

Special Counsel Robert Mueller's report is summarized in five pages in the file attached below. The excerpts summarize first principles. The 400 page report and appendices, which provides details, is a best practice for writing clear simple prose explaining complex factual, legal, and policy matters. The following are key takeaways.

The heart of the Special Counsel report is this. No person in the nation is above the law. Congress has alternative means to address presidential misconduct besides criminal prosecution through investigation, oversight, and impeachment. Other jurisdictions such as New York and California may have criminal jurisdiction. As a matter of fairness, this president would not be tried for, and could not defend himself against, criminal charges until after he left office. A criminal charge would undermine the ability of the executive branch to govern. A US Department of Justice legal opinion states a sitting president cannot be prosecuted while still in office, and Special Counsel is an attorney in the Department. Special Counsel does not by any means clear the president of criminal wrong-doing. *"[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."*

Special Counsel Mueller has done his part. It's up to the House and Senate to do their parts. More importantly, we the people have the right to vote to hold this president and his enablers accountable for his attacks on the rule of law, democratic governance, and truth itself.

Special Counsel conducted a thorough factual investigation to preserve the evidence while memories were fresh and documentary materials available, even though the Office did not reach a binary either/or decision to decline or charge.

Special Counsel concludes the Russian government interfered in the 2016 presidential election in sweeping and systematic fashion. The Office sought charges against two groups of Russian nationals. The Office charged certain individuals connected to the Trump campaign with making false statements or otherwise obstructing the investigation or parallel congressional investigations. The investigation did not establish that members of the campaign conspired or coordinated with the Russian government.

Special Counsel used the DOJ standard of discretion to initiate or decline a criminal prosecution. The standard is "whether admissible evidence would probably be sufficient to obtain and sustain a conviction for such an offense." If the answer was yes, Special Counsel considered "whether the prosecution would serve a substantial federal interest, the individuals were subject to effective prosecution in another jurisdiction, and there existed an adequate non-criminal alternative to prosecution."

The following are some implications of Special Counsel's report.

Congress has the constitutional authority continue to investigate this president and impeach him while he is in office within the separation of powers.

This president constitutionally can be indicted and tried after he leaves office.

The next president can pardon this president. Ford pardoned Nixon. Ford justified the pardon on the grounds that a pardon would bring the nation together and allow the nation to move on. Ford pardoned Nixon after the House voted on articles of impeachment including obstruction of justice, with both parties acting against Nixon.

Regarding Attorney General William Barr, even the report as redacted speaks for itself, providing evidence that Barr lied in misrepresenting the report to Congress and the nation. The Attorney General nevertheless has prosecutorial discretion to charge this president with a crime or not while the president remains in office.

Are other criminal jurisdictions bound by the same reasoning and authorities not to charge this president with a crime while he is in office if their investigation uncovers additional evidence? Presumably even the United States Attorney for the Southern District of New York will need approval from the DOJ to do so even with additional evidence of guilt, notwithstanding its fierce independence and reputation as the Sovereign District. States like New York and California presumably are not bound by federal policies against indicting and trying a sitting president.

Impeachment is the opiate of liberals. Vote.

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Resources

The New York Times Interactive Mueller Report

<https://www.nytimes.com/interactive/2019/04/18/us/politics/mueller-report-document.html>

Mueller Report on Special Counsel's Office Website <https://www.justice.gov/sco>

Mueller Report OCR Word File <http://www.cityprojectca.org/blog/wp-content/uploads/2019/04/Robert-Mueller-report-2019.docx>

Special Counsel's Charge <https://assets.documentcloud.org/documents/3726381/Robert-Mueller-Special-Counsel-Russia.pdf>

We Cannot Fault Mueller without Reading the Report

<https://www.cityprojectca.org/blog/archives/46020>

SDNY Sentencing Memo Michael Cohen <https://www.cityprojectca.org/blog/archives/45818>

Watergate Grand Jury Road Map <https://www.lawfareblog.com/watergate-road-map-unsealed>

