

**Previously,
In the Mueller Report...**



VOLUME I

Russian Interference

Investigation into connections the Trump campaign had with Russian agents, and whether the campaign conspired with Russia to interfere in the 2016 election.

VOLUME I

Russian Contacts with Trump Campaign

- Michael Cohen pursued the Trump Tower Moscow project well into the summer of 2016, with Trump's knowledge.
- Paul Manafort, who had extensive ties to the Ukraine and Russia, was hired as Trump campaign chairman.
- Putin attempted to set up back channel communications with the Trump admin via members of the "oligarchs," a group of wealthy Russian businessmen.
- Michael Flynn negotiated with Ambassador Kislyak about Obama's U.S. sanctions *before* the inauguration.

VOLUME I

Conclusion

The investigation did not find evidence of conspiracy between the campaign and Russia. However, evidence does show...

- Russia did interfere in the 2016 elections by spreading disinformation via social media (which many members of the campaign interacted with), hacking into Hillary's campaign, the DNC, and the DCCC and disseminating that info via Wikileaks and other outlets.
- The Trump campaign sought to obtain HRC's emails and thought they would benefit from the release of the hacked information.
- Putin increased outreach to Trump and his team after the election.
- George Papadopoulos attempted to arrange Trump/Putin meeting.

VOLUME I

Prosecution and Declination Decisions

Federal grand jury in D.C. indicted 13 Russian nationals and three Russian entities.

The Office did not charge any individual associated with the Trump Campaign with conspiracy to commit a federal offense arising from Russia contacts.

The Office determined that certain individuals (Flynn, Cohen, Manafort) lied to investigators about Campaign contacts with Russia and took other actions to interfere with the investigation.

VOLUME II

Obstruction Investigation

Investigation into whether and how
Trump attempted to obstruct the
Special Counsel's investigation.

VOLUME II

Considerations That Guided the Investigation

1. The Special Counsel did NOT make a traditional prosecutorial judgment:

"[T]he indictment or criminal prosecution of a sitting President would impermissibly undermine the capacity of the executive branch to perform its constitutionally assigned functions" in violation of "the constitutional separation of powers." - OLC Opinion

2. The OLC opinion also recognized:

- *A criminal investigation is permissible.*
- *A president does NOT have immunity after he leaves office.*
- *Individuals other than the president may be prosecuted at this time if they have committed an offense.*

3. Special Counsel chose certain investigative process b/c:

- *OLC opinion prevented charges against the President.*
- *President would have no opportunity for "public name-clearing" before an impartial adjudicator.*
- *Difficult to preserve secrecy of a sealed indictment*
- *Charges could "imperil the President's ability to govern."*

VOLUME II

Considerations That Guided the Investigation

“[I]f we had confidence after a thorough investigation of the facts that the President clearly did not commit obstruction of justice, **we would so state**. Based on the facts and the applicable legal standards, however, we are unable to reach that judgment. The evidence we obtained about the President's actions and intent presents difficult issues that prevent us from conclusively determining that no criminal conduct occurred. Accordingly, while this report does not conclude that the President committed a crime, **it also does not exonerate him.**” (Emphasis added)

VOLUME II

3 Elements Common to Obstruction Statutes

An Obstructive Act

“Reaches all corrupt conduct capable of producing an effect that prevents justice from being duly administered, regardless of the means employed.”

Nexus to an Official Proceeding

The government must demonstrate “a relationship in time, causation, or logic” between the obstructive act and the proceeding or inquiry to be obstructed.

Corrupt Intent

Acting “knowingly and dishonestly” or “with an improper motive.”

VOLUME II

Additional Obstruction Statute Considered

Witness Tampering

To “knowingly use intimidation ...
or corruptly persuade another person,”
with the intent to “influence, delay, or prevent
the testimony of any person in an official proceeding.”

VOLUME II

Obstruction Related Events

- Trump continues to deny his connections with Russia.
- Michael Flynn lies about his discussions about sanctions with Ambassador Kislyak.
- President asks K.T. McFarland to write statement denying he directed Flynn's discussion with Kislyak (she does not write one).
- Jeff Sessions recuses himself from overseeing the Special Counsel's investigation.
- President asks intelligence community leaders to make public statements that he has no connections to Russia (3x).
- Trump asks Comey to "lift the cloud" created by the Russia investigation.

