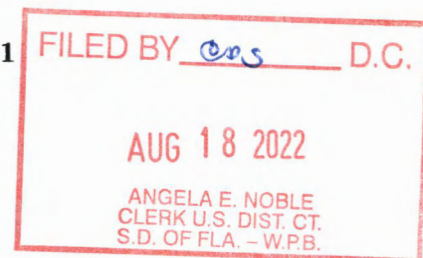


**-UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CRIMINAL CASE NO.: 9:22-mj-08332-BER-1



IN RE SEALED SEARCH WARRANT,

_____ /

SWORN DECLARATION OF PATRICK MICHAEL BYRNE

STATE OF FLORIDA

COUNTY OF SARASOTA

I, PATRICK MICHAEL BYRNE, hereby declare, under penalty of perjury pursuant to 28 U.S.C. § 1746, that I have full personal knowledge of the events and matters set forth herein, and testify that the following is true and accurate to the best of my knowledge:

1. I am over legal age and I am competent to testify.
2. The facts stated herein are based upon my personal knowledge. The dialogue quoted here was documented approximately 30-40 days after it was spoken in my book THE DEEP RIG: HOW ELECTION FRAUD COST DONALD J. TRUMP THE WHITE HOUSE, BY A MAN WHO DID NOT VOTE FOR HIM (OR WHAT TO SEND FRIENDS WHO ASK, "WHY DO YOU DOUBT THE INTEGRITY OF THE 2020 ELECTION?") 111 (2021), a book written in the last week of January, 2020 and first week of February, 2020.
3. On the evening of Friday, December 18, 2020, Attorney Sidney Powell, General Michael Flynn, an attorney named Emily Newman who worked for Ms.

Powell, and I were sitting in the Oval Office with President Donald J. Trump with the door closed.

4. Also present in the meeting were White House General Counsel Pat Cipollone, Attorney Patrick F. Philbin and Attorney Eric Herschmann.

5. In this meeting the topic of discussion revolved around how to respond to a situation where the FBI and DHS had themselves reported foreign interference being attempted in our elections (October 22), foreign interference in our election systems being successful in at least one state, and being undertaken against others, by a combination of Iran and other nation-state actors; and its December 16, 2020 of an unprecedented network security hack involving a product called SolarWinds Orion. *See also* Patrick Byrne, *THE DEEP RIG: HOW ELECTION FRAUD COST DONALD J. TRUMP THE WHITE HOUSE, BY A MAN WHO DID NOT VOTE FOR HIM (OR WHAT TO SEND FRIENDS WHO ASK, "WHY DO YOU DOUBT THE INTEGRITY OF THE 2020 ELECTION?")* 111-120 (2021).

6. During this discussion multiple different potential solutions were discussed, such as using the DHS (or FBI or joint US Marshall/National Guard) to send small teams into 6 (or 12, 31, or even only 1) counties to image the hard drive of the appropriate county election system (and/or conduct livestreamed recount and/or simply recover the election equipment for full exploitation by federal authorities), and also, appointing special counsel to investigate, which was not well-received by White House General Counsel Pat Cipollone, and to which Cipollone quipped that "Never in

American history has there been this kind of a challenge to an election!" *See also id* at 117.

7. General Flynn responded to Cipollone by stating, "Never in American history has there been a situation like this, with counting being shut down for hours, foreigners connecting to our equipment...." *See also id*.

8. As White House General Counsel, one of Mr. Cipollone's primary responsibilities was to advise the President of The United States as to bounds of his lawful authority as head of the executive branch of the federal government.

9. At one point White House General Counsel Pat Cipollone advised that Trump "does not have the authority to do this!" *See also id*.

10. Attorney Sidney Powell responded "Oh course he does!" citing Executive Order 13848. *See also id*.

11. White House General Counsel Pat Cipollone grew frustrated with the topic of conversation and made it clear that he did not want any involvement with the proposed courses of action, eventually stating, "Hey if you want to do this you don't need my permission. You don't even need a pen or a piece of paper. You can just say, 'I hire Sidney Powell as White House Special Counsel,' and it's done." *See also Byrne, supra*, at 117; *Marbury v. Madison*, 1 Cranch 137, 138, 157, (1803) (stating that the point in time in which the constitutional power of appointment has been exercised is when the last act required from the person performing the power has been performed).

