former U.S. Attorney Jessie Liu, who told us that she did not recall receiving a response after advising DuCharme in January 2020, when she was still U.S. Attorney, that the government's sentencing memorandum would be due in February.

The OIG also did not find evidence indicating that, after Shea became Interim U.S. Attorney and before the first memorandum was filed, DOJ leadership exerted pressure upon Shea or the DC USAO, or otherwise inserted itself into the internal DC USAO discussions about the sentencing memorandum and recommendation. Instead, we found that Shea, unsure of what to do, decided to seek guidance from DOJ leadership. Shea first reached out to DuCharme at least twice during the week before the filing deadline. The testimonial evidence shows that Shea contacted DuCharme not simply to notify the Deputy Attorney General's Office of an upcoming event in a significant matter, but also, as DuCharme described, because Shea was "looking for a steer" from DuCharme on how to approach the sentencing recommendation given Shea's concerns about the Guidelines range and the impact of the 8-level threats SOC. According to DuCharme, DuCharme advised Barr of his conversations with Shea, including that Stone's sentencing was coming up and that the Guidelines range was "kind of high," but Barr appeared only "mildly interested" and did not direct that any particular action be taken. Similarly, Shea's Chief of Staff told us that although Shea raised the upcoming sentencing with Barr's Chief of Staff, Brian Rabbitt, during the week before the filing deadline, Shea's Chief of Staff did not recall Rabbitt reacting to the description of the Guidelines range as "inordinately high."

The OIG did not find evidence indicating that after Shea raised the Stone sentencing with DuCharme and Rabbitt, that DuCharme, Rabbitt, or anyone else from the DOJ leadership offices reached out to Shea or the DC USAO before the day of the filing deadline to give direction or further discuss the sentencing memorandum. Later, on the day of the filing deadline, after Shea brought the matter directly to Barr due to his concern about possible resignations by trial team members, Shea ultimately did not take the approach he and Barr discussed, i.e., stating to the court that a sentence below the Guidelines range would be appropriate and deferring to the court on the ultimate sentence. Instead, the sentencing memorandum that Shea authorized advocated for a Guidelines sentence.

Phone records and testimonial evidence indicate that shortly after the media began reporting on the evening of February 10, 2020, that the Department's sentencing

memorandum recommended that the court sentence Stone to 7 to 9 years, Barr initiated several calls with members of his staff and Shea. According to Rabbitt, Barr was looking to confirm whether the media reports were accurately reporting the Department's sentencing recommendation and told Rabbitt that if the reports were accurate, they needed to "fix" the Department's filing. It was not until more than 4 hours later that President Trump posted his first tweet criticizing the government's sentencing position. Thus, we found that Barr had articulated his position about the sentencing recommendation both before and shortly after the first sentencing memorandum was filed, and before the President's tweets.

The OIG sought to interview Barr after he had resigned as Attorney General. He declined our request for a voluntary interview, and because the OIG does not have the authority to subpoena testimony from former Department employees, we were unable to compel his testimony. Barr had previously testified before the House Judiciary Committee in July 2020 about the Stone sentencing and told the Committee that he "hesitated" with the plan to file a second sentencing memorandum after learning of the then President's tweets because he knew that people would argue that his actions were in response to the President's criticism. He testified that he decided "at the end of the day that [he] really had to go forward with [the second] filing because it was the right thing to do." In his July 2020 testimony, Barr also said that he "had not discussed [his] sentencing recommendation with anyone at the White House...[o]r anyone outside the [D]epartment." As noted earlier in this report, Department phone records show that Barr, Rabbitt, and the then Director of the Department's Office of Public Affairs made calls to the White House on February 11. As noted above, Rabbitt told the OIG that his communications with the White House were limited to nominations issues, and he produced contemporaneous notes supporting his testimony. We do not know whether the Stone case was a subject of either Barr's or the OPA Director's communications; however, the evidence indicates that these communications occurred after Barr had already instructed his staff to file the second sentencing memorandum deferring to the court on Stone's sentence.

Barr's decision to file a second sentencing memorandum, changing the sentencing position the DC USAO took the day before, was an extraordinary step to take, and it was even more extraordinary that it was written at Main Justice under the direct supervision and control of DOJ leadership. The fact that the defendant, Stone, was a friend of President Trump raised further questions and perceptions about DOJ leadership's involvement. However, no law, rule, regulation, or DOJ policy, including those related to conflicts or ethics, prohibited Barr's participation in the Stone sentencing, and, therefore, the decision whether to participate was ultimately a discretionary one left to the judgment of the Attorney General. Further, in the absence of evidence that Barr's decision was affected by improper political considerations or influence, we found that it was within the Attorney General's discretion to correct what he viewed as an unjust submission and one that was contrary to what he and Shea had discussed the day before.

