IN DEFENSE OF DEMOCRACY


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A Guide to the Mueller Report
on the Investigation into Russian Interference in the
2016 Presidential Election

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We are told that many complain about the weather but few do anything about it.

The same could be said about the political situation in the United States and many countries that consider themselves democracies. But in a democracy it is possible – and necessary – to be involved if we want to maintain it. The term Democracy is derived from the Greek for "government by the people." If the "people" fail to take action to defend them, those freedoms that we assume to be a part of our birthright will rapidly deteriorate. We live in an age where this is not only a possibility, but has become a reality in many nations that have lost their democracies around the world.

The report that is summarized in the following pages was initiated by the US Justice System under a Republican administration that hired a Republican Special Counsel to investigate a Republican campaign and president. The Mueller Investigation took place over the course of a two year inquiry that exposed the vulnerability of the United States – and all democracies – to forces that want to see them compromised or destroyed.

The report showed that voters – via social media – easily can be swayed to favor one candidate over another, and that this can be done by making up derogatory information about a targeted individual. It showed that disparagement of one candidate can be effective because many voters are easily influenced by false information instead of exercising their duty as citizens to compare the strengths and weaknesses of those on the ballot. Many people are willing to let others do their thinking, which flies in the face of the assumption of an informed public upon which democracy is founded.

All governments fall short of the type of democracy – or "government by the people" – that we expect, but we tolerate imperfections because we hope that change is possible. We usually leave the running of our country to those we elect and hope for the best. But extreme partisanship can build until it threatens to undo democracy altogether. Leaders can become more self-serving than dedicated to the public good. It is at times like these that we must wake up if we are to rescue the system that encompasses our most basic liberties.

Deterioration of democracy often starts with a charismatic leader who identifies a need in supporters who consider themselves neglected by their government, often with justification. But rather than presenting a clear plan to address the needs of those supporters, the leader encourages followers to scapegoat minority populations and those with alternative views. This only can be done with the support of a group of enablers willing to follow as the country descends into autocracy.

Every country that has lost its democracy over the last century – including Germany and Italy during World War II, and more recently Russia, Poland, Hungary and the Philippines, among others – descended from democracy into domination by a large constituency who discarded the idea that democracy is government by and for all the people. They created a government by and for a group who sought advantage for themselves while steadily diminishing the rights of those not in the majority.

The report of the Special Counsel describes a clear and present danger to our democracy. The investigation found numerous and broad acts of misconduct that endanger the very fabric of our
society. It determined that the most basic principles upon which our democracy is founded, including fairness in the election process, were threatened not only by the Russians from without, but also from within.

In reducing the 448 page Mueller Report to a few dozen pages, we needed to make decisions about its primary themes. We have done our best to include everything that we consider relevant to understanding the key points. The report shows that many public officials, including the President, considered themselves above the law and violated the trust of their office. It makes it clear that preventing the gradual undermining of democracy requires the continual vigilance of everyone. The best way to grasp the context of the report is to read it yourself. The entire report can be purchased in bookstores and is available for free online.

The Mueller Report presents a fair and balanced investigation with an impressive level of thoroughness. It found that the Trump Campaign tried to participate in covert acts against the Clinton Campaign in cooperation with people acting on behalf of the Russian government to influence the 2016 US election. Sections of the report point to attempted collaboration between Russians and members of the Trump Campaign who sought information to sabotage Hillary Clinton's candidacy (see Volume 1, Page 6). In some cases – to their credit – Trump representatives refused to take information that was offered by Russian operatives (see Volume 1, Page 61). White House officials often declined to participate in the President’s attempts to obstruct the investigation (see Volume I, Page 4). In some cases, claims by the Russians that hacked material was available turned out to be inaccurate (see Volume 1, Page 65).

Three presidents have had impeachment proceedings brought against them: Andrew Johnson, Richard Nixon, and Bill Clinton. Impeachment in the US begins in the House of Representatives (similarly to an indictment) with the trial taking place in the Senate. Johnson, who opposed the post-war Civil Rights Bill was impeached by the House of Representatives in 1867 for trying to install his own cabinet members without Senate approval. He narrowly avoided conviction (being removed from office) in the Senate. Nixon resigned in 1974 while an impeachment process against him was underway for involvement in the Watergate burglary. Thus he never went to trial in the Senate. Clinton was impeached in the House of Representatives in 1998 for perjury and obstruction of justice (lying to Congressional investigators), but was not convicted in the Senate.

It should be noted that presidents accused of crimes have done things to benefit their country. A few examples: Nixon paved the way for trade with China. Clinton presided over a booming economy, although he also repealed bank regulations and this eventually led to a major downturn. Trump has attempted to lower the chance of a nuclear confrontation with North Korea and worked to bring exploding drug prices under control. No president is all good or all bad. But no president is above the law.

For democracy to succeed, it is essential that we look at the evidence to determine whether our leaders are doing their best to “…establish justice, insure domestic tranquility, provide for the common defense, [and] promote the general welfare…” (Preamble of the US Constitution). Or in extreme cases, do we believe that they are guilty of “…treason, bribery or other high crimes and misdemeanors…” (Article II, Section 4) and deserve to be impeached. As the ultimate guardians of democracy, we each must maintain an open mind. Unfortunately, most people are willing to believe what leaders or media pundits tell them without seeking their own conclusions based on evidence. This is why democracy is in trouble in the US and around our world. It also is why we
have extremes of views among us, with civil dialogue toward a common understanding nearly being a lost art.

A commitment to the principles of respect for rule of law and for each other is required if we are to save democracy for ourselves and restore it as a valid model for the world. That choice must be made before partisanship permanently creates a “house divided against itself,” in the words of Lincoln. Those who act in a rigidly partisan manner imperil others and themselves.

To preserve our democracy, we each must be willing to move beyond our pre-established positions and consider a more balanced truth. In our current controversy about whether the President broke the law, more honest and balanced assessments are beginning to come forth from both political and media partisans. Some Democrats advocate holding off on impeachment until if – and when – investigations into the conduct of the President point clearly in that direction. Some personalities on Fox news, which often provides blind advocacy for Republican presidents, have looked at the evidence and come to the conclusion that this president has interfered with the Special Counsel’s investigation (Shepard Smith), and, in the words of Andrew Nepolitano, Fox News Legal Analyst, Donald Trump's obstruction was "unlawful, defenseless and condemnable."

Our nation also is put into danger by a President who ignores information brought to him by the US intelligence community. It is clear from the Mueller Report and numerous other investigations that Russia is attempting to sabotage our democracy. In addition to incidents cited in the Report, investigations show that Russians were able to hack into the election apparatus of the state of Florida in the 2016 election, and this interference is likely to increase in upcoming elections. Yet Trump continues to deny Russian interference and has called the Russian probe “an attack on our country.” He has created conflicts with our democratic allies and expressed admiration for strongmen who have turned their democracies into dictatorships, including Putin of Russia, Orban of Hungary, and Duterte of the Philippines.

In countries that have lost their democracies, information like that which you have before you is considered subversive and no longer allowed. Debate in those countries about possible corruption is considered a threat to the state. People’s views no longer are important because the government makes decisions without popular input.

The press often is the conduit by which people get their information about political events. In the US and other countries where democracy is threatened we see an attempt to silence the press by accusations of “fake news,” and chastening those who challenge authority. If we fail to value and support our free press and freedom of expression we are acquiescing to their demise and are in danger of losing the information we need to make informed decisions.

Our allegiance thus must be to the principles of democracy – and how they look in the real world – while avoiding blind allegiance to strong personalities or political parties. This only can happen in a society that upholds the right of everyone to their own views as long as they don't advocate violence against others. Our ongoing involvement is required to maintain our most basic rights. We each must be prepared to take on the sometimes difficult task of thinking for ourselves – based on weighing the evidence – because simple solutions don't exist.

How can you get involved? You can participate in seminars or discussion groups. You can call or write to your representatives – letters do get read. You can join or support advocacy organizations, but be careful to ensure that they really represent your views. You can participate in protests. And you can vote.
The Mueller Investigation has been continually attacked by some who claim it is part of a vast left-wing conspiracy by numerous members of the Justice Department to bring down Donald Trump. They repeat the mantra that the investigation was launched under false pretenses and therefore is invalid. These arguments easily are dismissed by a simple analogy: If a police officer pulls someone over because he doesn’t like the person’s appearance, that is unjust and unlawful. But if the officer discovers a body in the back seat during the traffic stop, no one could reasonably claim that the possibility of murder shouldn’t be investigated. If there is evidence of a crime, it is up to law enforcement to investigate. If there is evidence of a crime committed in the investigation of a crime, that also should be investigated. No matter how often these conspiracy theories are repeated, they can’t undo the malfeasance discovered by an investigation that was launched by Republicans into a Republican campaign and President.

According to an article in Wikipedia regarding the origin of the investigation:
Australian officials informed American officials that in May 2016, a Trump presidential campaign adviser, George Papadopoulos, told the Australian High Commissioner to Britain, Alexander Downer, that Russian officials were in possession of politically damaging information relating to Hillary Clinton, the rival presidential candidate to Trump. Since the FBI, in response to this information, opened an investigation into the links between Trump associates and Russian officials on July 31, 2016, the meeting between Papadopoulos and Downer is considered to be the 'spark' that led to the Mueller investigation. In February 2018, the Nunes memo, written by staff for U.S. Representative Devin Nunes, described that the information on Papadopoulos "triggered the opening of" the original FBI investigation, rather than the Trump-Russia dossier as asserted by, among others, Trump, Nunes, Fox News hosts Steve Doocy, Ed Henry, Tucker Carlson, Sean Hannity, and Fox News contributor Andrew McCarthy.

We who are the beneficiaries of democracy have not only a right – but a responsibility – to consider numerous viewpoints to come to our own perspective about which leaders uphold democracy and which defile it. Then it is our job to put leaders in place who really understand and support what democracy is about.

The choice ultimately is between oligarchy, where autocrats and their cronies run the government for themselves and those who enable their abuses, and democracy, which despite its shortcomings, is designed to bring the greatest possible benefit to the greatest number of people.

Which will we choose?

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A FEW THINGS YOU MIGHT WANT TO KNOW ABOUT THE MUELLER REPORT 
BUT DIDN’T KNOW WHO TO ASK
By Rob Katz

A lot has been written about the Mueller Report. As a lawyer and as a citizen, I found the Report to be particularly disturbing. What follows is not a comprehensive examination of the Report, but rather an analysis of some of the legal questions raised by the Report that I found to be particularly important.

Overview

The full title of the Report Is “Report on the Investigation into Russian Interference in the 2016 Presidential Election.” Although most of the focus on the Report has been on Trump’s culpability, and that of his campaign staff, the Report itself is concerned with uncovering criminal activity related to what it concludes was substantial interference by the Russian government and its agents in the 2016 election on Trump’s behalf. Many of the indictments handed down by the Mueller team were against Russian operatives who had directly interfered with the election. The Report cites two types of interference: a social media campaign designed to mislead and persuade, and a hacking operation into the emails of the Democratic National Committee, Hillary Clinton Campaign Chair John Podesta, and others (See Volume I, pp. 4-5.) It’s important, particularly when considering the significance of Trump’s efforts to obstruct the Mueller investigation, to keep in mind that the central purpose of the investigation was to uncover Russian interference and indict some of those responsible as part of an effort to protect the integrity of our democracy.

The Report Is divided into two volumes, one largely devoted to the issue of Russian interference and ties between Russia and Trump campaign, the other principally concerned with Trump’s efforts to obstruct justice.

Why Wasn’t Anyone Indicted from the Trump Tower Meeting?

The June 9, 2016 meeting at Trump Tower in New York between a Russian attorney with ties to the Kremlin, and Donald Trump Jr. and other Trump campaign officials, has received a lot of attention. Why exactly did the Special Counsel conclude that nothing that went on at the meeting was chargeable as a crime?

Briefly by way of background, Rob Goldstone, a British music promoter with some connections to both Russia and Trump, emailed Donald Trump Jr. to propose a meeting with the “Crown Prosecutor of Russia” who “offered to provide the Trump Campaign with some official documents and information that would incriminate Hillary [Clinton] and her dealings with Russia” [as] “part of Russia and its governments support for Mr. Trump.” (Volume I, p. 110.) The Report recounts Donald Jr.’s now infamous response: “If it’s what you say I love it,” and the meeting was arranged through a series of emails and telephone calls. (Ibid.) Trump Jr., Jared Kushner and Campaign Manager Paul Manafort attended. The attorney, Natalia Veselnitskaya, who had worked for and maintained a relationship with, the Russian Government, “claimed that
funds derived from illegal activities in Russia were provided to Hillary Clinton and other Democrats. Trump Jr. requested evidence to support those claims,” but Veselnitskaya didn’t provide such information, not at the meeting or subsequently. (Volume I, p. 110.) Instead she wanted to focus attention on repealing the Magnitsky Act, a federal law that imposed sanctions on certain Russian officials.

As the Report explains, federal campaign finance law broadly prohibits foreign nationals from contributing to U.S. elections, not only money but any other “thing of value.” (Volume I, p. 186.) A “knowing and willful” violation involving more than $25,000 is a felony and more than $2,000 a misdemeanor. If Trump Jr., Kushner, and/or Manafort conspired to knowingly and willfully violate the statute by agreeing to accept something of value from a Russian national, then they could face criminal charges.

But the Mueller Report concludes that a prosecutor would be unable to prove beyond a reasonable doubt a criminal violation arising out of the Trump Tower meeting. The principal reason has to do with an inability to prove that violation of the law was “knowing and willful.” A general maxim of law that applies in almost all instances is Ignorantia Juris Non Excusat, ignorance of the law is no excuse. But the campaign finance laws in question have been interpreted to depart from that principle. Perhaps because of the technical, complex nature of campaign finance law, the “knowing and willful” requirement has been interpreted to mean a defendant “had general knowledge that their conduct was unlawful.” (Volume I, p. 187.)

The Report concludes that the investigation had “not developed evidence that the participants in the meeting were familiar with the foreign contributions ban or application of federal law to the relevant factual context.” Part of the difficulty, from a prosecutor’s point of view, is that Trump Jr. & Co. was not offered something that clearly was a thing of value within the statute, such as a contribution of money. The Report does conclude that existing legal authority “would support the view that candidate-related opposition research given to a campaign for the purpose of influencing an election could constitute a contribution in violation of campaign finance laws.” (Volume I, p. 187.) But the Report acknowledges that the issue has not been resolved, and it is not known for certain whether a court would interpret the law to prevent the provision by a foreign national of “information consist[ing] simply of the recounting of historically accurate facts.” So especially “in light of the unresolved legal questions about whether giving ‘documents and information’ of the sort offered here constitutes a campaign contribution,” Trump Jr. and the other meeting participants could mount a factual defense that they did not know that what they did constitutes a violation of campaign finance laws. (Volume I, pp. 187-188.)

To my mind, it strains credulity to believe that the participants, and particularly Paul Manafort, an experienced political campaign operative, wouldn’t have at least suspected that receiving this type of Russian aid was illegal and that an attorney should be consulted. But even accepting that the evidence developed by the investigation fell short of proving criminal liability
beyond a reasonable doubt, this evidence shows unequivocally that top Trump campaign officials were willing to receive a substantial assist from Russian agents in order to win the election.

**Why Wasn’t Manafort Sharing Polling Data with the Russians Charged as a Conspiracy?**

Manafort, who worked on Trump’s campaign from March to August 2016 and was campaign manager from June to August, had worked for pro-Russian politicians in Ukraine. Konstantin Kilimnik, a Russian national, had worked for him as a translator and manager of Manafort’s political consulting business. During his time in the campaign, Manafort instructed his deputy, Rick Gates, to provide Kilimnik with updates on the Trump campaign, including internal polling data. Gates periodically sent polling data to Kilimnik. Manafort also met twice with Kilimnik during this period to discuss a peace plan for Ukraine that would be a “backdoor” means for Russia to control the Eastern Ukraine. Manafort also briefed Kilimnik on the Trump campaign, and according to Gates, discussed “battleground” states like Michigan, Wisconsin, Pennsylvania, and Minnesota. (Volume I, p. 140.) Kilimnik has been identified by the FBI as someone with “ties to Russian intelligence.” (Volume I, p. 133.) There is evidence that Manafort expected the data to be shared with Oleg Deripaska, a Russian billionaire with close ties to Putin, for whom Manafort had worked and with whom Manafort had some sort of financial dispute. Manafort apparently hoped that with the sharing of the data, he could rehabilitate himself with Deripaska.

From this set of facts, it might be inferred that Manafort conspired to assist the Russians in interfering with the 2016 election by providing them with polling data that would allow them to better target their social media activities. But although both Manafort and Kilimnik were charged with various crimes, there were no charges stemming from this sharing of polling data. Why not? If that’s not conspiring with the Russians to interfere with the 2016 election, what is?