The Path to Unseal the Watergate Road Map <https://www.lawfareblog.com/road-map-impeachment-proceedings-what-watergate-can-teach-us-about-unsealing-mueller-report>

**Report On The Investigation Into
Russian Interference In The
2016 Presidential Election**

Volumes I and II

Special Counsel Robert S. Mueller, III
Submitted Pursuant to 28 C.F.R. § 600.8(c)
Washington, D.C.
March 2019

**INTRODUCTION TO VOLUME I
[Russian government interfered in the 2016 presidential election and its
interactions with the Trump Campaign]**

This report is submitted to the Attorney General pursuant to 28 C.F.R. § 600.8(c), which states that, "[a]t the conclusion of the Special Counsel's work, he . . . shall provide the Attorney General a confidential report explaining the prosecution or declination decisions [the Special Counsel] reached."

The Russian government interfered in the 2016 presidential election in sweeping and systematic fashion. Evidence of Russian government operations began to surface in mid-2016. In June, the Democratic National Committee and its cyber response team publicly announced that Russian hackers had compromised its computer network. Releases of hacked materials--hacks that public reporting soon attributed to the Russian government--began that same month. Additional releases followed in July through the organization WikiLeaks, with further releases in October and November. . . . [Pp. I--1.]

As set forth in detail in this report, the Special Counsel's investigation established that Russia interfered in the 2016 presidential election principally through two operations. First, a Russian entity carried out a social media campaign that favored presidential candidate Donald J. Trump and disparaged presidential candidate Hillary Clinton. Second, a Russian intelligence service conducted computer-intrusion operations against entities, employees, and volunteers working on the Clinton Campaign and then released stolen documents. The investigation also identified numerous links between the Russian government and the Trump Campaign. Although the investigation established that the Russian government perceived it would benefit from a Trump presidency and worked to secure that outcome, and that the Campaign expected it would benefit electorally from information stolen and released through Russian efforts, the investigation did not establish that members of the Trump Campaign conspired or coordinated with the Russian government in its election interference activities. [Pp. I--1-2.]

* * *

In evaluating whether evidence about collective action of multiple individuals constituted a crime, we applied the framework of conspiracy law, not the concept of "collusion." In so doing, the Office recognized that the word "collud[e]" was used in communications with the Acting Attorney General confirming certain aspects of the investigation's scope and that the term has frequently been invoked in public reporting about the investigation. But collusion is not a specific offense or theory of liability found in the United States Code, nor is it a term of art in federal criminal law. For those reasons, the Office's focus in analyzing questions of joint criminal liability was on conspiracy as defined in federal law. In connection with that analysis, we addressed the factual question whether members of the Trump Campaign "coordinat[ed]"--a term that appears in the appointment order--with Russian election interference activities. Like collusion, "coordination " does not have a settled definition in federal criminal law. We understood coordination to require an agreement--

tacit or express--between the Trump Campaign and the Russian government on election interference. That requires more than the two parties taking actions that were informed by or responsive to the other's actions or interests. We applied the term coordination in that sense when stating in the report that the investigation did not establish that the Trump Campaign coordinated with the Russian government in its election interference activities.

* * *

The report on our investigation consists of two volumes:

Volume I describes the factual results of the Special Counsel's investigation of Russia's interference in the 2016 presidential election and its interactions with the Trump Campaign. Section I describes the scope of the investigation. Sections II and III describe the principal ways Russia interfered in the 2016 presidential election. Section IV describes links between the Russian government and individuals associated with the Trump Campaign. Section V sets forth the Special Counsel's charging decisions.

Volume II addresses the President's actions towards the FBI's investigation into Russia's interference in the 2016 presidential election and related matters, and his actions towards the Special Counsel's investigation. Volume II separately states its framework and the considerations that guided that investigation. [Pp. 1--2-3.]

* * *

In sum, the investigation established multiple links between Trump Campaign officials and individuals tied to the Russian government. Those links included Russian offers of assistance to the Campaign. In some instances, the Campaign was receptive to the offer, while in other instances the Campaign officials shied away. Ultimately, the investigation did not establish that the Campaign coordinated or conspired with the Russian government in its election-interference activities.