## 2. Interim U.S. Attorney Timothy Shea

We did not find documentary or testimonial evidence that improper political considerations or influence affected Shea's decision to raise concerns about the proposed sentencing memorandum and recommendation. Shea told us that he was concerned about the "harshness" of the Guidelines range as compared to other cases, and he thought the basis for the 8-level threats SOC was "kind of...weak." He also told us that he was concerned that the DC USAO would lose credibility with the court if it requested a sentence that was too high and not "proportional" to comparable cases. Shea denied that Stone's relationship to then President Trump, or the possibility that Trump could publicly react to Shea's decision making, was a factor in his thinking on the Stone sentencing.

The Principal AUSA and the Criminal Chief told us that they believed at the time that reasonable minds could disagree on whether the sentencing position should be a Guidelines sentence or something less. Further, the FPC Chief told us that his statements to the trial team that Shea was "afraid of the President," and to the trial team, the Principal AUSA, and the Criminal Chief that politics was driving Shea's decision making, were not based on any actual knowledge as to Shea's motivations.

We did not find the descriptions of the meetings and discussions that occurred before Shea ultimately agreed to accept the Guidelines calculation and recommend a Guidelines sentence sufficient to support an inference that improper political considerations or influence affected Shea's initial desire to lower the sentencing recommendation or his initial questioning of the Guidelines calculation. We believe it was entirely reasonable that a U.S. Attorney would weigh in on a sentencing memorandum in a significant case before it was filed, particularly since USAO court filings are made in the name of the U.S. Attorney. According to Liu, it was common practice for her as U.S. Attorney to review and edit a sentencing memorandum in a significant case. We believe it was also entirely reasonable for a U.S. Attorney new to the office and to the case to request further information about the evidence and raise questions about the legal arguments. As described in this report, even the trial team's Guidelines calculation and sentencing position were not settled from the start but evolved over time through research and discussions. We credit Prosecutor 1's testimony that Shea seemed to Prosecutor 1 to be looking for any way to lower the sentencing recommendation, which contributed to Prosecutor 1's concerns about how the sentencing was being handled. We were unable to conclude on this basis, however, that Shea's motivations were improper and not based upon a sincere belief or concern that 87 months would be an unjust and unreasonable sentence.

Shea's first week in the DC USAO coinciding with a looming filing deadline in the Stone case was unfortunate timing for Shea, who had a demanding schedule of meetings in his first few days and no prior involvement in the Stone case. Additionally, as we discuss later, the FPC Chief's speculative statements about Shea's motivations and Main Justice pressure, without actual knowledge, unnecessarily further complicated an important

decision in the case. At the same time, we believe Shea's indecisiveness and actions in the days and hours before the filing deadline only exacerbated the difficulties of the situation and, later, led the Attorney General to make the highly unusual decision of filing a second government sentencing memorandum.

According to Shea's testimony, after raising concerns about the sentencing memorandum, his "procrastination kicked in again," and he still had not made a final decision on what to do by the morning of the filing deadline, February 10, when he elevated the matter directly to Barr. Based on DuCharme's and Shea's descriptions of their conversations during Shea's first week in office, and the testimony of other witnesses, we believe that Shea's lack of recent federal sentencing experience likely contributed to his indecisiveness.

As discussed previously, after Shea raised the sentencing issues to Barr, he ultimately did not take the sentencing approach he and Barr discussed and failed to communicate his change in position to DOJ leadership. Although, according to Rabbitt, Shea told Barr at the end of their meeting that he was still going to try to sell the approach to the team, Shea told us that he was "sure" that at the end of their meeting Barr thought the DC USAO's sentencing memorandum was going to defer to the court on the appropriate sentence. Given these circumstances, we agree with Rabbitt that, having involved the Attorney General and left him with that understanding, Shea should have updated Barr before the filing that he was not going to take the approach they had discussed.

Shea suggested during his OIG interview that the first filing did not represent a change in position from the approach he discussed with Barr, asserting that there were at least two ways to carry out that approach: the way he did it in the first sentencing memorandum on February 10 and the more explicit way Barr directed the next day. We disagree and note that the first memorandum speaks for itself. At the end of the first memorandum, Shea added one paragraph acknowledging certain mitigating factors, which was wholly inconsistent with the memorandum's explicit and repeated Guidelines sentence recommendation.