The Report says that “the office could not reliably determine Manafort’s purpose in sharing internal polling data with Kilimnik during the campaign period.” (Volume I, p. 130.) “Because of questions about Manafort’s credibility and our limited ability to gather evidence on what happened to the polling data after it was sent to Kilimnik, the Office could not assess what Kilimnik (or others he may have given it to) did with it. The Office did not identify evidence of a connection between Manafort’s sharing polling data and Russia’s interference in the election.” (Volume I, p. 131.)

The above may be correct in terms of a prosecutorial judgment of whether a jury would convict, but it is extremely unsatisfying. We know that Manafort was passing on polling data and other information about the campaign to someone who would be a conduit to a Russian billionaire close to Putin. There is evidence that in Manafort’s estimation at least, that information was valuable, and was part of an effort to rehabilitate himself with the billionaire.
The evidence shows that Trump’s campaign manager at least attempted to conspire with the Russians and assist their efforts to interfere with the election on his candidate’s behalf.

In any event, the Trump Tower meeting, the Manafort/Kliminik/Deripaska connection, and the many other contacts during and immediately after the 2016 campaign between campaign officials and Russian government and its agents makes laughable the allegation that the Mueller investigation was an unjustified witch hunt designed to harass the President. In light of the extensive evidence of Trump campaign/Russian connections, the undisputed effort of Russia to interfere on Trump’s behalf, and Trump’s bewildering sycophancy toward Putin, it would’ve been irresponsible not to investigate.

**What Did the Mueller Report Conclude About Trump’s Obstruction?**

Someone may be guilty of obstructing justice if he/she (1) commit[s] an obstructive act; (2) that interferes with an official proceeding; (3) with a corrupt intent. (Volume II, p. 9.) What did the Special Counsel decide with respect to whether Trump was guilty of obstruction of justice? The Report doesn’t answer that question definitively, but the conclusions it does come to point strongly toward obstruction.

First, the Special Counsel makes clear that he is obliged to follow the Justice Department policy of not indicting the sitting president. (Volume II, p. 1.) Second, the Report says that the Mueller team considered and rejected the idea that they should do a traditional assessment of the President’s conduct under the Justice Department standards for prosecution, in other words to evaluate if they would have prosecuted the President if there had been no policy against it. The idea was rejected because it would not afford Trump the opportunity of a trial in which he could contest the evidence and clear his name. (Volume II, p.2.)

Instead, the Report does three things on the issue of whether Trump obstructed justice. (1) it lays out extensive evidence of obstruction, while also pointing to some difficulties a potential prosecution would face; (2) it concludes that the Report does not exonerate Trump; and (3) it rejects various statutory and constitutional defenses that Trump’s legal team proposed about why he is not guilty of obstruction. Each will be considered below.

**Evidence of Obstruction**

I won’t attempt to summarize the voluminous evidence of obstruction of the Mueller investigation and its precursors, except to quote a passage of the Report that is a kind of summation: “Although the events we investigated involve discrete acts – e.g. the President’s statement to Comey about the Flynn investigation, his termination of Comey, and his efforts to remove the Special Counsel – it is important to view the President’s pattern of conduct as a whole. The pattern sheds light on the nature of the President’s acts and the inference that can be drawn about his intent. 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 . . . . These actions range from efforts to remove the
Special Counsel and to reverse the effect of the Attorney General’s recusal; to the attempted use of official power to limit the scope of the investigation; to direct and indirect contacts with witnesses with potential to influence their testimony. Viewing the acts collectively can help to illuminate their significance. For example, the president’s direction to [White House Counsel Don] McGahn to have the Special Counsel removed was followed almost immediately by his direction to [former campaign manager Corey] Lewandowski to tell the Attorney General to limit the scope of the Russia investigation to prospective election interference only – a temporal connection that suggests both acts were taken with a related purpose with respect to the investigation. 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. Comey did not end the investigation of Flynn, which ultimately resulted in Flynn’s prosecution and conviction for lying to the FBI. McGahn did not tell the Acting Attorney General that the Special Counsel must be removed, but was instead prepared to resign over the President’s order. Lewandowski and Dearborn did not deliver the President’s message to Sessions that he should confine the Russia investigation to future election meddling only. And McGahn refused to recede from his recollection about events surrounding the President’s direction to have the Special Counsel removed, despite the President’s multiple demands that he do so.” (Volume II, pp. 157-158.)

But with all this evidence, the Report does consider some difficulties in prosecuting the President, discussed below.

No Exoneration

The Report contains this often-quoted conclusion. “[I]f we had confidence that after a thorough investigation of the facts that the President clearly did not commit obstruction of justice, we would so state… The evidence we obtained about the President’s actions and intent present difficult issues that prevent us from conclusively determining no criminal conduct occurred. Accordingly, while this Report does not conclude that the President committed a crime, it also does not exonerate him.” (Volume II, p. 2.)

As several commentators have pointed out, this statement of non-exoneration is unusual – it’s not what prosecutors do. They indict or they don’t. But the Special Counsel believed this was appropriate under these unusual circumstances, in which he was prohibited from making a traditional prosecutorial decision about whether to indict. The Special Counsel may have also believed that Trump would use the lack of a definitive prosecutorial determination to claim exoneration. Of course, the statement of non-exoneration didn’t prevent Trump from claiming exoneration anyway, but it made the statement not credible.

In concluding that Trump was not exonerated, with the implication that he might be prosecuted when he leaves office, the Special Counsel rejected one of the bases for Attorney General Barr’s conclusion that there was insufficient evidence of obstruction. Barr opined that
because there wasn’t sufficient evidence implicating Trump in the underlying crime of conspiring with the Russians, that lack of evidence weakens the case that any of Trump’s supposed obstructive actions were performed with corrupt intent – one of the requirements for obstruction of justice. (See Atty. Gen. Barr, Letter to House and Senate Judiciary Com., March 23, 2019, p. 3.) The Report, anticipating that objection, surmises other corrupt motives for engaging in obstruction. “Obstruction of justice can be motivated by a desire to protect noncriminal personal interests, to protect against investigations where underlying criminal liability falls into a gray area, or to avoid personal embarrassment. The injury to the integrity of the justice system is the same regardless of whether a person committed an underlying wrong.” (Volume II, p. 157.) The Report suggests possible motivations, including “concerns that continued investigation would call into question the legitimacy of his election and potential uncertainty about whether certain events – such as advanced notice of WikiLeaks’s release of hacked information or the [Trump Tower] meeting could be seen as criminal activity by the president, his campaign, or his family.” In other words, even if Trump sought to obstruct the investigation not because he was engaged in some sinister conspiracy with the Russians, but because his vanity required that his election be seen as wholly legitimate – a motivation for which there is a great deal of evidence in the Report and elsewhere – he would still be guilty of obstruction.

I’ve heard some commentators imply that the fact that many of Trumps’ obstructive acts were not carried out, such as directing McGahn to fire Mueller and directing Sessions to unrecuse himself, saved Trump from liability for obstruction. As the Report makes clear, that’s not so, because the federal obstruction statute under which he’d be prosecuted “covers both substantive obstruction offences and attempts to obstruct justice.” (Volume II, p. 11, italics added.) Nonetheless, as the Report seems to implicitly recognize, prosecution might be more difficult for orders not carried out. The defense counterargument could be that Trump was merely “thinking out loud,” proposing a possible course of action to his attorneys that he did not execute on their advice. But I believe that the fact some acts that were carried out, such as Comey’s firing, combined with Trump’s own overbearing style of leadership, would make the thinking-out-loud defense a hard sell.

Rejection of President’s Constitutional Defenses

As has been widely reported, William Barr, before becoming Trump’s Attorney General, wrote an unsolicited memo opining that a President couldn’t be convicted of obstruction of justice for merely exercising his powers under Article II of the Constitution. In other words, holding the President liable for obstruction when he commits acts that are themselves illegal, like destroying evidence or coercing witnesses is one thing, but holding him liable for actions that were within his executive authority, like firing the head of the FBI, is another, and the President can’t be held liable these latter types of actions. The basic argument is that if the obstruction
statutes enacted by Congress are interpreted to prevent the President from exercising his Article II authority the way he sees fit, the statute would unduly interfere with presidential authority and violate the doctrine of the separation of powers. Trump’s legal team presented that defense to the Special Counsel.

The Report’s constitutional discussion rejecting this defense lasts for 12 pages, but may be roughly summarized this way: Supreme Court authority holds that when Congress enacts a statute placing limits on executive authority, e.g. authority to discharge officers working in the executive branch or to direct criminal investigations, that statute will be upheld as constitutional if it meets a test that balances the prerogatives of the executive and legislative branches. First, courts will determine the extent to which the statute prevents the executive branch from accomplishing its constitutionally assigned functions. Second, courts will examine whether the statute is justified by the overriding need to promote the objectives within the constitutional authority of Congress. (Volume II, p. 172). The Report concludes that application of an obstruction-of-justice statute to the President in the exercise of his official powers “is not a major intrusion into Article II powers.” “To the contrary, a statute that prohibits official action undertaken” for purposes such as “shielding himself from criminal punishment, avoiding financial liability, or preventing personal embarrassment…furthers rather than hinders the impartial evenhanded administration of the law” that the President as the nation’s chief executive is supposed to undertake. (Volume II, p. 174.) On the other hand, Congress clearly has the authority and a strong interest in preventing the President from obstructing justice. (Volume II, p. 176-177.) The Report also concludes that making the President liable for obstruction wouldn’t chill the exercise of proper executive authority, because such investigations and prosecutions would occur only “in highly unusual circumstances when a credible factual basis exists to believe that obstruction occurred.” (Volume II, p. 179.)

The Report also rejects the statutory defense that because the principal federal obstruction statute refers in one section to obstruction of justice by destroying evidence, the obstruction statute is limited only to that kind of activity. In fact, another section of the statute broadly imposes criminal liability on “whoever … obstructs, influences or impedes any official proceeding, or attempts to do so.” (Volume II, p. 161.)

While the Report’s analysis seems correct, it does point to another difficulty in prosecuting against the President for taking actions that are within his executive authority. As noted, in order to establish obstruction of justice there must be “corrupt intent.” When the obstructive act is something inherently illegal, such as unlawfully destroying evidence, corrupt intent—what going on in the President’s mind – can be easily inferred. When it involves exercise of executive authority that is not inherently illegal, whether the obstructive act was done with corrupt intent becomes more of an issue. The fact that Trump did not submit to questioning by Mueller, and that his legal team submitted answers to written questions only about his conduct before he became President, means that an important source of information for
understanding Trump’s intent was not available to Mueller. The Special Counsel’s judgment that it was more important to conclude the Report then to press for an interview with Trump, which would involve protracted judicial proceedings, may have been sound. But the lack of access to Trump certainly hampered the investigation, and probably made the conclusion about obstruction more tentative than it could have been. Still, evidence of Trump’s multiple acts of obstruction is quite compelling.

Where Do We Go From Here?

First, the call for further congressional investigation by House Democrats has opened up a second front in what may called broadly the Trump Congressional corruption inquiry. The President’s refusal to cooperate, a refusal backed by an expansive interpretation of executive authority and privilege, and a narrow interpretation of congressional authority, has to be answered in a court of law. Otherwise, bad precedent undermining Congressional oversight power, and dangerously expanding the power of the President, would be set. But, speaking now as a citizen and not a lawyer, I wish the House Democrats were more focused in their investigations. What is currently coming across is a muddled message, as different congressional chairpersons each pursue their own investigation. Trump may be winning the messaging war, saying in effect: “We’ve had this long investigation, two years, 450 pages, enough’s enough.” The Democrats have to explain clearly why further investigation is necessary. In my opinion, the focus should be on Trump’s finances, little information of which is given in the Mueller Report, and which Trump has doggedly sought to conceal. What does he have to hide?

Beyond the investigations, the question is whether to impeach. In making that call, we should be mindful that whether Trump has committed impeachable offense and whether he should be impeached are two separate questions. The determination whether or not to impeach is political, not strictly legal or judicial. I mean “political” in several ways. First, most basically, that the entire proceeding is conducted by Congress, a political branch of government, not the courts. Second, unlike the rest of the Constitution, which is authoritatively interpreted by the courts, Congress is the ultimate authority on what constitutes “high crimes and misdemeanors” subjecting the President to impeachment and removal. And impeachment is political because it involves the exercise of congressional discretion. Contrary to some beliefs, there is no constitutional obligation to impeach a President who has committed high crimes and misdemeanors. Nothing in the Constitution limits that discretion of Congress, just as generally there is no limitation on the discretion of prosecutors to decide what crimes to prosecute. Congress may decide that for reasons of public interest, impeachment should not proceed.

On the other hand, permitting a President to escape impeachment when it seems clear he has committed high crimes and misdemeanors sets a bad precedent and threatens to normalize criminal behavior at the highest level of government.
In light of our current situation, and unless further investigations in the near future turn up something on Trump that causes Republicans to desert him, it is unlikely that impeachment will lead to Trump’s removal from office, and might be counterproductive in the 2020 election. As an alternative, House Democrats should consider passing a resolution along the following lines that could balance the need not to set bad precedent with current political realities.

First, the resolution would resolve that Trump has committed impeachable offenses. The acts of obstruction set forth in the Mueller Report should be enumerated in the resolution. It should be emphasized that the investigation that Trump tried to impede sought to protect the very integrity of our democracy by investigating the substantial Russian interference in our election and bring to justice those responsible and those who sought to interfere with the investigation. Trump’s obstruction crimes placed his own interests over those of the country in a very significant way. Trump’s current stonewalling of legitimate Congressional oversight investigation would be additional grounds for impeachment.

Second, the resolution would nonetheless conclude that no impeachment proceedings will be initiated at this time. It should set forth the reasons for that decision. I think the reasons should include: (1) that impeachment will not lead to Trump’s removal from office because he will protected from conviction by complicit Republicans in the Senate; (2) that Trump will be up for re-election next year, and it is likely that the American electorate, when they consider the evidence against him, together with the totality of Trump’s record as President, will remove him from office; (3) that nothing prevents Trump from being prosecuted for obstruction once he is removed from office; (4) in light of points 1-3, Congress resolves that its time and resources are better spent focusing on legislation that will help to solve problems facing Americans, including strengthening health care coverage, raising wages, and repairing and replacing America’s infrastructure.

Other people may differ and think that Trump should be impeached, even if not removed from office. They may believe that it’s good politically. But if Democrats determine that it would not make sense to proceed, but don’t want to let Trump off the hook, I think something like the above resolution is the way to go.

Robert N. Katz

The author holds an MA degree in Political Science from UC Santa Barbara and a J.D. degree from Stanford Law School. He has spent most of his legal career as a Senior and Supervising Attorney with the California Supreme Court, from which he retired in 2018.
THE WHITE HOUSE
WASHINGTON

April 19, 2019

Via Hand Delivery

The Honorable William P. Barr
Attorney General of the United States
United States Department of Justice
950 Pennsylvania Ave. N.W.
Washington D.C. 20530

Dear Mr. Attorney General:

I write on behalf of the Office of the President to memorialize concerns relating to the form of the Special Counsel’s Office (“SCO”) Report (“SCO Report” or “Report”) and to address executive privilege issues associated with its release.

The SCO Report suffers from an extraordinary legal defect: It quite deliberately fails to comply with the requirements of governing law. Lest the Report’s release be taken as a “precedent” or perceived as somehow legitimating the defect, I write with both the President and future Presidents in mind to make the following points clear.

I begin with the SCO’s stated conclusion on the obstruction question: The SCO concluded that the evidence “prevent[ed] [it] from conclusively determining that no criminal conduct occurred.” SCO Report v.2, p.2. But “conclusively determining that no criminal conduct occurred” was not the SCO’s assigned task, because making conclusive determinations of innocence is never the task of the federal prosecutor.

What prosecutors are supposed to do is complete an investigation and then either ask the grand jury to return an indictment or decline to charge the case. When prosecutors decline to charge, they make that decision not because they have “conclusively determin[ed] that no criminal conduct occurred,” but rather because they do not believe that the investigated conduct constitutes a crime for which all the elements can be proven to the satisfaction of a jury beyond a reasonable doubt. Prosecutors simply are not in the business of establishing innocence, any more than they are in the business of “exonerating” investigated persons. In the American justice system, innocence is presumed; there is never any need for prosecutors to “conclusively determine” it. Nor is there any place for such a determination. Our country would be a very different (and very dangerous) place if prosecutors applied the SCO standard and citizens were obliged to prove “conclusively . . . that no criminal conduct occurred.”

Because they do not belong to our criminal justice vocabulary, the SCO’s inverted-proof-standard and “exoneration” statements can be understood only as political statements, issuing from persons (federal prosecutors) who in our system of government are rightly expected never
to be political in the performance of their duties. The inverted burden of proof knowingly embedded in the SCO’s conclusion shows that the Special Counsel and his staff failed in their duty to act as prosecutors and only as prosecutors.