VOLUME II

Obstruction Related Events

- The President fires James Comey. Evidence suggests the reason was to end the Russia investigation.
- The President attempts, multiple times, to have the Special Counsel removed.
- Trump attempts to have Sessions limit investigation to “future” elections only.
- Trump demands the resignation of Jeff Sessions.
- Trump directs Don Jr.’s response about the Trump Tower meeting to state it is only about Russian adoption and not to get “dirt” on Hillary Clinton.
- Trump directs communications staff to not publicly disclose information about the Trump Tower meeting.
- Trump’s personal counsel calls McGahn to convince him to put out a statement denying he was asked to fire the Special Counsel.

“There is evidence that at least one purpose of the President's conduct toward Sessions was to have Sessions assume control over the Russia investigation and supervise it in a way that would restrict its scope.”

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

Redactions Defined...

Harm to Ongoing Matter (HOM)

Information that pertains to ongoing investigations stemming from special counsel's original probe.

Investigative Techniques

Information that would disclose secret intelligence sources and methods.

Personal Privacy

Information that could be damning to "peripheral third parties" - specifically unindicted individuals.

Grand Jury

Material collected in grand jury interviews with witnesses. Used to protect secrecy of federal investigations and people under investigation not charged with a crime.



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part

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TONIGHT! FINAL READING!

VOLUME II

PART II SECTIONS K & L

PART III: Legal Defenses

PART IV: Conclusion

MUELLER LIVE!

part

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TONIGHT'S READERS

DAVID HIGGINS (host)

SARA CLOUGH

SHANNON McCORMICK

KELLI BLAND

TONY WEBER

PART II, Section K

**THE PRESIDENT'S
CONDUCT INVOLVING
MICHAEL COHEN**



In this section:



Donald J. Trump



Michael Cohen



Donald Trump Jr.



Felix Sater



Dmitry Peskov



Jared Kushner



Dmitry Medvedev



Rudy Giuliani

EVIDENCE

Trump was aware of and involved in the Trump Tower Moscow project (Sept 2015 - June 2016)

Cohen submits multiple false statements to congress, later claims he was adhering to the “party line”

EVIDENCE

Cohen states he *personally* paid \$130k to “the woman” (i.e., Stormy Daniels) as hush money to not talk about her sexual encounter with Trump.

Cohen receives messages of support during investigation via Trump’s personal counsel and believes he will be taken care of.



Stormy Daniels

stand for.¹⁰¹⁴ Cohen said that after the searches he was concerned that he was “an open book,” that he did not want issues arising from the payments to women to “come out,” and that his false statements to Congress were “a big concern.”¹⁰¹⁵

A few days after the searches, the President called Cohen.¹⁰¹⁶ According to Cohen, the President said he wanted to “check in” and asked if Cohen was okay, and the President encouraged Cohen to “hang in there” and “stay strong.”¹⁰¹⁷ Cohen also recalled that following the searches he heard from individuals who were in touch with the President and relayed to Cohen the President’s support for him.¹⁰¹⁸ Cohen recalled that PP ██████████, a friend of the President’s, reached out to say that he was with “the Boss” in Mar-a-Lago and the President had said “he loves you” and not to worry.¹⁰¹⁹ Cohen recalled that Personal Privacy ██████████ for the Trump Organization, told him, “the boss loves you.”¹⁰²⁰ And Cohen said that PP ██████████, a friend of the President’s, told him, “everyone knows the boss has your back.”¹⁰²¹

On or about April 17, 2018, Cohen began speaking with an attorney, Robert Costello, who had a close relationship with Rudolph Giuliani, one of the President’s personal lawyers.¹⁰²² Costello told Cohen that he had a “back channel of communication” to Giuliani, and that Giuliani had said the “channel” was “crucial” and “must be maintained.”¹⁰²³ On April 20, 2018, the New York Times published an article about the President’s relationship with and treatment of Cohen.¹⁰²⁴ The President responded with a series of tweets predicting that Cohen would not “flip”:

The New York Times and a third rate reporter . . . are going out of their way to destroy Michael Cohen and his relationship with me in the hope that he will ‘flip.’ They use non-existent ‘sources’ and a drunk/drugged up loser who hates Michael, a fine person with a wonderful family. Michael is a businessman for his own account/lawyer who I have always liked & respected. Most people will flip if the Government lets them out of trouble, even

¹⁰¹⁴ Remarks by President Trump Before Meeting with Senior Military Leadership, White House (Apr. 9, 2018).

¹⁰¹⁵ Cohen, 10/17/18 302, at 11.

¹⁰¹⁶ Cohen 3/19/19 302, at 4.

¹⁰¹⁷ Cohen 3/19/19 302, at 4.

¹⁰¹⁸ Cohen 9/12/18 302, at 11.