In short, we believe the first sentencing memorandum shows that as between the two very different positions of the trial team and FPC Chief, and what Shea discussed with Barr, Shea in the final moments decided to support the trial team and FPC Chief's position and, by changing the recommendation to a sentence within the applicable Guidelines range (i.e., 87 to 108 months), made the recommendation actually harsher than the proposed recommendation of 87 months. Although Shea told us that he did not think the change made a "major difference," the change increased the Department's recommended sentence from 87 months to a sentence of up to 108 months. Whatever the reason for Shea's decision—whether he was ultimately persuaded on the merits to support a Guidelines sentencing recommendation or whether other reasons may have influenced



him—we did not find evidence that his decision was affected by improper political considerations or influence.<sup>80</sup>

## **B. We Found No Evidence that Prosecutor 2 Provided False Testimony to the House Judiciary Committee**

We found no evidence that Prosecutor 2 provided false testimony to the House Judiciary Committee. After reviewing all available information, we found that the events described in this report demonstrate that, as a result of Prosecutor 1’s description to the trial team of certain events, and speculative comments made by the FPC Chief, Prosecutor 2 formed a belief that the team was being pressured by DC USAO management—including Shea, the Principal AUSA, the Criminal Chief, and the FPC Chief—to lower the sentencing recommendation and make other changes to the sentencing memorandum that were motivated by political considerations. Although we did not find evidence sufficient to establish improper political considerations or influence, we found that Prosecutor 2’s belief that he (and the rest of the trial team) had been pressured to revise the memorandum for political reasons was not unreasonable given the testimony we received from Prosecutor 2, Prosecutor 1, the FPC Chief, and Prosecutor 3.

In particular, according to both Prosecutor 1 and Prosecutor 2, Prosecutor 1 shared with Prosecutor 2 and the rest of the trial team his experiences during Shea’s first week in office, including that DC USAO management had tried to pressure Prosecutor 1 to make changes to the memorandum, and his concerns that what was happening was unethical, based not only upon what Prosecutor 1 observed during meetings with DC USAO management, but also based on his experience that the DC USAO Fraud and Public Corruption Section had never before sought a sentence below the Guidelines after a defendant was convicted at trial. Given that Prosecutor 1 was not only a member of the trial team but also held a senior role in the Fraud and Public Corruption Section, we believe

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<sup>80</sup> In comments Shea’s counsel submitted after reviewing a draft of this report, Shea’s counsel asserted that the OIG’s finding regarding his leadership is unfair and not supported by the evidence. In particular, counsel argued that Shea inherited an environment that was immediately hostile to him, including a trial team that made “baseless” assumptions about his motivations and an FPC Chief who repeated those baseless assumptions with the trial team as if they were fact. According to Shea’s counsel, it was the FPC Chief’s statements, not Shea’s leadership, that fueled the environment that led to the trial team giving him an “ultimatum” to go along with what they wanted or else they would resign. Although we concluded later in this report that the FPC Chief’s statements about Shea’s motivations and Main Justice pressure added further complication to an important decision in the case, we concluded that Shea, as Interim U.S. Attorney, bears the most responsibility for the manner in which the government’s sentencing recommendation in the Stone case was handled. We believe Shea’s apparent weak command of federal sentencing practice, indecisiveness, and procrastination only heightened concerns that his motivation for lowering the sentencing recommendation was political. Later, Shea only had himself to blame for failing to carry out what he and Barr discussed or at least advising Barr in advance that he had decided to take a different approach, after which Barr decided to file the second sentencing memorandum.

it would have been natural for Prosecutor 1's concerns to carry considerable weight with Prosecutor 2.

Further, we found that the FPC Chief's speculative comments to the trial team validated these concerns expressed by Prosecutor 1. With one exception, the FPC Chief told the OIG that he said or may have said some iteration of the statements Prosecutor 2 described to the House Judiciary Committee. Specifically, the FPC Chief told us that he may have told trial team members that Stone was being treated differently than every other defendant, and he said that if he did, he would have made this statement in the context of agreeing with the trial team that that would be the outcome if the office filed the version of the memorandum that the Criminal Chief forwarded on Sunday, February 9, incorporating Shea's edits. The FPC Chief told us that he believed that he acknowledged to trial team members that he thought Shea's desire to lower the sentence was being influenced by politics, that Shea was "afraid of the President," and that he (the FPC Chief) may have agreed with the team that a decision based on politics would be unethical. According to the FPC Chief, he was trying to validate the concerns that the trial team expressed, as well as acknowledge his own suspicion that Shea was acting out of fear of then President Trump and, more particularly, fear of the consequences of not seeking a lower sentence for an influential friend of then President Trump. The FPC Chief told us that he may have also conveyed that Shea was under pressure from Main Justice because he had thought throughout the relevant events that Shea must have been under pressure from Main Justice officials who wanted a lower sentence recommendation. The FPC Chief told us that these statements were based in part on his experience in other matters and that he did not have any actual knowledge as to Shea's motivations or Main Justice pressure. Even so, we found that the FPC Chief's speculative statements validated the concerns Prosecutor 1 shared with Prosecutor 2 and the rest of the team and helped reinforce the belief that improper political considerations or influence were fueling the efforts to lower the sentencing recommendation.