Second, and equally importantly: In closing its investigation, the SCO had only one job—to “provide the Attorney General with a confidential report explaining the prosecution or declination decisions reached by the Special Counsel.” 28 C.F.R. § 600.8(c). Yet the one thing the SCO was obligated to do is the very thing the SCO – intentionally and unapologetically – refused to do. The SCO made neither a prosecution decision nor a declination decision on the obstruction question. Instead, it transmitted a 182-page discussion of raw evidentiary material combined with its own inconclusive observations on the arguable legal significance of the gathered content. As a result, none of the Report’s Volume II complied with the obligation imposed by the governing regulation to “explain[] the prosecution or declination decisions reached.” Id.

The SCO instead produced a prosecutorial curiosity – part “truth commission” report and part law school exam paper. Far more detailed than the text of any known criminal indictment or declination memorandum, the Report is laden with factual information that has never been subjected to adversarial testing or independent analysis. That information is accompanied by a series of inexplicably inconclusive observations (inexplicable, that is, coming from a prosecutor) concerning possible applications of law to fact. This species of public report has no basis in the relevant regulation and no precedent in the history of special/independent counsel investigations.

An investigation of the President under a regulation that clearly specifies a very particular form of closing documentation is not the place for indulging creative departures from governing law. Under general prosecutorial principles, and under the Special Counsel regulation’s specific language, prosecutors are to speak publicly through indictments or confidentially in declination memoranda. By way of justifying this departure, it has been suggested that the Report was written with the intent of providing Congress some kind of “road map” for congressional action. See, e.g., Remarks of House Judiciary Committee Chairman Jerrold Nadler, 4/18/19 (Press Conference). If that was in fact the SCO’s intention, it too serves as additional evidence of the SCO’s refusal to follow applicable law. Both the language of the regulation and its “legislative” history make plain that the “[c]losing documentation” language was promulgated for the specific

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1 Some commentators have pointed to the so-called Watergate “Road Map” as precedent for giving Congress a prosecutor’s report containing no legal conclusions. That “Road Map” is shrouded in a bodyguard of myths, and the many separation of powers problems presented by its transmission remain largely unexplored. But the idea that it was a straightforward, just-the-facts type summary is easily dispelled. As two top Watergate prosecutors wrote years after the events of 1973-74, the Watergate Task Force created the “road map [to] serve as a do-it-yourself kit for the Judiciary Committee, helping it reassemble the individual pieces of grand-jury testimony and other evidence into a coherent theory of a criminal case as we and the [grand] jury saw it.” Ben-Veniste & Frampton, Stonewall: The Real Story of the Watergate Prosecution 242-43 (1977) (emphasis added).
purpose of preventing the creation of this sort of final report. Under a constitution of separated powers, inferior Article II officers should not be in the business of creating “road maps” for the purpose of transmitting them to Article I committees.

With the release of the SCO Report, and despite all of the foregoing, the President has followed through on his consistent promise of transparency. He encouraged every White House staffer to cooperate fully with the SCO and, so far as we are aware, all have done so. Voluntary interviewees included the Counsel to the President, two Chiefs of Staff, the Press Secretary and numerous others. In addition, approximately 1.4 million pages of documents were provided to the SCO. This voluntary cooperation was given on the understanding (reached with the SCO) that information (i) gathered directly from the White House or White House staffers and (ii) having to do with Presidential communications, White House deliberations, law enforcement information, and perhaps other matter may be subject to a potential claim of executive privilege and, for that reason, would be treated by the SCO as presumptively privileged. Volume II of the report contains a great deal of presumptively privileged information, largely in the form of references to, and descriptions of, White House staff interviews with the SCO. It also includes reference to presumptively privileged documentary materials.

The President is aware that, had he chosen to do so, he could have withheld such information on executive privilege grounds, basing such an assertion on the established principle that to permit release of such information might have a chilling effect on a President’s advisors, causing them to be less than fully frank in providing advice to a President. Notwithstanding his right to assert such a privilege, and with a measure of reluctance born of concern for future Presidents and their advisors, the President has in this instance elected not to assert executive privilege over any of the presumptively privileged portions of the report. As a consequence, not a single redaction in the Report was done on the advice of or at the direction of the White House.

The President therefore wants the following features of his decision to be known and understood:

(1) His decision not to assert privilege is not a waiver of executive privilege for any other material or for any other purpose;

(2) His decision to permit disclosure of executive-privileged portions of the report does not waive any privileges or protections for the SCO’s underlying investigative

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2 At the time of the Special Counsel regulations’ creation in 1999, it was widely understood that Section 600.8(c) was not intended to provide for “a report which discusses the evidence at length,” much less its public dissemination. The Future of the Independent Counsel Act: Hearings before the S. Comm. on Governmental Affairs, 106th Cong. 236 (1999) (letter from Robert B. Fiske, Jr.); see also id. at 252 (prepared statement of Janet Reno, Att’y Gen. of the United States); Reauthorization of the Independent Counsel Statute, Part I: Hearings Before the Subcomm. on Commercial and Admin. Law of the H. Comm. on the Judiciary, 106th Cong. 36 (1999) (prepared statement of Eric H. Holder, Jr., Deputy Att’y Gen.).
materials such as, for example, FBI Form 302 witness interview summaries and presumptively privileged documents made available to the SCO by the White House.

(3) His decision does not affect his ability as President to instruct his advisors to decline to appear before congressional committees to answer questions on these same subjects. It is one thing for a President to encourage complete cooperation and transparency in a criminal investigation conducted largely within the Executive Branch; it is something else entirely to allow his advisors to appear before Congress, a coordinate branch of government, and answer questions relating to their communications with the President and with each other. The former course reflected the President’s recognition of the importance of promoting cooperation with a criminal investigation. The latter course creates profound separation of powers concerns and – if not defended aggressively – threatens to undermine the integrity of Executive Branch deliberations. The President is determined to protect from congressional scrutiny not only the advice rendered by his own advisors, but also by advisors to future Presidents.

A great deal is said these days about the rule of law and the importance of legal norms. In that spirit, and mindful of the frenzied atmosphere accompanying the Report’s release, the following should not be forgotten. Government officials, with access to classified information derived from a counterintelligence investigation and from classified intelligence intercepts, engaged in a campaign of illegal leaks against the President. Many of those leaks were felonies. They disclosed the identity of a U.S. person in violation of his civil rights; they misused intelligence for partisan political purposes; and they eroded public confidence in the integrity and impartiality of our intelligence services. The criminal investigation began with a breach of confidentiality executed by a very senior administration official who was himself an intelligence service chief. This leak of confidential information, personally directed by the former Director of the FBI, triggered the creation of the SCO itself – precisely as he intended it to do.

Not so long ago, the idea that a law enforcement official might provide the press with confidential governmental information for the proclaimed purpose of prompting a criminal investigation of an identified individual would have troubled Americans of all political persuasions. That the head of our country’s top law enforcement agency has actually done so to the President of the United States should frighten every friend of individual liberty. Under our system of government, unelected Executive Branch officers and intelligence agency personnel are supposed to answer to the person elected by the people – the President – and not the other way around. This is not a Democratic or a Republican issue; it is a matter of having a government responsible to the people – and, again, not the other way around. In the partisan commotion surrounding the released Report, it would be well to remember that what can be done to a President can be done to any of us.

These leaks and this investigation also caused immense and continuing interference with the functioning of the Executive Branch. Our constitution makes the President the sole
constitutional officer “for whom the entire Nation votes, and [who] represent[s] the entire Nation both domestically and abroad.” *Clinton v. Jones*, 520 U.S. 681, 711 (1997) (Breyer, J., concurring). As a result, “[i]nterference with a President’s ability to carry out his public responsibilities is constitutionally equivalent to interference with the ability of the entirety of Congress, or the Judicial Branch, to carry out its public obligations.” *Id.* at 713. It is inarguable that the now-resolved allegation of “Russian collusion” placed a cloud over the Presidency that has only begun to lift in recent weeks. The pendency of the SCO investigation plainly interfered with the President’s ability to carry out his public responsibility to serve the American people and to govern effectively. These very public and widely felt consequences flowed from, and were fueled by, improper disclosures by senior government officials with access to classified information. That this continues to go largely unremarked should worry all civil libertarians, all supporters of investigative due process, and all believers in limited and effective government under the Constitution.

I respectfully ask you to include a copy of this letter in the Department’s records relating to the SCO investigation.

Sincerely,

Emmet T. Flood

*Special Counsel to the President*

The main findings are summarized below. To find full quotes from the report see the QUOTES section which follows, or the actual report.