¹⁰¹⁹ Cohen 9/12/18 302, at 11.

¹⁰²⁰ Cohen 9/12/18 302, at 11.

¹⁰²¹ Cohen 9/12/18 302, at 11.

¹⁰²² 4/17/18 Email, Citron to Cohen; 4/19/18 Email, Costello to Cohen; MC-SCO-001 (7/7/18 redacted billing statement from Davidoff, Hutcher & Citron to Cohen).

¹⁰²³ 4/21/18 Email, Costello to Cohen.

¹⁰²⁴ See Maggie Haberman et al., *Michael Cohen Has Said He Would Take a Bullet for Trump. Maybe Not Anymore.*, New York Times (Apr. 20, 2018).

EVIDENCE

The President's conduct after Cohen begins cooperating with the investigation

- Cohen reveals recorded conversation with Trump about payment to another woman.
- Cohen states both payments made “at the direction of” candidate Trump.
- Trump begins to publicly attack Cohen and his family.
- Trump does not answer Counsel's questions about Trump Tower Project or Trump's communications with Cohen about it, and his counsel declines to provide any further information.

the decision.¹⁰⁵⁷ The Office also again asked for the timing of the President's discussions with Cohen about Trump Tower Moscow and asked him to specify "what period of the campaign" he was involved in discussions concerning the project.¹⁰⁵⁸ In response, the President's personal counsel declined to provide additional information from the President and stated that "the President has fully answered the questions at issue."¹⁰⁵⁹

In the weeks following Cohen's plea and agreement to provide assistance to this Office, the President repeatedly implied that Cohen's family members were guilty of crimes. On December 3, 2018, after Cohen had filed his sentencing memorandum, the President tweeted, "'Michael Cohen asks judge for no Prison Time.' You mean he can do all of the TERRIBLE, unrelated to Trump, things having to do with fraud, big loans, Taxis, etc., and not serve a long prison term? He makes up stories to get a GREAT & ALREADY reduced deal for himself, and get his wife and father-in-law (who has the money?) off Scott Free. He lied for this outcome and should, in my opinion, serve a full and complete sentence."¹⁰⁶⁰ Harm to Ongoing Matter



On December 12, 2018, Cohen was sentenced to three years of imprisonment.¹⁰⁶² The next day, the President sent a series of tweets that said:

I never directed Michael Cohen to break the law. . . . Those charges were just agreed to by him in order to embarrass the president and get a much reduced prison sentence, which he did—including the fact that *his family was temporarily let off the hook*. As a lawyer, Michael has great liability to me!¹⁰⁶³

On December 16, 2018, the President tweeted, "Remember, Michael Cohen only became a 'Rat' after the FBI did something which was absolutely unthinkable & unheard of until the Witch Hunt was illegally started. They BROKE INTO AN ATTORNEY'S OFFICE! Why didn't they break into the DNC to get the Server, or Crooked's office?"¹⁰⁶⁴

In January 2019, after the media reported that Cohen would provide public testimony in a congressional hearing, the President made additional public comments suggesting that Cohen's

¹⁰⁵⁷ 1/23/19 Letter, Special Counsel's Office to President's Personal Counsel.

¹⁰⁵⁸ 1/23/19 Letter, Special Counsel's Office to President's Personal Counsel.

¹⁰⁵⁹ 2/6/19 Letter, President's Personal Counsel to Special Counsel's Office.

¹⁰⁶⁰ @realDonaldTrump 12/3/18 (10:24 a.m. ET and 10:29 a.m. ET) Tweets (emphasis added).

¹⁰⁶¹ @realDonaldTrump 12/3/18 (10:48 a.m. ET) Tweet.

¹⁰⁶² Cohen 12/12/18 Transcript.

¹⁰⁶³ @realDonaldTrump 12/13/18 (8:17 a.m. ET, 8:25 a.m. ET, and 8:39 a.m. ET) Tweets (emphasis added).

¹⁰⁶⁴ @realDonaldTrump 12/16/18 (9:39 a.m. ET) Tweet.

ANALYSIS

1. Obstructive Act

- **Participation:** Evidence shows Trump knew about the false statements. However, available evidence does not establish the President directed or aided in Cohen's false testimony.
- **Witness tampering:** It could be inferred the President used "inducements" to encourage Cohen to not cooperate, and "intimidation" to deter Cohen or undermine his credibility.

2. Nexus to a Proceeding

- The President knew of the Special Counsel's Office, Congress, and SDNY's investigations of Cohen.