PROSECUTION AND DECLINATION DECISIONS

The Appointment Order authorized the Special Counsel's Office "to prosecute federal crimes arising from [its] investigation" of the matters assigned to it. In deciding whether to exercise this prosecutorial authority, the Office has been guided by the Principles of Federal Prosecution set forth in the Justice (formerly U.S. Attorney's) Manual. In particular, the Office has evaluated whether the conduct of the individuals considered for prosecution constituted a federal offense and whether admissible evidence would probably be sufficient to obtain and sustain a conviction for such an offense. Justice Manual § 9-27.220 (2018). Where the answer to those questions was yes, the Office further considered whether the prosecution would serve a substantial federal interest, the individuals were subject to effective prosecution in another jurisdiction, and there existed an adequate non-criminal alternative to prosecution. Id.

As explained below, those considerations led the Office to seek charges against two sets of Russian nationals for their roles in perpetuating the active-measures social media campaign and computer-intrusion operations. The Office similarly determined that the contacts between Campaign officials and Russia-linked individuals either did not involve the commission of a federal crime or, in the case of campaign-finance offenses, that our evidence was not sufficient to obtain and sustain a criminal conviction. At the same time, the Office concluded that the Principles of Federal Prosecution supported charging certain individuals connected to the Campaign with making false statements or otherwise obstructing this investigation or parallel congressional investigations. [Pp. 1--173-74.]

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INTRODUCTION TO VOLUME II

[The President's actions towards the FBI's investigation into Russia's interference in the 2016 presidential election and related matters, and his actions towards the Special Counsel's investigation]

Beginning in 2017, the President of the United States took a variety of actions towards the ongoing FBI investigation into Russia's interference in the 2016 presidential election and related matters that raised questions about whether he had obstructed justice. The Order appointing the Special Counsel gave this Office jurisdiction to investigate matters that arose directly from the FBI's Russia investigation, including whether the President had obstructed justice in connection with Russia-related investigations. The Special Counsel's jurisdiction also covered potentially obstructive acts related to the Special Counsel's investigation itself. This Volume of our report summarizes our obstruction-of-justice investigation of the President.

We first describe the considerations that guided our obstruction-of-justice investigation, and then provide an overview of this Volume:

First, a traditional prosecution or declination decision entails a binary determination to initiate or decline a prosecution, but we determined not to make a traditional prosecutorial judgment. The Office of Legal Counsel (OLC) has issued an opinion finding that "the 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."¹

Given the role of the Special Counsel as an attorney in the Department of Justice and the framework of the Special Counsel regulations, see 28 U.S.C. § 515; 28 C.F.R. § 600.7(a), this Office accepted OLC's legal conclusion for the purpose of exercising prosecutorial jurisdiction. And apart from OLC's constitutional view, we recognized that a federal criminal accusation against a sitting President would place burdens on the President's capacity to govern and potentially preempt constitutional processes for addressing presidential misconduct.²

Second, while the OLC opinion concludes that a sitting President may not be prosecuted, it recognizes that a criminal investigation during the President's term is permissible.³ The OLC opinion also recognizes that a President does not have immunity after he leaves office.⁴ And if individuals other than the President committed an obstruction offense, they may be prosecuted at this time. Given those considerations, the facts known to us, and the strong public interest in safeguarding the integrity of the criminal justice system, we conducted a thorough factual investigation in order to preserve the evidence when memories were fresh and documentary materials were available.

Third, we considered whether to evaluate the conduct we investigated under the Justice Manual standards governing prosecution and declination decisions, but we determined not to

¹ *A Sitting President's Amenability to Indictment and Criminal Prosecution*, 24 Op. O.L.C. 222, 222, 260 (2000) (OLC Op.).

² See U.S. CONST. Art. I § 2, cl. 5; § 3, cl. 6; cf. OLC Op. at 257-258 (discussing relationship between impeachment and criminal prosecution of a sitting President).