The one comment that the FPC Chief unequivocally disputed, which Prosecutor 2 specifically attributed to him, was the allegation that the FPC Chief threatened the trial team with job loss or otherwise told the team that they could lose their jobs if they did not go along with what Shea wanted. However, we did not conclude that Prosecutor 2 provided false testimony to the House Judiciary Committee on this issue, or, for that matter, that the FPC Chief was untruthful to the OIG in his denial, because the people who participated in the conversation at issue all came away with differing recollections and interpretations as to what the FPC Chief said. According to the FPC Chief, at most, he may have asked the trial team: "Why would we put ourselves in a position where, over some lines in a sentencing memorandum, or [by] not trying to work this out, we're all going to quit our jobs? Because that's where this is headed." Prosecutor 1 and Prosecutor 3 told us that they did not recall the FPC Chief specifically stating that the trial team "could lose their jobs," as Prosecutor 2 recalled, but both Prosecutor 1 and Prosecutor 3 said they recalled the FPC Chief saying that jobs were on the line, or words to that effect, during a phone

conversation on February 8, 2020. Prosecutor 1 told us that he understood the FPC Chief to be conveying that the trial team could lose their jobs or be demoted if they did not go along with a lower sentencing recommendation, an interpretation similar to Prosecutor 2's, while Prosecutor 3 told us that he found the FPC Chief's statement ambiguous as to whose jobs were on the line. According to Prosecutor 3, after the trial team's call with the FPC Chief, members of the trial team discussed whether the FPC Chief had threatened their jobs on the call, and at least Prosecutor 3 was not sure what the FPC Chief meant.<sup>81</sup>

After considering all the available testimony, particularly that Prosecutor 1's interpretation of the FPC Chief's job comment was similar to Prosecutor 2's, we concluded that Prosecutor 2 did not provide false testimony to the House Judiciary Committee in violation of 18 U.S.C. §§ 1621 and 1001.<sup>82</sup>

**C. We Found No Evidence that DC USAO Supervisors' Handling of the First and Second Sentencing Memoranda Was Affected by Improper Political Considerations or Influence**

During his OIG interview, Prosecutor 2 told us that he identified the Principal AUSA, Criminal Chief, and the FPC Chief during his testimony before the House Judiciary Committee to explain, in response to questioning, who were the DC USAO supervisors (besides Shea) known to Prosecutor 2 to be involved in the sentencing discussions and to have applied the pressure on the trial team that Prosecutor 2 described to the House Judiciary Committee. Prosecutor 2 told us that he also identified the FPC Chief because the FPC Chief made the statements he attributed to DC USAO supervisors in his House Judiciary Committee testimony; according to Prosecutor 2, he did not have any direct discussions with the Principal AUSA and the Criminal Chief about Stone's sentencing and did not attribute any of the specific statements he heard from supervisors to either of them.

We found no documentary or testimonial evidence that the actions and decisions of the Principal AUSA, the Criminal Chief, and the FPC Chief in the preparation and filing of the first and second sentencing memoranda were affected by improper political considerations or influence. We therefore concluded that the Principal AUSA, the Criminal Chief, and the FPC Chief did not violate Department policy or otherwise engage in misconduct in connection with the Stone sentencing. However, given the sensitivities of the case, we believe that certain statements the FPC Chief made to the trial team about Shea's motivations and Main Justice pressure before the first memorandum was filed—which the

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<sup>81</sup> As noted earlier in this report, we were unable to compel testimony from the fourth member of the government's trial team, Prosecutor 4, who declined our request for a voluntary interview after he had left the Department.

<sup>82</sup> During the course of our investigation, and consistent with the OIG's usual practice, we presented information concerning Prosecutor 2's testimony to a U.S. Attorney's Office for a prosecutive decision. After reviewing the matter, the USAO advised the OIG that it declined prosecution.