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<thead>
<tr>
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<tbody>
<tr>
<td>1</td>
<td>Russian interference in the 2016 US election was an absolute and firm conclusion of the report.</td>
<td>“The Russian government interfered in the 2016 presidential election in sweeping and systematic fashion.”</td>
<td>1</td>
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| 2              | Conspiracy was not established.                                          | “…we applied the framework of conspiracy law, not the concept of ‘collusion.’ …collusion is not a specific offense or theory of liability found in the US Code…”  
|                |                                                                         | “…the investigation did not establish that members of the Trump Campaign conspired or coordinated with the Russian government in its election interference activities.” | 2                                 |
| 3              | The campaign of Donald Trump showed interest in possible derogatory information about Trump’s opponent. | “The presidential campaign of Donald J. Trump showed interest in WikiLeak’s release of the documents and welcomed their potential to damage candidate Clinton…”  
<p>|                |                                                                         | “On June 9, 2016, a Russian lawyer met with senior Trump Campaign officials Donald Trump Jr., Jared Kushner, and campaign chairman Paul Manafort to deliver what the email proposing the meeting had described as ‘official documents and information that would incriminate Hillary.’ …the Campaign anticipated receiving information from Russia that could assist candidate Trump’s electoral prospects, but the…presentation did not provide such information…On July 31…the FBI opened an investigation into potential coordination between the Russian government and individuals associated with the Trump Campaign.” | 5                                 |
| 4              | The US retaliated for Russian interference in the election.             | “On December 29, 2016, then-President Obama imposed sanctions on Russia for having interfered in the election.” | 7                                 |
| 5              | Michael Flynn tried to intervene in the sanctions before Trump took office, which is illegal. | “Incoming National Security Advisor Michael Flynn called Russian Ambassador Sergey Kislyak and asked Russian not to escalate the situation in response to the sanctions.” | 7                                 |
| 6 | Trump tried to intervene with the investigation into Russian election interference. | “President Trump reacted negatively to the Special Counsel’s appointment….he…sought to have Attorney General Sessions unrecuse from the Russian investigation and to have the Special Counsel removed, and engaged in efforts to curtail the Special Counsel’s investigation and prevent the disclosure of information to it, including through public and private contacts with potential witnesses.” | 8 |
| 7 | No one in the Trump Campaign was criminally charged with conspiracy with Russia. | “…while the investigation identified numerous links between individuals with ties to the Russian government and individuals associated with the Trump campaign, the evidence was not sufficient to support criminal charges.” | 9 |
| 8 | However, members of the Trump Campaign were charged with crimes. | “…the investigation established that several individuals affiliated with the Trump Campaign lied to the Office [of the Special Counsel], and to Congress, about their interactions with Russian-affiliated individuals and related matters. Those lies materially impaired the investigation of Russian election interference.” | 9 |
| 9 | Many people helped disseminate false information from Russian sources. | “…numerous high-profile US persons, including former Ambassador Michael McFaul, Roger Stone, Sean Hannity, and Michael Flynn Jr. re-tweeted or responded to tweets posted to these IRA (Russian Internet Research Agency) controlled accounts.” | 28 |
| 10 | Trump may have known about the emails that were stolen from the Democrats. | “On July 27, 2016, GRU (a Russian intelligence organization) targeted email accounts connected to candidate Clinton’s personal office. Earlier that day Trump made public statements that included the following: ‘Russia, if you’re listening I hope you’re able to find the 30,000 emails that are missing.”’ | 49 |
| 11 | The Access Hollywood tapes featured lewd statements about women by Trump. | “On October 17, 2016…The Washington Post published an Access Hollywood video that captured comments by candidate Trump some years earlier that was expected to adversely affect his Campaign.” | 58 |
| 12 | There were other meetings between Russians and Trump officials before the election. | “Oknyasky and Stone set up a May 2016 in-person meeting…Rasin offered to sell Stone derogatory information on Clinton…Stone refused the offer, stating that Trump would not pay for opposition research.” “The Office identified multiple contacts…between Trump Campaign officials and individuals with ties to the Russian government…the investigation examined whether these contacts involved or resulted in | 61 |</p>
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<tr>
<td><strong>13</strong></td>
<td>Trump explored business deals with Russia before the election.</td>
<td>“Between at least 2013 and 2016, the Trump Organization explored a...licensing deal in Russia involving the construction of a Trump-branded property in Moscow.”</td>
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<td><strong>14</strong></td>
<td>What was the Trump Tower meeting and did Trump know about it?</td>
<td>“On June 9, 2016, senior representatives of the Trump Campaign met in Trump Tower with a Russian attorney expecting to receive derogatory information about Hillary Clinton...[prior to the meeting] Trump Jr. immediately responded that ‘if it’s what you say I love it,’ and arranged for the meeting through a series of emails and telephone calls....According to written answers submitted by President Trump, he has no recollection of learning of the meeting at the time, and the Office found no documentary evidence that he was made aware of the meeting.” “Michael Cohen recalled being in Donald J. Trump’s office on June 6 or 7 when Trump Jr. told his father that a meeting to obtain adverse information about Clinton was going forward.”</td>
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<td><strong>15</strong></td>
<td>There were other connections between the Trump Campaign and the Russians.</td>
<td>“Trump Campaign officials met with Russian Ambassador Sergey Kislyak during the week of the Republican National Convention.” “Paul Manafort served on the Trump Campaign, including a period as campaign chairman....Manafort had connections to Russia through his prior work for Russian oligarch Oleg Deripaska and later through his work for a pro-Russian regime in Ukraine....Manafort instructed Rick Gates [an employee]...to provide Kilimnik [a Kiev employee of his] with updates on the Trump campaign, including internal polling data.”</td>
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<td><strong>16</strong></td>
<td>There were other types of Russian influences on the Trump Campaign.</td>
<td>“In preparation for the 2016 Convention, foreign policy advisors to the Trump Campaign...discussed toning down language from the 2012 platform that identified Russia as the country’s number one threat.” “Manafort also twice met Kilimnik in the US during the campaign period and conveyed campaign information...”</td>
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<td><strong>17</strong></td>
<td>A connection between Manafort’s sharing data and</td>
<td>“The office did not identify a connection between Manafort’s sharing polling data and Russia’s interference in the election.”</td>
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<td>Event</td>
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<td>18</td>
<td>Despite Russian attempts to contact the Trump</td>
<td>“The investigation did not establish that these efforts reflected or constituted coordination</td>
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<td></td>
<td>Campaign right after the election, no coordination was found.</td>
<td>between the Trump Campaign and Russian in its election interference activities.”</td>
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<td>19</td>
<td>Communication between the Trump campaign and Russia continued after the election and before the inauguration, but no illegal activity was found.</td>
<td>“December 13, 2016…Kushner did not recall any discussion during his meeting with Gokov [head of Russian bank] about the sanctions.”</td>
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<td>20</td>
<td>No evidence was found that Trump directed Michael Flynn in his interactions with Russia after the election but while Obama was still President, which may have been illegal.</td>
<td>“Michael Flynn…dealt with Russia on two sensitive matters during the transition period…the investigation did not identify evidence that the President-Elect asked Flynn to make any request to [Russian Ambassador] Kislyak”</td>
</tr>
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<td>21</td>
<td>Trump did not approve of the sanctions that were imposed on Russia by Obama.</td>
<td>“When asked about imposing sanctions on Russia for its alleged interference in the 2016 presidential election, President Trump told the media, ‘I think we ought to get on with our lives.’”</td>
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<td>22</td>
<td>Trump continually denied that Russians were behind the election hacking.</td>
<td>“President-elect Trump asked McFarland if the Russians did ‘it,’ meaning the intrusions intended to influence the presidential election. McFarland said yes, and Trump expressed doubts that it was the Russians.”</td>
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<td>23</td>
<td>Some Russians were charged with obstruction, but no Trump Campaign officials were indicted for conspiring with them.</td>
<td>“On February 16, 2018, a federal grand jury in the District of Columbia returned an indictment charging 13 Russian nationals and three Russian entities…with violating US criminal laws in order to interfere with US elections and political processes.” “…the indictment does not charge any Trump Campaign official or any other US person with participating in the conspiracy.”</td>
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<td>24</td>
<td>Paul Manafort, Rick Gates, and Michael Flynn were charged with working for foreign governments without registering under FARA. No evidence was found to indict anyone from the Trump campaign for this charge.</td>
<td>“The investigation uncovered extensive evidence that Paul Manafort’s and Rick Gates’ pre-campaign work for the government of Ukraine violated FARA…violations involving Michael Flynn…concerned…Turkey…the investigation did not…yield evidence sufficient to sustain any charge that any individuals affiliated with the Trump acted as an agent of a foreign principle…”</td>
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<td>25</td>
<td>There was not sufficient evidence found to charge</td>
<td>“The Office determined that the evidence was not sufficient to charge either incident”</td>
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<td>Page</td>
<td>Event Description</td>
<td>Details</td>
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<td>26</td>
<td>George Papadopoulos [Trump advisor] was charged with lying to the FBI.</td>
<td>“On January 27, 2017, George Papadopoulos agreed to be interviewed by FBI agents… [He] lied about the timing, extent and nature of his communication with [Russian representatives].”</td>
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<td>27</td>
<td>Michael Flynn was charged with lying to the FBI.</td>
<td>“Michael Flynn agreed to be interviewed by the FBI on January 24, 2017, four days after he assumed his duties as National Security Advisor to the President. During the interview, Flynn made several false statements pertaining to his communication with the Russian ambassador.”</td>
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<tr>
<td>28</td>
<td>Michael Cohen was charged with lying to Congress and sentenced to prison.</td>
<td>“[Michael] Cohen stated that the Trump Tower Moscow project had ended in January, 2016….Cohen represented that he never traveled to Moscow in connection with the project and never considered asking Trump to travel for the project….Cohen stated that he did not recall any Russian government contact about the project.” “Each of the foregoing representations in Cohen’s two-page statement was false and misleading.”</td>
</tr>
<tr>
<td>29</td>
<td>Jeff Sessions was not charged.</td>
<td>“…while a US Senator and a Trump Campaign advisor, Jeff Sessions interacted with Russian Ambassador Kislyak during the week of the Republican National Convention in July, 2016, and also at a meeting in Session’s Senate office in September, 2016.” “…Sessions answered ‘no’ to a question asking whether he had ‘been in contact with anyone connected to any part of the Russian government about the 2016 election, either before or after election day.’ …the evidence was not sufficient to establish that Sessions gave knowingly false answers to Russia-related questions in light of the wording and context of those questions.”</td>
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<tr>
<td>1</td>
<td>This second part of the investigation is about possible Obstruction of Justice (that came up during the investigation of possible conspiracy between the Trump Campaign and Russians) during and after the 2016 Presidential campaign.</td>
<td>“Beginning in 2017, the President of the United States took a variety of actions toward 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.”</td>
<td>1</td>
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<td>2</td>
<td>Indicting a sitting President violates the rules of the Office of Legal Counsel, but an investigation into possible criminal behavior is permissible. A President can be prosecuted for crimes committed before or during time in office. Other persons can be charged with crimes at any time.</td>
<td>“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….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. The OLC opinion also recognizes that a President does not have immunity after he leaves office. And if individuals other than the President committed an obstruction offense, they may be prosecuted at this time.”</td>
<td>1</td>
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<td>3</td>
<td>Trump lied publicly about having business in Russia.</td>
<td>“Trump…denied having any business in or connections to Russia, even though as late as June 2016 the Trump Organization has been pursuing a licensing deal for skyscraper to be built in Russia called Trump Tower Moscow.”</td>
<td>3</td>
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<td>4</td>
<td>Trump privately told FBI Director James Comey that he needed loyalty.</td>
<td>“On January 27, the day after the President was told that Flynn had lied to the Vice-President and had made similar statements to the FBI, the President invited FBI Director Comey to a private dinner at the White House and told Comey that he needed loyalty.”</td>
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<td>5</td>
<td>Trump asked Comey not to prosecute Flynn for lying.</td>
<td>“On February 14… the President said, ‘I hope you can see your way clear to letting this go, to letting Flynn go.’”</td>
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<td>6</td>
<td>Trump asked the Deputy National Security Advisor to draft a letter stating that he had not directed Michael Flynn to discuss sanctions with the Russian Ambassador before Trump was President. She declined.</td>
<td>“Shortly after requesting Flynn’s resignation and speaking privately to Comey, the President sought to have Deputy National Security Advisor K.T. McFarland draft an internal letter stating that the President had not directed Flynn to discuss sanctions with Kislyak. McFarland declined because she thought that the request would look like a quid pro quo for an ambassadorship she had been offered…”</td>
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<td>7</td>
<td>Jeff Sessions decided that he had to recuse from the investigation because he had been a part of Trump’s Campaign. Trump told White House Counsel Don McGahn to stop Sessions from recusing.</td>
<td>“In February 2017, Attorney General Jeff Sessions began to assess whether he has to recuse himself from the campaign-related investigations because of his role in the Trump Campaign. In early March, the President told White House Counsel Donald McGahn to stop Sessions from recusing.”</td>
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<td>8</td>
<td>Comey disclosed in March that the President’s Campaign would be included in the investigation of Russian meddling in the election.</td>
<td>“In late March, Comey publicly disclosed at a congressional hearing that the FBI was investigating ‘the Russian government’s efforts to interfere in the 2016 presidential election, including any links or coordination between the Russian government and the Trump campaign.’”</td>
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<td>9</td>
<td>James Comey was fired as FBI Director on May 9, 2017. The reason given was that he had mishandled the Hillary Clinton email investigation. But the investigation showed that the firing decision had been made before that.</td>
<td>“The day of the firing [May 9], the White House maintained that Comey’s termination resulted from independent recommendation from the Attorney General and Assistant Attorney General that Comey should be discharged for mishandling the Hillary Clinton email investigation. But the President had decided to fire Comey before hearing from the Department of Justice.”</td>
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<td>10</td>
<td>Trump told Russian officials that pressure had been taken off by firing Comey.</td>
<td>“The day after firing Comey, the President told Russian officials that he ‘had faced great pressure because of Russia,’ which had been ‘taken off’ by Comey’s firing.”</td>
<td></td>
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<td>11</td>
<td>Trump acknowledged in a TV interview that he fired Comey because of the “Russia Thing.”</td>
<td>“The next day, the President acknowledged in a television interview that he was going to fire Comey regardless of the Department of Justice’s recommendation.”</td>
<td></td>
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<td>12</td>
<td>On May 17, 2017, the Acting Attorney General, Rod Rosenstein, appointed a Special Counsel to investigate Russian</td>
<td>“On May 17, 2017, the Acting Attorney General for the Russia Investigation appointed a Special Counsel to conduct the investigation and related matters.”</td>
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<td>13</td>
<td>The media then reported that the President also was being investigated.</td>
<td>“On June 14, 2017, the media reported that the Special Counsel’s Office was investigating whether the President had obstructed justice.” 4</td>
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<td>14</td>
<td>On June 17, the President tried to have the Special Counsel removed.</td>
<td>“On June 17, 2017, the President called McGahn at home and directed him to call the Acting Attorney General and say that the Special Counsel had conflicts of interest and must be removed. McGahn did not carry out the direction.” 4</td>
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<td>15</td>
<td>The next day, the President again tried to get Jeff Sessions to unrecuse from the investigation.</td>
<td>“On June 18, 2017, the President met one-on-one in the Oval Office with his former campaign manager Corey Lewandowski…and dictated a message for Lewandowski to deliver to Sessions. The message said that Sessions should publicly announce that…the investigation was ‘very unfair’ to the President…and Sessions planned to meet with the Special Counsel and ‘let [him] move forward with investigating election meddling for future elections.’” 5</td>
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<td>16</td>
<td>The President directed aides not to discuss emails setting up a meeting between his Campaign and a Russian representative who offered derogatory information on Hillary Clinton.</td>
<td>“In the summer of 2017, the President learned that media outlets were asking questions about the June 9, 2016 meeting at Trump Tower between senior campaign officials, including Donald Trump, Jr., and a Russian lawyer who was said to be offering damaging information about Hillary Clinton as ‘part of Russia and its government’s support for Mr. Trump.’ On several occasions, the President directed aides not to publicly disclose the emails setting up the June 9 meeting.” 5</td>
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<td>17</td>
<td>The President edited a press statement about the meeting to make it appear that it only was about Russian adoptions.</td>
<td>“Before the meeting became public, the President edited a press statement for Trump Jr. by deleting a line that acknowledged that the meeting was with ‘an individual who [Trump Jr.] was told might have information helpful to the campaign’ and instead said only that the meeting was about adoptions of Russian children. When the press asked questions about the President’s involvement in Trump Jr.’s statement, the President’s personal lawyer repeatedly denied the President had played any role.” 5</td>
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<td>18</td>
<td>The President at first praised Michael Cohen when he minimized Trump’s involvement in the Moscow</td>
<td>“The President’s conduct toward Michael Cohen, a former Trump Organization executive, changed from praising Cohen for when he falsely minimized the President’s 6</td>
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Project, but castigated him after he began cooperating with the investigation.

involvement in the Trump Tower Moscow project, to castigation of Cohen when he became a cooperating witness….In 2017, Cohen provided false testimony to Congress about the project, including stating that he only briefed Trump on the project three times and never discussed travel to Russia with him, in an effort to adhere to a ‘party line’ that Cohen said was developed to minimize the President’s connection with Russia.”

19 Cohen discussed a pardon with the President’s personal counsel.

“Cohen…discussed pardons with the President’s personal counsel and believed that if he stayed on message he would be taken care of.”

20 The President was not implicated in conspiring with Russia on election interference.

“Unlike cases in which a subject engages in obstruction of justice to cover up a crime, the evidence we obtained did not establish that the President was involved in an underlying crime related to Russian interference.”

21 The investigation entered a second phase of Obstruction of Justice on the part of the President after he fired James Comey.

“Soon after the firing of Comey and the appointment of the Special Counsel, however, the President became aware that his own conduct was being investigated in an obstruction-or-justice inquiry. At that point, the President engaged in a second phase of conduct, involving public attacks on the investigation, non-public efforts to control it, and efforts in both public and private to encourage witnesses not to cooperate with the investigation.”

22 The President’s Personal Counsel wrote a letter to the Attorney General stating that Special Counsel report was basically flawed because “It quite deliberately fails to comply with the requirements of governing law.” Mueller disputes this view. [The letter is included.]

“The President’s counsel raised statutory and constitutional defenses to a possible obstruction-of-justice analysis of the conduct we investigated. We concluded that none of those legal defenses provided a basis for declining to investigate the facts.”

23 Since the President is the exception to the rule that evidence from an investigation is presented to a grand jury to indict, it is up to Congress to determine if the charges are serious

“The conclusion is 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….Accordingly, while this report does not conclude that the President concluded a crime, it also does not exonerate him.”
There are three basic elements required to prove obstruction-of-justice. “Three basic elements are common to most of the relevant obstruction statutes: (1) an obstructive act; (2) a nexus between the obstructive act and an official proceeding; (3) a corrupt intent.”

Investigative and Evidentiary Considerations
After the appointment of the Special Counsel, this Office obtained evidence about the following events relating to potential issues of obstruction of justice involving the President:

(a) The President’s January 27, 2017 dinner with former FBI Director James Comey in which the President reportedly asked for Comey’s loyalty, one day after the White House had been briefed by the Department of Justice on contacts between former National Security Advisor Michael Flynn and the Russian Ambassador;

(b) The President’s February 14, 2017 meeting with Comey in which the President reportedly asked Comey not to pursue an investigation of Flynn;

(c) The President’s private requests to Comey to make public the fact that the President was not the subject of an FBI investigation to lift what the President regarded as a cloud;

(d) The President’s outreach to the Director of National Intelligence and the Directors of the National Security Agency and the Central Intelligence Agency about the FBI’s Russia Investigation;

(e) The President’s stated rationales for terminating Comey on May 9, 2017, including statements that could reasonably be understood as acknowledging that the FBI’s Russia investigation was a factor in Comey’s termination; and

(f) The President’s reported involvement in issuing a statement about the June 9, 2016 Trump Tower meeting between Russians and senior Trump Campaign officials that said the meeting was about adoption, and omitted that the Russians had offered to provide the Trump Campaign with derogatory information about Hillary Clinton.
“…we determined that there was a sufficient factual and legal basis to further investigate potential obstruction-of-justice issues involving the President.”

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<td>The President agreed only to answer written questions of investigators, not to submit to an interview.</td>
<td>“We also sought a voluntary interview with the President. After more than a year of 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 question on obstruction topics or questions on events during the transition.”</td>
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<td>27</td>
<td>Trump publicly denied having any business in Russia and publicly doubted that Russia was involved in election hacks while he actually did have Russian business interests and he sought information about damaging leaks to Clinton.</td>
<td>“Trump responded to questions about possible connections to Russia by denying any business involvement in Russia – even though the Trump Organization had pursued a business project in Russia as late as June 2016. Trump also expressed skepticism that Russia had hacked the emails at the same time as he and other Campaign advisors privately sought information about any further planned WikiLeaks releases.”</td>
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<td>28</td>
<td>Trump praised Putin and promised better relations with Russia from the beginning of his campaign in June, 2015.</td>
<td>“On June 16, 2015, Donald J. Trump declared his intent to seek nomination as the Republican candidate for President. By early 2016, he distinguished himself among Republican candidates by speaking of closer ties with Russia, saying he would get along well with Russian President Vladimir Putin, questioning whether the NATO alliance was obsolete, and praising Putin as a ‘strong leader.’”</td>
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<td>The press reported that Trump advisors had ties to Russia.</td>
<td>“Beginning in February 2016 and continuing through the summer, the media reported that several Trump campaign advisors appeared to have ties to Russia. For example, the press reported that campaign advisor Michael Flynn was seated next to Vladimir Putin at a RT [Russian Times] gala in Moscow in December 2015 and that Flynn had appeared regularly on RT as an analyst. The press also reported that foreign policy advisor Carter Page had ties to a Russian state-run gas company, and that chairman Paul Manafort had done work for the ‘Russian-backed former Ukrainian president Viktor Yanukovych.’”</td>
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<td>In early 2016, the Clinton Campaign announced that it had been hacked.</td>
<td>“…Hillary Clinton’s campaign manager publicly contended that Russia had hacked the DNC emails and arranged their release in order to help candidate Trump.”</td>
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<td>Trump publicly denied that Russia had hacked the emails of his opponent while congratulating Russia at the same time.</td>
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<td>“In the days that followed WikiLeaks’ July 22, 2016 release of hacked DNC emails, the Trump Campaign publicly rejected suggestions that Russia was seeking to aid candidate Trump. … [Trump] ‘Russia, if you’re listening, I hope you’re able to find the 30,000 emails that are missing.’”</td>
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<td>While Russian was under US sanction for the invasion of Crimea, Trump stated that he would consider lifting those sanctions.</td>
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<td>“Trump also said that ‘there’s nothing that I can think of that I’d rather do than have Russia friendly as opposed to the way they are right now,’ and in response to a question about whether he would recognize Crimea as Russian territory and consider lifting sanctions, Trump replied, ‘We’ll be looking at that.’”</td>
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<td>He also continued repeating that he had no business interests in Russia.</td>
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<td>“During the press conference Trump repeated ‘I have nothing to do with Russia’ five times….The Trump organization, however, had been pursuing a building project in Moscow…from approximately September 2015 through June 2016, and the candidate was regularly updated on developments, including possible trips by Michael Cohen to Moscow to promote the deal and by Trump himself to finalize it.”</td>
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<td>According to Russian officials, they were in continual contact with the Trump Campaign.</td>
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<td>“On November 8, 2016, Trump was elected President. Two days later, Russian officials told the press that the Russian government had maintained contacts with Trump’s ‘immediate entourage’ during the campaign.”</td>
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<td>Comey briefed Trump about the Steele “Dossier,” and told him he wasn’t under investigation.</td>
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<td>“On January 6, 2017…intelligence officials briefed President-Elect Trump and the incoming Administration on the intelligence committee’s assessment that Russia had interfered in the 2016 presidential election. When the briefing concluded, Comey spoke with the President-Elect privately to brief him on unverified, personally sensitive allegations compiled by [Christopher] Steele….Comey recalled that the President-Elect seemed defensive, so Comey decided to assure him that the FBI was not investigating him personally.”</td>
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<td>Congress began investigating the Russian interference.</td>
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<td>“In the following weeks, three Congressional committees opened investigations to examine Russia’s interference in the election and see whether the Trump Campaign had colluded with Russia.”</td>
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<td>37</td>
<td>The FBI Deputy Director provided information to the White House about Flynn’s</td>
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|      | “FBI Deputy Director Andrew McCabe, who provided the White House officials access to the information [about the Flynn phone calls]
phone calls to Russia that involved discussing sanctions. and was present when they reviewed it, recalled the White House official asking him whether Flynn’s conduct violated the Logan Act….After reviewing the materials and talking with Flynn, McGahn and Priebus concluded that Flynn should be terminated and recommended that course of action to the President.”