³ OLC Op. at 257 n.36 ("A grand jury could continue to gather evidence throughout the period of immunity").

⁴ OLC Op. at 255 ("Recognizing an immunity from prosecution for a sitting President would not preclude such prosecution once the President's term is over or he is otherwise removed from office by resignation or impeachment").

apply an approach that could potentially result in a judgment that the President committed crimes. The threshold step under the Justice Manual standards is to assess whether a person's conduct "constitutes a federal offense." U.S. Dep't of Justice, Justice Manual § 9-27.220 (2018) (Justice Manual). Fairness concerns counseled against potentially reaching that judgment when no charges can be brought. The ordinary means for an individual to respond to an accusation is through a speedy and public trial, with all the procedural protections that surround a criminal case. An individual who believes he was wrongly accused can use that process to seek to clear his name. In contrast, a prosecutor's judgment that crimes were committed, but that no charges will be brought, affords no such adversarial opportunity for public name-clearing before an impartial adjudicator.

The concerns about the fairness of such a determination would be heightened in the case of a sitting President, where a federal prosecutor's accusation of a crime, even in an internal report, could carry consequences that extend beyond the realm of criminal justice. OLC noted similar concerns about sealed indictments. Even if an indictment were sealed during the President's term, OLC reasoned, "it would be very difficult to preserve [an indictment's] secrecy," and if an indictment became public, "[t]he stigma and opprobrium" could imperil the President's ability to govern." Although a prosecutor's internal report would not represent a formal public accusation akin to an indictment, the possibility of the report's public disclosure and the absence of a neutral adjudicatory forum to review its findings counseled against potentially determining "that the person's conduct constitutes a federal offense." Justice Manual § 9-27.220.

Fourth, 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, 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.

* * *

This report on our investigation consists of four parts. Section I provides an overview of obstruction-of-justice principles and summarizes certain investigatory and evidentiary considerations. Section II sets forth the factual results of our obstruction investigation and analyzes the evidence. Section III addresses statutory and constitutional defenses. Section IV states our conclusion. . . .

Our obstruction-of-justice inquiry focused on a series of actions by the President that related to the Russian-interference investigations, including the President's conduct towards the law enforcement officials overseeing the investigations and the witnesses to relevant events. [Pp. II--1-2; emphasis added.]

The Department of Justice and the President's personal counsel have recognized that the President is subject to statutes that prohibit obstruction of justice by bribing a witness or suborning perjury because that conduct does not implicate his constitutional authority. With respect to whether the President can be found to have obstructed justice by exercising his powers under Article II of the Constitution, we concluded that Congress has authority to prohibit a President's corrupt use of his authority in order to protect the integrity of the administration of justice. . . .

The conclusion that Congress may apply the obstruction laws to the President's corrupt

exercise of the powers of office accords with our constitutional system of checks and balances and the principle that no person is above the law. . . .

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.** [Pp. II--8; emphasis added.]

We also sought a voluntary interview with the President. After more than a year of discussion, the President declined to be interviewed. During the course of our discussions, the President did agree to answer written questions on certain Russia-related topics, and he provided us with answers. He did not similarly agree to provide written answers to questions on obstruction topics or questions on events during the transition. Ultimately, while we believed that we had the authority and legal justification to issue a grand jury subpoena to obtain the President's testimony, we chose not to do so. We made that decision in view of the substantial delay that such an investigative step would likely produce at a late stage in our investigation. We also assessed that based on the significant body of evidence we had already obtained of the President's actions and his public and private statements describing or explaining those actions, we had sufficient evidence to understand relevant events and to make certain assessments without the President's testimony. The Office's decision-making process on this issue is described in more detail in Appendix C, *infra*, in a note that precedes the President's written responses. [P. II--12.]

* * *

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."** *United States v. Lee*, 106 U.S. 196, 220 (1882); see also *Clinton v. Jones*, 520 U.S. at 697; *United States v. Nixon*, *supra*.

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. [Pp. II--181-82; emphasis added.]