FPC Chief told us he based on his experience in other matters, Stone’s relationship with then President Trump, and Shea’s relationship with Barr, but not based on any specific knowledge—were not well considered. For example, as described earlier in this report, both Prosecutor 1 and Prosecutor 2 told us that, in explaining Shea’s motivations, the FPC Chief told them that “this is coming from Main Justice.” The FPC Chief told us that he would not be surprised if he had conveyed to the trial team that Shea was under pressure from Main Justice because he had thought throughout that Shea must have been “getting pinged frequently” or otherwise under pressure from Main Justice officials given the amount of questions and time spent discussing the recommendation. As detailed in the report, we found no evidence that anyone from the DOJ leadership offices reached out to Shea or the DC USAO before the filing of the first sentencing memorandum to discuss the Stone case or give direction. Additionally, Prosecutor 1 and Prosecutor 2 told us that the FPC Chief told them that Shea was “terrified” or “afraid” of the President. The FPC Chief said that he would not question having stated that Shea was afraid of the President, even though he was not aware of specific evidence to that effect. Although the FPC Chief may have had good intentions in seeking common ground with his trial team, we believe that in the period leading up to the filing of the first sentencing memorandum, these statements—which were in fact speculative but made in a form that suggested the FPC Chief possessed specific knowledge—contributed to an atmosphere of mistrust among those involved in the discussions, unnecessarily complicating further an important decision in the case. As noted above, we found that the FPC Chief’s speculative statements helped reinforce Prosecutor 2’s belief that improper political considerations or influence were fueling the efforts to lower the sentencing recommendation and became an important basis of Prosecutor 2’s congressional testimony.

In comments the FPC Chief’s counsel submitted after reviewing a draft of this report, the FPC Chief’s counsel stated that the FPC Chief’s statements were not entirely speculative but instead were informed by his experience as a prosecutor in public corruption cases, his role as “guardian” of the Fraud and Public Corruption Section’s sentencing policy, and the circumstances of Stone’s relationship to the President and Barr’s appointment of Shea as Interim U.S. Attorney. The FPC Chief’s counsel also stated that our conclusion about the FPC Chief’s speculative statements would inappropriately chill future Department discussions and expressions of concern about the improper politicization of sensitive cases. Our conclusion is not intended to discourage deliberative conversations in which concerns about political considerations or influence are raised and considered by Department personnel. We do not take issue with the trial team or the FPC Chief discussing concerns that political considerations or influence may have been affecting the handling of the government’s sentencing memorandum. Further, we do not find that these concerns were unreasonable given the information known to them at the time, as well as the information they did not know, such as, for example, that DOJ leadership did not exert pressure upon Shea or the DC USAO, or otherwise insert itself into the internal DC USAO discussions about the sentencing memorandum before the first sentencing memorandum was filed. However, we believe that speculative assumptions by a supervisor that political

considerations or influence are necessarily affecting a matter, and then communicating such assumptions to subordinates in a manner that could be construed as factual, is not well considered. We believe this is particularly true where, as here, the supervisor was acting as a conduit between the decisionmakers and the subordinates such that it would have been reasonable for the subordinates to believe that the supervisor's statements were based in fact, without a statement from the supervisor to the contrary.

## **VII. Conclusion**

Our role in this investigation was not to second guess discretionary judgments by Department personnel in connection with the positions taken in the government's first and second sentencing memorandum, but to determine whether the personnel involved in the sentencing deliberations complied with Department policy and any applicable law, rules, or regulations. In determining whether actions and decisions of Department employees were affected by improper political considerations or influence, we reviewed thousands of pages of documentary evidence and considered the extensive testimonial evidence we obtained. After reviewing all such information, the OIG did not find evidence that the actions and decisions of DOJ leadership or DC USAO officials in the preparation and filing of the first and second sentencing memoranda in the Roger Stone case were affected by improper political considerations or influence, in violation of Department policy, or otherwise in violation of applicable laws, rules, or regulations. We also concluded that Shea's failures in leadership prompted the events leading up to the filing of the second sentencing memorandum.

We further concluded that the evidence did not support a finding that Prosecutor 2 provided false testimony to the House Judiciary Committee on June 24, 2020, when he alleged that DC USAO supervisors placed improper political pressure on the trial team. We found that Prosecutor 2's statements that he (and the rest of the trial team) had been improperly pressured by DC USAO management and DOJ leadership to be consistent with Prosecutor 2's understanding and not unreasonable given the testimony we received from Prosecutor 2, as well as testimony from Prosecutor 1, the FPC Chief, and Prosecutor 3. Finally, although we did not take issue with the trial team or the FPC Chief discussing concerns that political considerations or influence may have been affecting the handling of the government's sentencing memorandum, for the reasons described above, we concluded that the FPC Chief's speculative statements before the first sentencing memorandum was filed about Shea's motivations and Main Justice pressure were not well considered and unnecessarily further complicated an important decision in the case.