3. Intent

"There is evidence that could support the inference that the President intended to discourage Cohen from cooperating with the government because Cohen's information would shed adverse light on the President's campaign-period conduct and statements."

PART II, Section L

OVERARCHING FACTUAL ISSUES



3 Features that make this investigation “atypical”

1. The President’s Article II authority provides him with unique and powerful means of influencing official proceedings, subordinate officers, and potential witnesses.
2. Obstruction does not depend on there being an underlying crime. This investigation did not reveal an underlying crime was committed.
3. Many of the President’s acts directed at witnesses occurred in public view. Public acts are not excluded from the scope of obstruction statutes.

“Our investigation found multiple acts by the President that were capable of exerting undue influence over law enforcement investigations, including the Russian-interference and obstruction investigations.”

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“The President's efforts to influence the investigation were mostly unsuccessful, but that is largely because the persons who surrounded the President declined to carry out orders or accede to his requests.”

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2 Phases of the President's Conduct

1. **Before firing Comey:** The President *may* have believed he was not under investigation, and deemed it critically important to make this known to the public.
2. **After firing Comey:** The President became aware of the obstruction investigations about him and began a series of actions designed to influence individuals who could have provided adverse evidence against him and to take control of the investigation.

PART III

LEGAL DEFENSES TO THE APPLICATION OF OBSTRUCTION OF JUSTICE STATUTES TO THE PRESIDENT



“Our analysis led us to conclude that the obstruction-of-justice statutes ***can validly prohibit*** a President’s corrupt efforts to use his official powers to curtail, end, or interfere with an investigation.” (emphasis added)

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STATUTORY DEFENSES

In which the Mueller team provides *extensive* examples of case law supporting the use of 18 U.S.C. § 1512(c)(2) to prosecute an Obstruction of Justice case.



18 U.S.C. § 1512(c)(2)

(c) Whoever corruptly --

(1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or

(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so,

Shall be fined under the title or imprisoned not more than 20 years, or both.

Other Obstruction Statutes That May Apply

18 U.S.C. § 1503(a)

The “Omnibus clause” applies generally to obstruction of pending judicial and grand proceedings. Extends to witness tampering and to other obstructive conduct that has a nexus to a proceeding.

18 U.S.C. § 1505

Which broadly criminalizes obstructive conduct aimed at pending agency and congressional proceedings.

18 U.S.C. § 1512(b)(3)

Criminalizes tampering with witnesses to prevent the communication of information about a crime to law enforcement.

CONSTITUTIONAL DEFENSES

In which the Mueller team provides examples applying case law to separation-of-powers considerations regarding obstruction statutes.



ARTICLE II

Article II of the U.S. Constitution:

- Establishes the executive branch
- Vests the power of the executive in the President
- Lays out the procedure for electing and removing the president
- Establishes the president's powers and responsibilities (including the ability to appoint officers and remove those he's appointed).

“But when the President’s official actions come into conflict with the prohibitions in the obstruction statutes, any constitutional tension is reconciled through separation-of-powers analysis.”

“We concluded that Congress can validly make obstruction-of-justice statutes applicable to corruptly motivated official acts of the President without impermissibly undermining his Article II functions.”

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“The President has no more right than other citizens to impede official proceedings by corruptly influencing witness testimony.”

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“In sum, contrary to the position taken by the President's counsel, we concluded that, in light of the Supreme Court precedent governing separation-of-powers issues, we had a valid basis for investigating the conduct at issue in this report. In our view, the application of the obstruction statutes would not impermissibly burden the President's performance of his Article II function to supervise prosecutorial conduct or to remove inferior law-enforcement officers. And the protection of the criminal justice system from corrupt acts by any person-including the President-accords with the fundamental principle of our government that ‘[n]o [person] in this country is so high that he is above the law.’”

PART IV: CONCLUSION

“Because we determined not to make a traditional prosecutorial judgment, we did not draw ultimate conclusions about the President's conduct. The evidence we obtained about the President's actions and intent presents difficult issues that would need to be resolved if we were making a traditional prosecutorial judgment. At the same time, *if we had confidence after a thorough investigation of the facts that the President clearly did not commit obstruction of justice, we would so state.* Based on the facts and the applicable legal standards, we are unable to reach that judgment. Accordingly, while this report does not conclude that the President committed a crime, *it also does not exonerate him.*” (emphasis added)



END!

Appendix A

Order Appointing the Special Counsel

Appendix B

Glossary of names, terms, and abbreviations

Appendix C

Counsel's written questions to the President,
and his responses

Appendix D

List of Counsel's transferred, referred,
and completed cases