38 The President asked Comey to not prosecute Flynn after he had been fired. “According to Comey’s account of the meeting, the President began the conversation by saying: ‘I want to talk about Mike Flynn.’ The President stated that Flynn had not done anything wrong in speaking with the Russians, but had to be terminated because he misled the Vice President….The President stated: ‘I hope you can see your way clear to letting this go, to letting Flynn go...’”

39 The President sought to have a message sent to Flynn to “stay strong.” “In March or early April, the President asked McFarland to pass a message to Flynn telling him the President felt bad for him and he should stay strong.”

40 The President tried again to send word to Comey to end the investigation. “According to senior ODNI (Office of the Director of National Intelligence) official Michael Dempsey, Coats said after the meeting that the President has brought up the Russia investigation and asked him to contact Comey to see if there was a way to get past the investigation, get it over with, end it, or words to that effect.”

41 The President asked Comey on a number of occasions to announce that he was not under investigation. “On March 30 and April 11, against the advice of White House advisors who had informed him that any direct contact with the FBI could be perceived as improper interference in the ongoing investigation, the President made personal outreaches to Comey asking him to ‘lift the cloud’ of the Russia investigation by making public the fact that the President was not under investigation.”

42 The President fired Comey on May 9, 2017, and tried to suggest that a letter from Rod Rosenstein justified it, but Rosenstein did not buy into that. “The President then called Rosenstein directly and said…he wanted Rosenstein to do a press conference. Rosenstein responded that this was not a good idea because if the press asked him, he would tell the truth that Comey’s firing was not his idea.”

43 The next day, Trump celebrated the firing of Comey with two Russians, claiming that would end the investigation. “On the morning of May 10, 2017, President Trump met with Russian Foreign Minister Segey Lavrov and Russian Ambassador Sergey Kislyak …’I just fired the head of the FBI. He was a crazy, a real nut job. I faced great...”
The Special Counsel weighs in on whether firing Comey constitutes Obstruction of Justice.

“The Special Counsel weighs in on whether firing Comey constitutes Obstruction of Justice. That’s taken off…I’m not under investigation.”

The President’s claim that he fired Comey because of the recommendations of Rosenstein or poor morale in the FBI was not based on reality.

“The President’s claim that he fired Comey because of the recommendations of Rosenstein or poor morale in the FBI was not based on reality. Rosenstein articulated his criticism of Comey’s handling of the Clinton investigation after the President had already decided to fire Comey. The President’s draft termination letter also stated that morale in the FBI was at an all time low and Sander’s told the press after Comey’s termination that the White House had heard from ‘countless’ FBI agents who had lost their confidence in Comey. But the evidence does not support those claims.”

The President was upset when the Special Counsel was appointed and asked Sessions to resign because he hadn’t protected him. Trump’s advisors said that his claim that the Special Counsel had conflicts of interest was “ridiculous.”

“The President was upset when the Special Counsel was appointed and asked Sessions to resign because he hadn’t protected him. Trump’s advisors said that his claim that the Special Counsel had conflicts of interest was “ridiculous.” The Acting Attorney General appointed a Special Counsel on May 17, 2017, prompting the President to state that it was the end of his presidency and that Attorney General Sessions had failed to protect him and should resign. Sessions submitted his resignation, which the President ultimately did not accept. The President told senior advisors that the Special Counsel had conflicts of interest, but they responded that those claims were ‘ridiculous’ and posed no obstacle to the Special Counsel’s service.”

Comey testified before Congress that he was asked to show loyalty and to “let Flynn go” by the President.

“Comey testified before Congress that he was asked to show loyalty and to “let Flynn go” by the President. On June 8, 2017, Comey testified before Congress about his interactions with the President before his termination, including the request for loyalty, the request that Comey ‘let Flynn go,’ and the request that Comey ‘lift the cloud’ over the presidency caused by the ongoing investigation.”

Trump called his attorney and directed him to have the Special Counsel removed.

“Trump called his attorney and directed him to have the Special Counsel removed. On Saturday, June 17, the President called McGahn and directed him to have the Special Counsel removed….McGahn was perturbed by the call and did not intend to act on the request.”

Trump denied that he had directed McGahn to fire the Special Counsel.

“Trump denied that he had directed McGahn to fire the Special Counsel. “…after the media reported on the President’s actions, he denied that he ever ordered McGahn to have the Special Counsel terminated and made repeated efforts to have McGahn deny the story.”
<p>| 50 | Failing to fire the Special Counsel, Trump tried to limit the scope of the investigation to future elections. | “On June 19, 2017 the President meet one-on-one with Corey Lewandowski in the Oval Office and dictated a message to be delivered to Attorney General Sessions that would have the effect of limiting the Russia investigation to future election interference only.” | 90 |
| 51 | Evidence turned up showing that Sessions had lied about speaking about campaign matters with the Russian ambassador. | “On July 21, 2017, the Washington Post reported that the US intelligence intercepts shows that Sessions had discussed campaign-related matters with the Russian ambassador, contrary to what Sessions had said publicly.” | 94 |
| 52 | Trump’s efforts to limit the investigation points to obstruction. | “The President’s effort to send Sessions a message through Lewandowski would qualify as an obstructive act if it would naturally obstruct the investigation ….Substantial evidence indicates that the President’s effort to limit the scope of the Special Counsel’s investigation to future election interference was intended to prevent further investigative scrutiny of the President’s and his campaign’s conduct.” | 97 |
| 53 | Trump’s continually acting in secrecy, away from official channels, is more evidence of obstruction of justice. | “The manner in which the President acted provides additional evidence of his intent. Rather than rely on official channels, the President met with Lewandowski alone in the Oval Office. The President selected a loyal “devotee” outside the White House to deliver the message [to fire the Special Counsel], supporting an inference that he was working outside the White House channels, including McGahn, who had previously resisted contacting the Department of Justice about the Special Counsel. The President also did not contact the Acting Attorney General, who had just testified publicly that there was no cause to remove the Special Counsel.” | 98 |
| 54 | Trump did not want to be told any details about the Trump Tower meeting. He was told that the meeting was about Russian adoptions and didn’t inquire further. | “Hicks said she wanted to get in front of the story and have Trump Jr. release the emails as part of the interview with ‘softball questions.’ The President said he did not want to know about it and they should not go to the press….Hicks recalled that the President asked her what the meeting had been about and she said she had been told the meeting was about Russian adoption. The President responded, ‘then just say that.’” | 101 |
| 55 | The press release by Donald Jr. stated only that adoptions were discussed. | “It was a short introductory meeting….We primarily discussed a program about the adoption of Russian children that was active | 103 |
| 56 | The President defended the Trump Tower meeting in a press conference. | “As I’ve said – most other people, you know, when they call up and say, ‘By the way, we have information on your opponent,’ I think most politicians…. ‘Who wouldn’t have taken a meeting like that?’” | 105 |
| 57 | Trump continued to try to get Sessions to unrecuse for about one year and a half. | “On multiple occasions in 2017, the President spoke with Sessions about reversing his recusal so that he could take over the Russia investigation and begin an investigation and prosecution of Hillary Clinton. The duration of the President’s efforts – which spanned from March 2017 to August 2018 – and the fact that the President repeatedly criticized Sessions in public and private for failing to tell the President that he would have to recuse is relevant to assessing whether the President’s efforts to have Sessions unrecuse could qualify as obstructive acts.” | 112 |
| 58 | Trump’s repeated attempt to have Sessions “protect” him could be seen as obstruction. | “A reasonable inference from those statements and the President’s actions is that the President believed that an unrecused Attorney General would play a protective role and could shield the President from the ongoing Russia investigation.” | 113 |
| 59 | Trump asked his personal attorney to lie in a statement that Trump had not asked him to fire the Special Counsel. | “On January 26, 2018, the President’s personal counsel called McGahn’s attorney and said that the President wanted McGahn to put out a statement denying that he had been asked to fire the Special Counsel and that he had threatened to quit in protest. McGahn’s attorney spoke with McGahn about that request and then called the President’s personal counsel to relay that McGahn would not make a statement.” | 114 |
| 60 | Trump tried to deny he had ordered McGahn to fire Mueller by saying he never used the word “fire.” | “…when the President spoke with McGahn in the Oval Office, he focused on whether he had used the word ‘fire.’ The President’s assertion…that he had never directed McGahn to have the Special Counsel removed thus runs counter to the evidence.” | 118 |
| 61 | The request to fire Mueller may amount to obstruction if it meets one of the criteria which is that it affected the investigation. | “To establish a nexus [connection to an official proceeding], it would be necessary to show that the President’s actions would have the natural tendency to affect such a proceeding [investigation] or that they would hinder, delay, or prevent the communication of information to investigators.” | 119 |</p>
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<td>Trump took numerous steps to influence the possible testimony of a number of key witnesses.</td>
<td>“In addition to the interactions with McGahn described above, the President has taken other actions directed at possible witnesses in the Special Counsel’s investigation, including Flynn, Manafort, and as described in the next section, Cohen.”</td>
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<td>63</td>
<td>Manafort was under the impression that he had been promised a pardon.</td>
<td>“In January 2018, Manafort told Gates that he had talked to the President’s personal counsel and they were ‘going to take care of us.’ …Gates asked Manafort outright if anyone mentioned pardons and Manafort said no one used that word.” “Immediately following the revocation of Manafort’s bail, the President’s personal lawyer, Rudolph Giuliani, gave a series of interviews in which he raised the possibility of a pardon for Manafort.”</td>
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<td>Trump continually tweeted that the trial of Manafort was unfair in a possible effort to influence the jury.</td>
<td>“On July 31, 2018, Manafort’s criminal trial began in the Eastern District of Virginia, generating substantial news coverage. The next day, the President tweeted, ‘This is a terrible situation and Attorney General Jeff Sessions should stop this Rigged Witch Hunt right now, before it continues to stain our country any further. Bob Mueller is totally conflicted, and his 17 angry democrats that are doing his dirty work are a disgrace to USA.’ “On August 17, as jury deliberations continued, the President commented on the trial from the South Lawn of the White House…the President twice called the Special Counsel’s investigation a ‘rigged witch hunt.’”</td>
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<td>Manafort may have lied because he thought he would get a pardon from the President.</td>
<td>“On November 26, the Special Counsel’s Office disclosed a public court filing that Manafort had breached his plea agreement by lying about multiple subjects.” “With respect to Manafort, there is evidence that the President’s actions had the potential to influence Manafort’s decision whether to cooperate with the government. The President and his personal counsel made repeated statements suggesting that a pardon was a possibility for Manafort.” “Evidence concerning the President’s conduct towards Manafort indicates that the President intended to encourage Manafort to not cooperate with the government.”</td>
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<td>Cohen lied to Congress about the Trump Tower</td>
<td>“On October 24 and 25, 2017, Cohen testified before Congress and repeated the false</td>
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Moscow timing repeating false statements made previously. He was in touch with the President’s personal counsel during that time.

statements he had included in his written statement about Trump Tower Moscow. Phone records show that Cohen spoke with the President’s personal counsel immediately after his testimony on both days.”

67 Cohen lied again when he stated that he had paid off a woman for Trump but was never reimbursed.

“On February 13, 2018, Cohen released a statement to news organizations that stated, ‘In a private transaction in 2016, I used my own personal funds to facilitate a payment of $130,000 to [the woman]. Neither the Trump Organization nor the Trump campaign was a party to the transaction with [the woman] and neither reimbursed me for the payment, either directly or indirectly.’”

68 Trump called Cohen to reassure him after his house had been searched.

“A few days after the searches [of Cohen’s home] the President called Cohen. 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.’”

69 Cohen also made a second payment to a woman for Trump.

“Beginning on July 20, 2018, the media reported on the existence of a recording Cohen had made of a conversation he had with candidate Trump about a payment made to a second woman who said she had an affair with Trump.”

70 Trump had to admit that he did have business in Moscow after Cohen was sentenced.

“I decided not to do the project…There would have been nothing wrong if I did do it…I was focused on running for President…There was a good chance that I wouldn’t have won, in which case I would’ve gone back into the business.”

71 Trump denied any responsibility for the charges on which Cohen was sentenced.

“I never directed Michael Cohn to break the law…Those charges were just agreed to by him in order to embarrass the president and get a reduced prison sentence…”

72 There is no proof that Trump directed Cohen to lie.

“…while there is evidence…that the President knew Cohen provided false testimony to Congress about the Trump Tower Moscow project, the evidence available to us does not establish that the President directed or aided Cohen’s false testimony.”

73 Multiple incidents were found during the investigation that pointed to obstruction of justice by the President.

“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. The incidents were often carried out through one-on-one meetings in which the President sought to use his official
power outside of the usual channels. These actions ranged from efforts to remove the Special Counsel and to reverse the effect of the Attorney General’s recusal; to the attempted use of official power to limit the scope of the investigation; to direct and indirect contacts with witnesses with the potential to influence their testimony.”

<p>| 74 | The President did not succeed in many of his attempts to obstruct justice because his team refused to carry out his orders. | “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.” |
| 75 | The President’s personal counsel wrote a letter to claim that the President cannot obstruct justice because his actions are a part of his job [this letter is included]. | “The President’s personal counsel has written to this Office to advance statutory and constitutional defenses to the potential application of the obstruction-of-justice statutes to the President’s conduct….As a constitutional matter, the President’s counsel argued that the President cannot obstruct justice by exercising his constitutional authority to close Department of Justice investigations or terminate the FBI director….In analyzing counsel’s statutory arguments, we concluded that the President’s proposed interpretation of Section 1512(c)(2) is contrary to the litigating position of the Department of Justice and is not supported by principles of statutory construction.” |
| 76 | The Special Counsel rejects that argument because the actions taken to obstruct justice are illegal even if taken by a President. | “Article II of the Constitution does not categorically and permanently immunize the President from potential liability for conduct that we investigated. Rather, 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.” |
| 77 | Courts have upheld that view. | “Courts have not limited Section 1512(c)(2) to conduct that impairs evidence, but instead have read it to cover obstructive acts in any form…. [It] applies to corrupt acts – including by public officials – that frustrate commencement or conduct of a proceeding, and not just to acts that make evidence unavailable or impair its integrity.” |
| 78 | The President is immune to prosecution for laws while still in office but not once impeached. | “The President has no more right than other citizens to impede official proceedings by corruptly influencing witness testimony….Congress cannot reserve for itself the power of removal of an officer charged with |</p>
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<td>A President cannot claim that his actions taken for a corrupt purpose are lawful if they are taken in his own personal interest rather than for sound legal reasons. “A general ban on corrupt action does not unduly intrude on the President’s responsibility to ‘take Care that the Laws be faithfully executed.’ To the contrary, the concept of ‘faithful execution’ connotes the use of power in the interest of the public, not the office holder’s personal interests.”</td>
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<td>A President can be held liable for breaking the law after leaving office. “Under OLC’s opinion that a sitting President is entitled to immunity from indictment, only a successor administration would be able to prosecute a former President. But that consideration does not suggest that a President would have any basis for fearing abusive investigations or prosecutions after leaving office.”</td>
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<td>The Supreme Court has upheld, in the case of Nixon, Clinton and others, that the President is not immune to being held responsible for corruption. “In sum, contrary to the position taken by the President’s counsel, we concluded that, in the 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….And the protection of the criminal justice system from corrupt acts from any person – including the President – accord with the fundamental principle of our government that “[n]o [person] in this country is so high that he is above the law.” [US v. Lee; Clinton v. Jones; US v. Nixon].</td>
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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.

In late July, 2016, soon after WikiLeaks’ first release of stolen documents, a foreign government contacted the FBI about a May 2016 encounter with Trump Campaign foreign policy advisor George Papadopoulos. Papadopoulos had suggested to a representative of that foreign government that the Trump Campaign had received indications from the Russian government that it could assist the Campaign through the anonymous release of information damaging to Democratic presidential candidate Hillary Clinton. That information prompted the FBI on July 31, 2016, to open an investigation into whether individuals associated with the Trump Campaign were coordinating with the Russian government in its interference activities.

…After the election, in late December 2016, the US imposed sanctions on Russia for having interfered in the election. By early 2017, several congressional committees were examining Russia’s interference.

…(May, 2017) The order appointing the Special Counsel authorized him to investigate “the Russian government’s efforts to interfere in the 2016 presidential election,” including any links or coordination between the Russian government and individuals associated with the Trump Campaign.

… the Special Counsel’s investigation established that Russian interfered in the 2016 presidential election primarily 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 the 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 that 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.

In evaluating whether evidence about collective action of multiple individual constitute a crime, we applied the framework of conspiracy law, not the concept of "collusion."

…collusion is not a specific offense or theory of liability found in the US Code…For those reasons, the Office's focus in analyzing questions of joint criminal liability was on conspiracy…
The Internet Research Agency (IRA) carried out the earliest Russian interference identified by the investigation – a social media campaign designed to provoke and amplify political and social discord in the United States.