12. After approximately 30 minutes more discussion, President Trump stated to White House General Counsel Pat Cipollone “You know Pat? A few minutes ago you said that I can make it happen just by *saying* it. Well.... OK. I have decided, now I’m saying it. ‘Sidney Powell is hereby appointed as White House Special Counsel.’” *See also* Byrne, *supra*, at 119 (emphasis in original).

13. Another White House lawyer interjected stating that Sidney Powell needs a clearance and “it’ll take months to get her a clearance.” *See also id* at 120.

14. General Michael Flynn responded to this objection by stating “Mr. President, you can do the same thing with a clearance. You can grant any clearance you want, on the spot, verbally.” *See also* Byrne, *supra*, at 120; *Marbury v. Madison*, 1 Cranch 137, 138, 157, (1803) (stating that the point in time in which the constitutional power of appointment has been exercised is when the last act required from the person performing the power has been performed).

15. Immediately thereafter President Donald J. Trump stated to his White House lawyers, “I grant Sidney Powell a Top Secret security clearance.” Byrne, *supra*, at 120. Whereupon the White House counsels were angry, but did not dispute Trump’s actions, but instead left the room angrily.

16. I have read *Marbury v. Madison*, 5 U.S. 137 (1803), which states that “A commission is not necessary to the appointment of an officer by the executive. ... A commission is only *evidence* of an appointment.” (emphasis in original).

17. I witnessed White House lawyers advise the President of his power to verbally appoint government officials.

18. I witnessed a former National Security Advisor advise the President of his power to verbally grant any level security clearance to a person on the spot.

19. On December 18, 2020, I witnessed *Marbury v. Madison* in action.

20. On December 18, 2020, I witnessed White House General Counsel advise the President that he could make a verbal appointment.

21. On December 18, 2020, I witnessed President Donald J. Trump verbally appoint Attorney Sidney Powell to the position of White House Special Counsel.

22. On December 18, 2020, Attorney Sidney Powell held the position of White House Special Counsel.

23. On December 18, 2020, I witnessed General Michael Flynn, who was the 24th United States National Security Advisor, advise the President that he could verbally grant, on the spot, any security clearance level.

24. On December 18, 2020, I witnessed President Donald J. Trump verbally grant White House Special Counsel Sidney Powell a Top Secret security clearance.

25. On December 18, 2020, White House Special Counsel Sidney Powell held a Top Secret security clearance.

26. In January 2022, I had the opportunity of a social visit with the Honorable Rudy Giuliani. Over the course of lunch, I asked him what happened such that our conversation in the White House had not been implemented. Mr. Giuliani told me that after our party had left the White House at approximately 12:15 AM December 19, 2020, he spoke to the President for an additional 2-3 minutes

whereupon the President verbally reversed his decision and instructions, and that is why those earlier decisions were never implemented.

27. Over the same lunch, Mayor Giuliani mentioned that he knew in my book I noted how the party of General Flynn, Ms. Powell, Ms. Newman, and myself had dawdled briefly on the sidewalk in front of the White House and then saw Mark Meadows and Rudy Giuliani leave by a nearby exit: Mark Meadows and Rudy Giuliani "left together and walked away to the west. The four of us strode east, elated: with Sidney ensconced as White House Special Counsel, and Mike providing organizational skills and his vast expertise of DC, we were in good standing: at that moment we felt the chance of success high." Byrne, *supra*, at 122. Mr. Giuliani indicated that the president had already reversed his decision by the time that I saw Giuliani at that point (which confirms that the reversal formally happened, and happened within just a few minutes of our departure from the President's chambers, which is why those earlier decisions were not implemented).

FURTHER DECLARANT SAYETH NAUGHT.



PATRICK MICHAEL BYRNE

Date: 