The presidential campaign of Donald J. Trump showed interest in WikiLeaks’ release of documents [that came from Russia] and welcomed their potential to damage candidate Clinton….Around the same time, candidate Trump announced that he hoped Russia would recover emails described as missing from a private server used by Clinton when she was Secretary of State (he later said that he was speaking sarcastically)…the investigation did not establish that members of the Trump Campaign conspired or coordinated with the Russian government in its election interference activities.

On June 9, 2016…a Russian lawyer met with senior Trump Campaign officials Donald Trump Jr., Jared Kushner, and campaign chairman Paul Manafort to deliver what the email proposing the meeting had described as "official documents and information that would incriminate Hillary."…The written communications setting up the meeting showed that the Campaign anticipated receiving information from Russia that could assist candidate Trump's electoral prospects, but the Russian lawyer's presentation did not provide such information….On July 31, 2016, based on the foreign government reporting, the FBI opened an investigation into potential coordination between the Russian government and individuals associated with the Trump Campaign.

On December 29, 2016, then-President Obama imposed sanctions on Russia for having interfered in the election. Incoming National Security Advisor Michael Flynn called Russian Ambassador Sergey Kislyak and asked Russia not to escalate the situation in response to the sanctions. The following day, Putin announced that Russia would not take retaliatory measure in response to the sanctions at that time.

Then-FBI Director James Comey later confirmed to Congress the existence of the FBI's investigation into Russian interference that had begun before the election….On May 17, 2017, Acting Attorney General Rod Rosenstein appointed the Special Counsel and authorized him to conduct the investigation….President Trump reacted negatively to the Special Counsels appointment. He told advisors that it was the end of his presidency, sought to have Attorney General Sessions unrecuse from the Russia investigation and to have the Special Counsel removed, and engaged in efforts to curtail the Special Counsel's investigation and prevent the disclosure of information to it, including through public and private contacts with potential witnesses.

First, the Office [of Special Counsel] determined that Russia's two principle interference operations in the 2016 US presidential election – the social media and the hacking-and-dumping operations – violated US criminal law….Second, while the investigation identified numerous links between individuals with ties to the Russian government and individuals associated with the Trump campaign, the evidence was not sufficient to support criminal charges….Third, the investigation established that several individuals affiliated with the Trump campaign lied to the Office, and to Congress, about their interactions with Russian-affiliated individuals and related matters. Those lies materially impaired the investigation of Russian election interference.

The Office investigated several other events that have been publicly reported to involve potential Russia-related contacts. For example, while the investigation established that interactions between Russian Ambassador Kislyak and Trump Campaign officials…were brief, public and non-substantive….the Office cannot rule out the possibility that…unavailable information would shed additional light on…the events described in the report.
The Office has concluded its investigation into links and coordination between the Russian government and individuals associated with the Trump campaign. Certain proceedings associated with the Office's work remain ongoing.

During its investigation the Office issued more than 2,800 subpoenas under the auspices of a grand jury sitting in the District of Columbia; executed nearly 500 search-and-seizure warrants...and interviewed more than 500 witnesses...This volume is a summary. It contains, in the Office's judgment, that information necessary to account for the Special Counsel's prosecution and declination decisions and to describe the investigation's main factual results.

The first form of Russian election influence came primarily from the Internet Research Agency (IRA)....The IRA conducted social media operations targeted at large US audiences with the goal of sowing discord in the US political system....By early to mid-2016, IRA operations included supporting the Trump Campaign and disparaging candidate Hilary Clinton. The IRA made various expenditures to carry out those activities, including buying political advertisements on social media in the names of US persons and entities....The investigation did not identify evidence that any US persons knowingly or intentionally coordinated with the IRA's interference operation.

In November, 2017, a Facebook representative testified that Facebook had identified 470 IRA-controlled Facebook accounts that collectively made 80,000 posts between January, 2015 and August, 2017.

IRA employees also traveled to the US on intelligence-gathering missions.

Throughout 2016, IRA accounts published an increasing number of materials supporting the Trump Campaign and opposing the Clinton Campaign....For example...the IRA purchased an advertisement depicting candidate Clinton and caption that read in part, "If one day God lets this liar enter the White House as a president – that day would be a national tragedy."

...numerous high-profile US persons, including former Ambassador Michael McFaul, Roger Stone, Sean Hannity, and Michael Flynn Jr., retweeted or responded to tweets posted to these IRA controlled accounts.

In most cases, the IRA account operator would tell the US person [who helped to organize events or rallies, such as Miners for Trump] that they personally could not attend the event due to some preexisting conflict or because they were somewhere else in the US.

Posts from the IRA-controlled Twitter account...were cited or retweeted by multiple Trump Campaign officials and surrogates, including Donald J. Trump Jr., Eric Trump, Kellyanne Conway, Brad Parscale, and Michael T. Flynn.

Two military units of the GRU (Russian Federation's Main Intelligence Directorate of the General Staff) carried out computer intrusions into the Clinton Campaign, DNC and DCCC.

Officers from (GRU) separately hacked computers belonging to state boards of elections, secretaries of state, and US companies that supplied software and other technology to the administration of US elections.

On June 14, 2016, the DNC and its cyber-response team announced the breach of the DNC network and suspected theft of DNC documents.

...June 15, 2016, the GRU...began releasing to the public documents stolen from the DNS and DCCC computer networks.

...the GRU units transferred many of the documents they stole from the DNS and chairman of the Clinton Campaign to WikiLeaks....WikiLeaks, and particularly its founder Julian Assange, privately expressed opposition to candidate Clinton well before the first release of stolen documents.
On July 22, 2016, WikiLeaks released over 20,000 emails and other documents stolen from the DNC computer networks. The Democratic National Convention started three days later.

On July 27, 2016, GRU targeted email accounts connected to candidate Clinton's personal office. Earlier that day, candidate Trump made public statements that included the following: "Russia, if you're listening I hope you're able to find the 30,000 emails that are missing." …Within five hours of Trump's statement, GRU officers targeted for the first time Clinton's personal office.

The GRU also targeted private technology firms responsible for manufacturing and administering election-related software and hardware, such as voter registration software and electronic polling stations.

On June 12, 2016, Assange claimed in a televised interview to "have emails relating to Hillary Clinton which are pending publication," but provided no additional context….Gates recalled candidate Trump being generally frustrated that the Clinton emails had not been found….In February, 2016, Gates pleaded guilty…[to] criminal information charging him with conspiring to defraud and commit multiple offenses against the US, as well as making false statements to our Office.

[In footnotes] In November, 2018, Cohen pleaded guilty to a plea agreement to a single-count…charging him with making false statements to Congress…He had previously pleaded guilty to several other criminal charges brought by the US Attorney's Office in the Southern District of New York….Cohen met with our Office on multiple occasions for interviews and provided information that the Office has generally assessed to be reliable and that is included in this report.

According to Gates, by the late summer of 2016, the Trump Campaign was planning a press strategy, a communications campaign, and messaging based on the possible release of Clinton emails by WikiLeaks. [In footnotes] Jerome Corsi first rose to public prominence in August 2004 when he published his book Unfit for Command: Swift Boat Veterans Speak out Against John Kerry. In the 2008 election cycle, Corsi gained prominence for being a leading proponent of the allegation that Barack Obama was not born in the US. Corsi told the Office that Donald Trump expressed interest in his writings, and that he spoke with Trump on the phone on at least six occasions.

In one conversation…Corsi told Malloch [an associate] that the release of the Podesta [Clinton Campaign Chairman] emails was coming, after which "we" were going to be in the driver's seat.

On October 7, 2016…the Washington Post published an Access Hollywood video that captured comments by candidate Trump some years earlier and that was expected to adversely affect the Campaign. ["I don't even wait. And when you're a star, they let you do it. You can do anything. Grab them by the pussy. You can do anything."]

Donald Trump Jr. had direct electronic communication with WikiLeaks during the campaign period.

Throughout 2016, the Trump Campaign expressed interest in Hillary Clinton's private email server and whether approximately 30,000 emails from the server had in fact been permanently destroyed, as reported in the media. Several individuals associated with the Campaign were contacted in 2016 about various efforts to obtain the missing Clinton emails and other stolen material in support of the Trump Campaign….[a] Florida based Russian, Henry Oknyansky (aka Greenberg) claimed to have information relating to Hillary Clinton….Oknyansky and [Roger] Stone set up a May 2016 in-person meeting….At the meeting [Alexei] Rasin [a Ukrainian] offered to sell Stone derogatory information on Clinton….Stone refused the offer, stating that Trump would not pay for opposition research.
After candidate Trump stated on July 27, 2016, that he hoped Russia would "find the 30,000 emails that are missing," Trump asked individuals affiliated with his Campaign to find the deleted Clinton emails.

[Peter] Smith [part of the Trump Campaign] drafted multiple emails stating or intimating that he was in contact with Russian hackers….The investigation did not establish that Smith was in contact with Russian hackers…

The Office identified multiple contacts …between Trump Campaign officials and individuals with ties to the Russian government…the investigation examined whether these contacts involved or resulted in coordination or a conspiracy with the Trump Campaign and Russia, including with respect to Russia providing assistance to the Campaign in exchange for any sort of favorable treatment in the future. Based on the available information, the investigation did not establish such coordination…. Outreach from individuals with ties to Russian continued in the spring and summer of 2016, when Trump was moving toward – and eventually becoming – the Republican nominee for President.

The Trump Organization has pursued and completed projects outside the US as part of its real estate portfolio….Between at least 2013 and 2016, the Trump Organization explored a…licensing deal in Russian involving the construction of a Trump-branded property in Moscow.

The investigation established evidence that, during the period the Trump Moscow project was under consideration, the possibility of candidate Trump visiting Russia arose…

[Rhona] Graff [Senior vice-president at the Trump Organization] received an email from Deputy Prime Minister Prikhodko on March 17, 2016…inviting Trump to participate in the 2016 Forum in St. Petersburg. [Trump turned down the invitation]

George Papadopoulos was a foreign policy advisor to the Trump Campaign from March 2016 to early October 2016…Papadopoulos was told by London based professor Joseph Mifsud, immediately after Mifsud's return from a trip to Moscow, that the Russian government had obtained "dirt" on candidate Clinton in the form of thousands of emails…Papadopoulos worked…to arrange a meeting between the Campaign and the Russian government. That meeting never came to pass.

The Campaign held a meeting of the foreign policy advisory team with Senator Sessions and candidate Trump…on March 31, 2016….Papadopoulos spoke about his previous work in the energy sector and he brought up a potential meeting with Russian officials. Papadopoulos and Campaign advisor J.D Gordon…have stated that Trump was interested in and receptive to the idea of a meeting with Putin.

Papadopoulos was dismissed from the Trump Campaign in early October 2016 after an interview he gave to the Russian news agency Interfax generated adverse publicity.

Carter Page worked for the Trump Campaign from January 2016 to September 2016…he advocated pro-Russian foreign policy positions and traveled to Moscow in his personal capacity…the investigation did not establish that Page coordinated with the Russian government in its efforts to interfere with the 2016 presidential election.

In April 2016, candidate Trump delivered his first speech on foreign policy and national security at an event hosted by the National Interest, a publication affiliated with CNI (Center for the National Interest). Then-Senator Jeff Sessions and Russian Ambassador Kislyak both attended the event…

In the wake of Session's confirmation hearings as Attorney General, questions arose about whether Sessions campaign-period interactions with CNI…included any meetings with Ambassador Kislyak or involved Russian-related matters.

Between the 2016 speech at the Mayflower Hotel and the presidential election, Jared Kushner had periodic contacts with [Dmitri] Simes [President of CNI]. Simes recalled
that he, not Kushner, initiated all conversation about Russia, and that Kushner never asked him to set up back-channel conversations with Russians.

On June 9, 2016, senior representatives of the Trump Campaign met in Trump Tower with a Russian attorney expecting to receive derogatory information about Hillary Clinton from the Russian government...the "Crown prosecutor of Russia...offered to provide the Trump Campaign with some official documents and information that would incriminate Hillary and her dealings with Russia” as “part of Russia and its government’s support for Mr. Trump.”...Trump Jr. immediately responded that "if it's what you say I love it," and arranged for the meeting through a series of emails and telephone calls...Trump Jr. invited campaign chairman Paul Manafort and senior advisor Jared Kushner to attend the meeting, and both attended....According to written answers submitted by President Trump, he has no recollection of learning of the meeting at the time, and the Office found no documentary evidence showing that he was made aware of the meeting....The Russian attorney who spoke at the meeting...claimed that funds derived from illegal activities in Russia were provided to Hillary Clinton and other Democrats. Trump requested evidence to support those claims but [the lawyer] did not provide such information. She and her colleagues then turned to a critique of the Magnitsky Act, a 2012 statute that imposed financial and travel sanctions on Russian officials [in retaliation for acts seen as threatening to the US] and that resulted in a retaliatory ban on adoption of Russian children. [After the election, Trump officials refused to meet with this group again.]

Michael Cohen recalled being in Donald J. Trump's office on June 6 or 7 when Trump Jr. told his father that a meeting to obtain adverse information about Clinton was going forward. Cohen did not recall Trump Jr. stating that the meeting was connected to Russia.

Trump Campaign officials met with Russian Ambassador Sergey Kislyak during the week of the Republican National Convention....In July, 2016, Senator Sessions...spoke at the Global Partners in Diplomacy event....Approximately 80 foreign ambassadors to the UN, including Kislyak, were invited to the conference.

In preparation for the 2016 Convention, foreign policy advisors to the Trump Campaign, working with the Republican National Committee, reviewed the 2012 Convention's foreign policy platform....The Campaign team discussed toning down language from the 2012 platform that identified Russia as the country's number one threat...

Paul Manafort served on the Trump Campaign, including a period as campaign chairman....Manafort had connections to Russia through his prior work for Russian oligarch Oleg Deripaska and later through his work for a pro-Russian regime in Ukraine. Manafort stayed in touch with these contacts during the campaign period through Konstantin Kilimnik, a longtime Manafort employee who previously ran Manafort's office in Kiev and who the FBI assessed to have ties to Russian intelligence...Manafort instructed Rick Gates, his deputy on the Campaign and longtime employee, to provide Kilimnik with updates on the Trump Campaign – including internal polling data...

Manafort also twice met Kilimnik in the US during the campaign period and conveyed campaign information....The investigation did not uncover evidence of Manafort's passing along information about Ukrainian peace plans to the candidate or anyone else in the Campaign or the Administration.

The Office did not identify a connection between Manafort's sharing polling data and Russian's interference in the election...

The FBI...assesess that Kilimnik has ties to Russian intelligence.

...Manafort briefed Kilimnik on the state of the Trump Campaign and Manafort’s plan to win the election. The briefing encompassed the Campaign’s messaging and internal
polling data. According to Gates, it also included discussion of “battleground” states, which Manafort identified as Michigan, Wisconsin, Pennsylvania and Minnesota.

Manafort resigned from the Trump Campaign in mid-August 2016, approximately two weeks after his second meeting with Kilimnik, amidst negative media reporting about his political consulting work for the pro-Russian Party of the Regions of the Ukraine.

Beginning immediately after the election [November 8, 2016], individuals connected to the Russian government started contacting officials of the Trump Campaign and Transition Team through multiple channels…The investigation did not establish that these efforts reflected or constituted coordination between the Trump Campaign and Russia in its election-interference activities.

The following morning…Sergey Kiznetsov, an official at the Russian Embassy to the US, emailed [Hope] Hicks [White House Communications Director] form his Gmail address with the subject line, "Message from Putin." Attached to the email was a message from Putin, in both English and Russian…"he look[ed] forward to working with [Trump] on leading Russian-American relations out of crisis." …Five days later, on November 14, 2016, Trump and Putin spoke by phone in the presence of Transaction Team members, including…Michael Flynn.

As Russian officials in the US reached out to the President-Elect and his team, a number of Russian individuals working in the private sector began their own efforts to make contact…

[Petr] Avon told Putin he would take steps to protect himself and the Alpha-Bank shareholders from potential sanctions, and one of those steps would be to try to reach out to the incoming administration to establish a line of communication.

[Kirill] Dmitriev [Head of the Russian Direct Investment Fund] arrived with his wife in the Seychelles on January 11, 2017, and checked into the Four Seasons Resort where Crown Prince Mohammed and [George] Nader [Advisor to the United Arab Emirates' Crown Prince] were staying….Erik Prince [Blackwater founder and Trump campaign supporter] described the eight years of the Obama Administration in negative terms and stated that he looked forward to a new era of cooperation and conflict resolution.

Kushner went forward with the meeting that Kislyak had requested…It took place at Trump Tower on November 30, 2016. At Kushner's invitation, Flynn also attended….Kushner expressed a desire on the part of the incoming Administration to start afresh with US-Russian relations….The three men also discussed US policy toward Syria…

On December 6, 2016, the Russian Embassy reached out to Kushner's assistant to set up a second meeting between Kislyak and Kushner….Kushner told the office that he did not want to take another meeting because he had already decided that Kislyak was not the right channel for him to communicate with Russia, so he arranged to have one of his assistants, Avi Berkowitz, meet with Kislyak in his stead….Kushner agreed to meet with [Sergey] Gorkov [head of a Russian bank under sanction, who supposedly had a direct line to Putin] …December 13, 2016…Kushner did not recall any discussion during his meeting with Gorkov about the sanctions…

Incoming National Security Advisor Michael Flynn was the Transition Team’s primary conduit for communication with the Russian Ambassador and dealt with Russia on sensitive matters during the transition period: a United Nations Security Council vote and the Russian government’s reaction to the US imposition of sanctions for Russian interference in the 2016 election…the investigation did not identify evidence that the
President-Elect asked Flynn to make any request to Kislyak….On December 21, 2016 Egypt submitted a resolution to the UN Security Council calling on Israel to cease settlement activities in the Palestinian Territory. 

According to Flynn, the Transition Team regarded the vote as a significant issue and wanted to support Israel by opposing the resolution….Later that day [December 22] President-Elect Trump spoke with Egyptian President Abdel Fattah al-Sisi about the vote. Ultimately, Egypt postponed the vote.

On December 29, 2016, the Obama administration expelled 35 Russian government officials and closed two Russian-owned compounds in the US….The Transition Team and President-Elect Trump were concerned that these sanctions would harm the US relationship with Russia….When asked about imposing sanctions on Russia for its alleged interference in the 2016 presidential election, President-Elect Trump told the media: “I think we ought to get on with our lives.”

…President-Elect Trump asked McFarland if the Russians did ‘it,’ meaning the intrusions intended to influence the presidential election. McFarland said yes, and Trump expressed doubts that it was the Russians.

The Office…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 prosecution. 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… On February 16, 2018, a federal grand jury in the District of Columbia returned an indictment charging 13 Russian nationals and three Russian entities…with violating US criminal laws in order to interfere with US elections and political processes.

Although members of the IRA had contact with the individuals affiliated with the Trump Campaign, the indictment does not charge any Trump Campaign official or any other US person with participating in the conspiracy….The Office did, however, charge one US person for his role in supplying false or stolen bank account numbers that allowed the IRA conspirators to access US online payment systems….On July 13, 2018, a federal grand jury…returned an indictment charging Russian military intelligence officers with the GRU with conspiring to hack into various computers used by the Clinton Campaign, DNC, DCC and other US persons…committing identity theft and conspiring to commit money laundering in furtherance of the hacking conspiracy…

One of the interactions between the Trump Campaign and Russia-affiliated individuals – the June 9, 2016 meeting between high-ranking campaign officials and the Russians promising derogatory information on Hillary Clinton – implicates…campaign finance statutes….The Office ultimately concluded that, even if the principle legal questions were resolved favorably to the government, a prosecution would encounter difficulties proving that Campaign officials or individuals connected to the Campaign willfully violated the law….Finally, although the evidence of contacts between Campaign officials and Russia-affiliated individuals may not have been sufficient to establish or sustain criminal charges, several US persons connected to the Campaign made false statements about those contacts and took other steps to obstruct the Office’s investigation and those of Congress. This office has therefore charged some of those individuals with making false statements and obstructing justice.

The Foreign Agents Registration Act (FARA) general makes it illegal to act as an agent of a foreign principle by engaging in certain activities in the US without registering with the Attorney General….The investigation uncovered extensive evidence that Paul
Manafort’s and Rick Gate’s pre-campaign work for the government of Ukraine violated FARA

...the investigation produced evidence of FARA violations involving Michael Flynn. Those potential violations...concerned...Turkey, and were resolved when Flynn admitted to the underlying facts in...his guilty plea to a false-statements charge...The investigation did not, however, yield evidence sufficient to sustain any charge that any individual affiliated with the Trump campaign acted as an agent of foreign principle...the Office considered whether two...efforts [including the June, 9, 2016 meeting at Trump Tower]...constituted prosecutable violations of the campaign finance laws.

The Office determined that the evidence was not sufficient to charge either incident [this plus one other meeting that was redacted] as a criminal violation.

Political campaigns frequently conduct and pay for opposition research. A foreign entity that engaged in such research and provided resulting information to a campaign could exert a greater effect on an election, and a greater tendency to ingratiate the donor to the candidate, than a gift of money or tangible things “of value”...the government would unlikely be able to prove beyond a reasonable doubt that the June 9 meeting participants had general knowledge that their conduct was unlawful.

Under the federal perjury statutes, it is a crime for a witness testifying under oath before a grand jury to knowingly make a false material declaration....On January 27, 2017, George Papadopoulos agreed to be interviewed by FBI agents...[he] lied about the timing, extent and nature of his communication with [Russian representatives].

Michael Flynn agreed to be interviewed by the FBI on January 24, 2017, four days after he assumed his duties as National Security Advisor to the President. During the interview, Flynn made several false statements pertaining to his communication with the Russian ambassador.

[Michael] Cohen stated that the Trump Tower Moscow project had ended in January, 2016....Cohen represented that he never traveled to Moscow in connection with the project and never considered asking Trump to travel for the project....Cohen stated that he did not recall any Russian government contact about the project.

Each of the foregoing representations in Cohen’s two-page statement was false and misleading.

...while a US Senator and a Trump Campaign advisor, Jeff Sessions interacted with Russian Ambassador Kislyak during the week of the Republican National Convention in July, 2016, and also at a meeting in Session’s Senate office in September, 2016.

...Sessions answered “no” to a question asking whether he had “been in contact with anyone connected to any part of the Russian government about the 2016 election, either before or after election day.” ...the evidence was not sufficient to establish that Sessions gave knowingly false answers to Russia-related questions in light of the wording and context of those questions....Accordingly, the Office concluded that the evidence was insufficient to prove that Sessions was willingly untruthful in his answers and this insufficient to obtain or sustain a conviction for perjury or false statements.
Beginning in 2017, the President of the United States took a variety of actions toward 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 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. 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. The OLC opinion also recognizes that a President does not have immunity after he leaves office. And if individuals other than the President committed an obstruction offense, they may be prosecuted at this time.

Fairness concerns counseled against potentially reaching 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. If we had confidence that after a thorough investigation of the facts that the President clearly did not commit obstruction of justice, we would so state…while this report does not conclude that the President committed a crime, it also does not exonerate him.

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 toward the law enforcement officials overseeing the investigations and the witnesses to relevant events. Trump…denied having any business in or connections to Russia, even though as late as June 2016 the Trump Organization has been pursuing a licensing deal for a skyscraper to be built in Russia called Trump Tower Moscow. After the election, the President expressed concerns to his legal advisors that reports of Russia’s election interference might lead the public to question the legitimacy of his election. In mid-January 2017, incoming National Security Advisor Michael Flynn falsely denied to the Vice-President, other administration officials, and FBI agents that he had talked to Russian Ambassador Sergey Kislyak about Russia’s response to US sanctions on Russia for its election interference. On January 27, the day after the President was told that Flynn had lied to the Vice-President and had made similar statements to the FBI, the President invited FBI Director Comey to a private dinner at the White House and told Comey that he needed loyalty. On February 14…the President said, “I hope you can see your way clear to letting this go, to letting Flynn go.”…Shortly after requesting Flynn’s resignation and speaking privately to Comey, the President sought to have Deputy National Security Advisor K.T. McFarland draft an internal letter stating that the President had not directed Flynn to discuss sanctions with Kislyak. McFarland declined because she thought that the request would look like a quid pro quo for an ambassadorship she had been offered….In February 2017, Attorney General Jeff
Sessions began to assess whether he had to recuse himself from the campaign-related investigations because of his role in the Trump Campaign. In early March, the President told White House Counsel Donald McGahn to stop Sessions from recusing….In late March, Comey publicly disclosed at a congressional hearing that the FBI was investigating “the Russian government’s efforts to interfere in the 2016 presidential election, including any links or coordination between the Russian government and the Trump campaign.”

On May 3, 2017, Comey testified in a congressional hearing, but declined to answer questions about whether the President was personally under investigation….The day of the firing [May 9], the White House maintained that Comey’s termination resulted from independent recommendation from the Attorney General and Assistant Attorney General that Comey should be discharged for mishandling the Hillary Clinton email investigation. But the President had decided to fire Comey before hearing from the Department of Justice. The day after firing Comey, the President told Russian officials that he “had faced great pressure because of Russia,” which had been “taken off” by Comey’s firing. The next day, the President acknowledged in a television interview that he was going to fire Comey regardless of the Department of Justice’s recommendation….On May 17, 2017, the Acting Attorney General for the Russia Investigation appointed a Special Counsel to conduct the investigation and related matters….On June 14, 2017, the media reported that the Special Counsel’s Office was investigating whether the President had obstructed justice….On June 17, 2017, the President called McGahn at home and directed him to call the Acting Attorney General and say that the Special Counsel had conflicts of interest and must be removed. McGahn did not carry out the direction…

On June 18, 2017, the President met one-on-one in the Oval Office with his former campaign manager Corey Lewandowski….and dictated a message for Lewandowski to deliver to Sessions. The message said that Sessions should publicly announce that…the investigation was “very unfair” to the President….and Sessions planned to meet with the Special Counsel and “let [him] move forward with investigating election meddling for future elections.” …Lewandowski told the President that the message would be delivered soon. Lewandowski did not want to deliver the President’s message personally, so he asked senior White House official Rick Dearborn to deliver it to Sessions. Dearborn was uncomfortable with the task and didn’t follow through…In the summer of 2017, the President learned that media outlets were asking questions about the June 9, 2016 meeting at Trump Tower between senior campaign officials, including Donald Trump, Jr., and a Russian lawyer who was said to be offering damaging information about Hillary Clinton as “part of Russia and its government’s support for Mr. Trump.” On several occasions, the President directed aides not to publicly disclose the emails setting up the June 9 meeting…Before the meeting became public, the President edited a press statement for Trump Jr. by deleting a line that acknowledged that the meeting was with “an individual who [Trump Jr.] was told might have information helpful to the campaign” and instead said only that the meeting was about adoptions of Russian children. When the press asked questions about the President’s involvement in Trump Jr.’s statement, the President’s personal lawyer repeatedly denied the President had played any role….In early summer, 2017, the President called Sessions at home and again asked him to reverse his recusal from the Russia investigation. Sessions did not reverse his recusal. In October, 2017, the President met privately with Sessions in the oval office and asked him to “take [a] look” at investigating Clinton.

McGahn told [White House] officials that the media reports were accurate in stating that the President had directed McGahn to have the Special Counsel removed….The President’s conduct toward Michael Cohen, a former Trump Organization executive,
changed from praising Cohen for when he falsely minimized the President’s involvement in the Trump Tower Moscow project, to castigation of Cohen when he became a cooperating witness….In 2017, Cohen provided false testimony to Congress about the project, including stating that he only briefed Trump on the project three times and never discussed travel to Russia with him, in an effort to adhere to a “party line” that Cohen said was developed to minimize the President’s connection with Russia….Cohen…discussed pardons with the President’s personal counsel and believed that if he stayed on message he would be taken care of. But after Cohen began cooperating with the government in the summer of 2018, the President publicly criticized him, called him a “rat,” and suggested that his family members had committed crimes.

Unlike cases in which a subject engages in obstruction of justice to cover up a crime, the evidence we obtained did not establish that the President was involved in an underlying crime related to Russian interference….Many of the President’s acts directed at witnesses, including discouragement of cooperation with the government and suggestions of possible future pardons, took place in public view….the actions we investigated can be divided into two phases, reflecting a possible shift in the President’s motives. The first phase covered the period from the President’s first interactions with Comey through the President’s firing of Comey. During that time, the President has been repeatedly told he was not personally under investigation. Soon after the firing of Comey and the appointment of the Special Counsel, however, the President became aware that his own conduct was being investigated in an obstruction-or-justice inquiry. At that point, the President engaged in a second phase of conduct, involving public attacks on the investigation, non-public efforts to control it, and efforts in both public and private to encourage witnesses not to cooperate with the investigation….The President’s counsel raised statutory and constitutional defenses to a possible obstruction-of-justice analysis of the conduct we investigated. We concluded that none of those legal defenses provided a basis for declining to investigate the facts.

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….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….Under applicable Supreme Court precedent, the Constitution does not categorically and permanently immunize a President for obstructing justice through the use of his Article II powers….The term “corruptly” sets a demanding standard. It requires a concrete showing that a person acted with an intent to obtain an improper advantage for himself or someone else, inconsistent with official duty and the rights of others….The conclusion is 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….Accordingly, while this report does not conclude that the President concluded a crime, it also does not exonerate him.

Three basic elements are common to most of the relevant obstruction statutes: (1) an obstructive act; (2) a nexus between the obstructive act and an official proceeding; (3) a corrupt intent….Obstruction-of-justice law “reaches all corrupt conduct capable of producing an effect that prevents justice form being duly administered, regardless of the means employed. An “effort to influence” a proceeding can qualify as an endeavor to obstruct justice even if the effort was “subtle or circuitous” and “however cleverly or with whatever cloaking of purpose” it was made….An improper motive can render an actor’s conduct criminal even when the conduct would otherwise be lawful and within
the actor’s authority….Obstruction-of-justice law generally requires a nexus, or connection, to an official proceeding…pending “judicial or grand jury proceedings.”

10 The word “corruptly” provides the intent element for obstruction of justice and means acting “knowingly and dishonestly” or “with an improper motive.”

11 Acting “knowingly…corruptly” requires proof that the individual was “conscious of wrongdoing.” …Section 1512(c)(2) covers both substantive obstruction offenses and attempts to obstruct justice.

12 “It is well established that a[n] [obstruction-of-justice] offense is complete when one corruptly endeavors to obstruct or impeded the due administration of justice; the prosecution need not prove that the due administration of justice was actually obstructed or impeded.” United States vs. Davis

Investigative and Evidentiary Considerations

After the appointment of the Special Counsel, this Office obtained evidence about the following events relating to potential issues of obstruction of justice involving the President:

(g) The President’s January 27, 2017 dinner with former FBI Director James Comey in which the President reportedly asked for Comey’s loyalty, one day after the White House had been briefed by the Department of Justice on contacts between former National Security Advisor Michael Flynn and the Russian Ambassador;

(h) The President’s February 14, 2017 meeting with Comey in which the President reportedly asked Comey not to pursue an investigation of Flynn;

(i) The President’s private requests to Comey to make public the fact that the President was not the subject of an FBI investigation to lift what the President regarded as a cloud;

(j) The President’s outreach to the Director of National Intelligence and the Directors of the National Security Agency and the Central Intelligence Agency about the FBI’s Russia Investigation;

(k) The President’s stated rationales for terminating Comey on May 9, 2017, including statements that could reasonably be understood as acknowledging that the FBI’s Russia investigation was a factor in Comey’s termination; and

(l) The President’s reported involvement in issuing a statement about the June 9, 2016 Trump Tower meeting between Russians and senior Trump Campaign officials that said the meeting was about adoption, and omitted that the Russians had offered to provide the Trump Campaign with derogatory information about Hillary Clinton.

…we determined that there was a sufficient factual and legal basis to further investigate potential obstruction-of-justice issues involving the President.

13 We also sought a voluntary interview with the President. After more than a year of 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 question on obstruction topics or questions on events during the transition.

15 We summarize the evidence we found and then analyze it by reference to the three statutory obstruction-of-justice elements: obstructive act, nexus to proceeding, and intent….During the 2016 campaign, the media raised questions about a possible connection between the Trump Campaign and Russia. The questions intensified after WikiLeaks released politically damaging Democratic Party emails that were reported to have been hacked by Russia. Trump responded to questions about possible connections to Russia by denying any business involvement in Russia – even though the Trump Organization had pursued a business project in Russia as late as June 2016. Trump also expressed skepticism that Russia had hacked the emails at the same time as he and other
Campaign advisors privately sought information about any further planned WikiLeaks releases.

On June 16, 2015, Donald J. Trump declared his intent to seek nomination as the Republican candidate for President. By early 2016, he distinguished himself among Republican candidates by speaking of closer ties with Russia, saying he would get along well with Russian President Vladimir Putin, questioning whether the NATO alliance was obsolete, and praising Putin as a “strong leader.” The press reported that Russian political analysts and commentators perceived Trump as favorable to Russia. Beginning in February 2016 and continuing through the summer, the media reported that several Trump campaign advisors appeared to have ties to Russia. For example, the press reported that campaign advisor Michael Flynn was seated next to Vladimir Putin at a RT [Russian Times] gala in Moscow in December 2015 and that Flynn had appeared regularly on RT as an analyst. The press also reported that foreign policy advisor Carter Page had ties to a Russian state-run gas company, and that chairman Paul Manafort had done work for the “Russian-backed former Ukrainian president Viktor Yanukovych.”

Soon thereafter, Hillary Clinton’s campaign manager publicly contended that Russia had hacked the DNC emails and arranged their release in order to help candidate Trump.

In the days that followed WikiLeaks’ July 22, 2016 release of hacked DNC emails, the Trump Campaign publicly rejected suggestions that Russia was seeking to aid candidate Trump. “Russia, if you’re listening, I hope you’re able to find the 30,000 emails that are missing. I think that you will probably be rewarded mightily by our press.”

Trump also said that “there’s nothing that I can think of that I’d rather do than have Russia friendly as opposed to the way they are right now,” and in response to a question about whether he would recognize Crimea as Russian territory and consider lifting sanctions, Trump replied, “We’ll be looking at that.” … During the press conference Trump repeated “I have nothing to do with Russia” five times…. The Trump organization, however, had been pursuing a building project in Moscow…from approximately September 2015 through June 2016, and the candidate was regularly updated on developments, including possible trips by Michael Cohen to Moscow to promote the deal and by Trump himself to finalize it.

On August 19, 2016, Manafort was asked to resign amid media coverage scrutinizing his ties to a pro-Russia political party in Ukraine and links to Russian business….On October 7, 2016, WikiLeaks released the first set of emails stolen by a Russian intelligence agency from Clinton Campaign chairman John Podesta. The same day, the federal government announced that “the Russian Government directed the recent compromises of e-mails from US persons and institutions, including form US political organizations….On October 11, 2016, Podesta stated publicly that the FBI was investigating Russia’s hacking and said that candidate Trump might have known in advance that the hacked emails were going to be released.

On November 8, 2016, Trump was elected President. Two days later, Russian officials told the press that the Russian government had maintained contacts with Trump’s “immediate entourage” during the campaign….On December 10, 2016, the press reported that the US intelligence agencies had “concluded that Russia interfered in last month’s presidential election to boost Donald Trump’s bid for the White House.”

On December 29, 2016, the Obama Administration announced that in response to Russian cyber operations aimed at the US election, it was imposing sanctions and other measures on several Russian individuals and entities.

Several advisors recalled that the President-elect viewed stories about his Russian connections, the Russian investigations, and the intelligence committee assessments, as a threat to the legitimacy of his electoral victory.
During the presidential transition, incoming National Security Advisor Michael Flynn had two phone calls with the Russian Ambassador to the US about the Russian response to US sanctions imposed because of Russia’s election interference. After the press reported on Flynn’s contacts with the Russian Ambassador, Flynn lied to incoming Administration officials by saying he had not discussed sanctions on the calls. The officials publicly repeated those lies in press interviews. The FBI, which previously was investigating Flynn for other matters, interviewed him about the calls in the first week after the inauguration, and Flynn told similar lies to the FBI. On February 13, 2017, the President asked Flynn to resign. The following day, the President had a one-on-one conversation with Comey in which he said, “I hope you can see your way clear to letting this go, to letting Flynn go.”

Immediately after discussing the sanctions with McFarland on December 29, 2016, Flynn called Kislyak and requested that Russia respond to the sanctions only in a reciprocal manner, without escalating the situation.

Members of the intelligence community were surprised by Russia’s decision not to retaliate in response to the sanctions. Previously, the FBI had opened an investigation of Flynn based on his relationship with the Russian government. Flynn’s contacts with Kislyak became a key component of that investigation.

On January 6, 2017...intelligence officials briefed President-Elect Trump and the incoming Administration on the intelligence committee’s assessment that Russia had interfered in the 2016 presidential election. When the briefing concluded, Comey spoke with the President-Elect privately to brief him on unverified, personally sensitive allegations compiled by [Christopher] Steele. [British former intelligence officer with the Secret Intelligence Service from 1987 until 2009]. According to a memorandum Comey drafted immediately after their private discussion, the President-Elect began the meeting by telling Comey he had conducted himself honorably over the prior year and had a great reputation. Comey recalled that the President-Elect seemed defensive, so Comey decided to assure him that the FBI was not investigating him personally.

In the following weeks, three Congressional committees opened investigations to examine Russia’s interference in the election and see whether the Trump Campaign had colluded with Russia.

On January 12, 2017, a Washington Post columnist reported that Flynn and Kislyak communicated on the day the Obama Administration announced the Russia sanctions. The column questioned whether Flynn had said something to “undercut the US sanctions” and whether Flynn’s communications had violated the letter or spirit of the Logan Act. [The Logan Act makes it a crime for “any citizen of the US to...without the authority of the US, directly or indirectly commence or carry on any correspondence or intercourse with any foreign government or any officer or agent thereof, in relation to any disputes or controversies with the US...”]

The public statements of incoming Administration officials denying that Flynn and Kislyak had discussed sanctions alarmed senior DOJ officials, who were aware that the statements were not true....On January 24, 2017, Flynn agreed to be interviewed by agents from the FBI. During the interview, which took place at the White House, Flynn falsely stated that he did not ask Kislyak to refrain from escalating the situation in response to the sanctions on Russia imposed by the Obama Administration.

Based on his preliminary research, [John] Eisenberg [Attorney at the White House Counsel’s Office] informed McGahn that there was a possibility that Flynn had violated...the Logan Act.

...on January 27, the President called FBI Director Comey and invited him to dinner that evening. [Reince] Priebus [White House Chief of Staff] recalled that before the dinner, he
told the President something like, “don’t talk about Russia, whatever you do,” and the President promised he would not talk about Russia at the dinner. McGahn had previously told the President that he should not communicate directly with the Department of Justice to avoid a perception or reality of political interference in law enforcement.

34 According to Comey’s account of the dinner, the President repeatedly brought up Comey’s future, asking whether he wanted to stay on as FBI Director. Because the President has previously said he wanted Comey to stay on as FBI Director, Comey interpreted the President’s comments as an effort to create a patronage relationship by having Comey ask for his job. According to Comey’s account, at one point during the dinner the President stated, “I need loyalty, I expect loyalty.”

35 After Comey’s account of the dinner became public, the President and his advisors disputed that he had asked for Comey’s loyalty. The President also indicated that he had not invited Comey to dinner, telling a reporter he thought Comey had “asked for the dinner” because “he wanted to stay on.” But substantial evidence corroborates Comey’s account of the dinner invitation and a request for loyalty.

36 The week of February 6, Flynn had a one-on-one conversation with the President in the Oval Office about the negative media coverage of his contacts with Kislyak. The President asked Flynn what he and Kislyak discussed and Flynn responded that he might have talked about sanctions.

37 FBI Deputy Director Andrew McCabe, who provided the White House officials access to the information [about the Flynn phone calls] and was present when they reviewed it, recalled the White House official asking him whether Flynn’s conduct violated the Logan Act. After reviewing the materials and talking with Flynn, McGahn and Priebus concluded that Flynn should be terminated and recommended that course of action to the President.

39 At 4PM that afternoon [February 14, 2017], the President met with Comey, Sessions, and other officials for a homeland security briefing. At the end of the briefing, the President dismissed the other attendees and stated that he wanted to speak to Comey alone.

40 According to Comey’s account of the meeting, the President began the conversation by saying: “I want to talk about Mike Flynn.” The President stated that Flynn had not done anything wrong in speaking with the Russians, but had to be terminated because he misled the Vice President. The President stated: I hope you can see your way clear to letting this go, to letting Flynn go…”

41 Shortly after the meeting with the President, Comey began drafting a memorandum documenting their conversation. On February 16, 2017, the President held a press conference and said that he removed Flynn because Flynn “didn’t tell the Vice-President of the US the facts, and then he didn’t remember. And that just wasn’t acceptable to me.”

42 The President also denied having any connection to Russia, stating: “I have nothing to do with Russia…” The next day, the President asked Preibus to have McFarland draft an internal email stating that would confirm that the President did not direct Flynn to call the Russian Ambassador about sanctions. Preibus said he told the President he would only direct McFarland to draft such a letter if she were comfortable with it.

43 In March or early April, the President asked McFarland to pass a message to Flynn telling him the President felt bad for him and he should stay strong.

44 …substantial evidence corroborates Comey’s account.

45 First, Comey wrote a detailed memorandum of his encounter with the President on the same day it occurred. Comey also told senior FBI officials about the meeting with the President that day, and their recollections of what Comey told them at the time are consistent with Comey’s account;
Second, Comey provided testimony about the President’s request that he “let Flynn go” under oath in congressional proceedings and in interviews with federal investigators subject to penalties for lying...Comey’s recollections of the encounter have remained consistent over time; Third...other administration officials who were present have confirmed Comey’s account of how he ended up in a one-on-one meeting with the President. And the President acknowledged to Priebus and McGahn that he in fact has spoken with Comey about Flynn in their one-on-one meeting; Fourth, the President’s decision to clear the room and, in particular, to exclude the Attorney General from the meeting signals that the President wanted to be alone with Comey, which is consistent with the delivery of a message of the type that Comey recalls, rather than a more innocuous conversation that could have occurred in the presence of the Attorney General; Finally, Comey’s reaction to the President’s statement is consistent with the President having asked him to “let Flynn go.” ...

46 McGahn...informed the President that Flynn’s conduct could violate [the law]. After the Vice-President and senior White House officials reviewed the underlying information about Flynn’s calls on February 10, 2017, they believed that Flynn could not have forgotten his conversations with Kislyak and concluded that he had been lying...Some evidence suggests that the President knew about the existence and context of Flynn’s calls when they occurred, but the evidence was inconclusive and could not be relied upon to establish the President’s knowledge....Our investigation accordingly therefore did not produce evidence that established the President knew about Flynn’s discussion of sanctions before the Department of Justice notified the White House of those discussions in late January 2017.

47 The President’s decision to meet one-on-one with Comey contravened the advice of the White House Counsel that the President should not communicate directly with the Department of Justice to avoid any appearance of interfering in law enforcement activities.

48 On March 20, 2017 Comey publicly disclosed the existence of the FBI’s investigation. In the days that followed, the President contacted Comey and the other intelligence agency leaders and asked them to push back publicly on the suggestion that the President had any connection to the Russian election-interference effort in order to “lift the cloud” of the ongoing investigation.

49 [March 2, 2017] …the President called McGahn and urged him to contact Sessions to tell him not to recuse himself from the Russia investigation....Sessions replied that he intended to follow the rules on recusal.

52 On March 9, 2017, Comey briefed the “Gang of Eight” Congressional leaders about the FBI’s investigation of Russian interference, including an identification of the principal US subjects of the investigation.

54 Press reports following Comey’s March 20 testimony suggested that the FBI was investigating the President, contrary to what Comey had told the President at the end of the January 6, 2017, intelligence briefing.

55 In the weeks following Comey’s March 20, 2017, testimony, the President repeatedly asked intelligence community officials to push back publicly on any suggestion that the President had a connection to the Russian election-interference effort....On March 22, 2017, the President asked Director of National Intelligence Daniel Coates and CIA Director Michael Pompeo to stay behind in the Oval Office after a Presidential Daily Briefing. According to Coats, the President asked them whether they could say publicly that no link existed between him and Russia. Coats responded that the Office of the
Director of National Intelligence had nothing to do with investigations and it was not his role to make a public statement on the Russia investigation. Pompeo…recalled that the President regularly urged officials to get the word out that he had not done anything wrong related to Russia….According to senior ODNI official Michael Dempsey, Coats said after the meeting that the President has brought up the Russia investigation and asked him to contact Comey to see if there was a way to get past the investigation, get it over with, end it, or words to that effect.

56 Coats told the President that the investigations were going to go on and the best thing to do was to let them run their course….On March 26, 2017…the President called NASA Director Admiral Michael Rogers. The President expressed frustration with the Russian investigation, saying that it made relations with the Russians difficult…“the thing with the Russians [wa]s messing up” his ability to get things done with Russia. The President also said that the news stories linking him with Russia were not true and asked Rogers if he could do anything to refute the stories.

57 Coats recalled the President bringing up the Russia investigation several times, and Coats finally told the President that Coats’ job was to provide intelligence and not get involved in investigations.

58 On the morning of April 11, 2017, the President called Comey again….the President said he was “following up to see if [Comey] did what [the President] asked last time — getting out that he personally was not under investigation.

59 The evidence shows that the President was focused on the Russian investigation’s implications for his Presidency — and, specifically, on dispelling any suggestion that he was under investigation or had links to Russia….After Comey publicly confirmed the existence of the FBI’s Russia investigation on March 20, 2017, the President was “beside himself” and expressed anger that Comey did not issue a statement correcting any misperception that the President himself was under investigation….On March 30 and April 11, against the advice of White House advisors who had informed him that any direct contact with the FBI could be perceived as improper interference in the ongoing investigation, the President made personal outreaches to Comey asking him to “lift the cloud” of the Russia investigation by making public the fact that the President was not under investigation.

60 On May 3, 2017, Comey was scheduled to testify at an FBI oversight hearing before the Senate Judiciary Committee….Comey…declined to answer questions about whether investigators had “ruled out” anyone in the Trump campaign as potentially a target of th[e] criminal investigation,” including whether the FBI had “ruled out the president of the United States.”

[May 4] The President became very upset and directed his anger at Sessions… “This is terrible Jeff. It’s all because you recused. AG is supposed to be [the] most important appointment. Kennedy appointed his brother. Obama appointed Holder. I appointed you and you recused yourself. You left me alone on an island. I can’t do anything.”

64 Bannon told the President that he could not fire Comey because “that ship had sailed.” Bannon also told the President that firing Comey was not going to stop the investigation…

65 In the morning of Monday, May 8, 2017, the President met in the Oval Office with senior advisors, including McGahn, Priebus, and Miller and informed them that he had decided to terminate Comey.

66 The President told the group that Miller had researched the issue and determined the President had the authority to terminate Comey without cause….At noon, Sessions, Rosenstein, and [Jody] Hunt [Chief of Staff to Attorney General Jeff Sessions] met with McGahn and White House Counselor’s Office attorney Uttam Dhillon at the White
McGahn said that the President had decided to fire Comey and asked for Sessions’ and Rosenstein’s views.

On May 9, Hunt delivered to the White House a letter from Sessions recommending Comey’s removal and a memorandum from Rosenstein, addressed to the Attorney General, titled “Restoring Public Confidence in the FBI.”

McGahn and Dhillon said Rosenstein described his concerns about Comey’s handling of the Clinton email investigation.

On May 9, Hunt delivered to the White House a letter from Sessions recommending Comey’s removal and a memorandum from Rosenstein, addressed to the Attorney General, titled “Restoring Public Confidence in the FBI.”

McCabe told the President that he knew Comey had told the President he was not under investigation, that most people in the FBI felt positively about Comey, and that McCabe worked “very closely” with Comey and was part of all the decisions that has been made in the Clinton investigation.

The President then called Rosenstein directly and said…he wanted Rosenstein to do a press conference. Rosenstein responded that this was not a good idea because if the press asked him, he would tell the truth that Comey’s firing was not his idea.

On the morning of May 10, 2017, President Trump met with Russian Foreign Minister Seger Lavrov and Russian Ambassador Sergey Kislyak in the Oval Office. The media…reported that…the President brought up his decision…to terminate Comey: “I just fired the head of the FBI. He was a crazy, a real nut job. I faced great pressure because of Russia. That’s taken off…I’m not under investigation.”

When McCabe met with the President that afternoon, the President, without prompting, told McCabe that people in the FBI loved the President, estimated that a least 80% of the FBI had voted for him, and asked McCabe who had had voted for in the 2016 presidential election…In response to questions from reporters, Sanders said that Rosenstein decided “on his own” to review Comey’s performance and that Rosenstein had decided “on his own” to come to the President on Monday, May 8, to express his concerns about Comey. When a reporter indicated that the “vast majority” of FBI agents supported Comey, Sanders said: “Look, we’ve heard from countless members of the FBI that say very different things. Following the press conference, Sanders spoke to the President, who told her she had done a good job and did not point out any inaccuracies in her comments. Sanders told this Office that her reference to hearing from “countless members of the FBI” was a “slip of the tongue.” She also recalled that her statement in a separate press conference that rank-and-file FBI agents had lost confidence in Comey was a comment she made “in the heat of the moment” that was not founded on anything.

The White House Counsel’s Office agreed it was factually wrong to say that the Department of Justice had initiated Comey’s termination, and McGahn asked attorneys in the White House Counsel’s Office to work with the press office to correct the narrative….The next day, on May 11, 2017, the President participated in an interview with Lester Holt….During the interview, the President stated he had made the decision to fire Comey before the President met with Rosenstein and Sessions. The President told Holt: “I was going to fire regardless of recommendation…. [Rosenstein] made a recommendation. But regardless of the recommendation I was going to fire Comey knowing there was no good time to do it….And in fact, when I decided to just do it, I said to myself…this Russia thing with Trump and Russia is a made-up story. It’s an excuse by the Democrats for having lost an election that they should have won.” …The President confirmed that he expected the new FBI director to continue the Russia investigation.

In analyzing the President’s decision to fire Comey, the following evidence is relevant to the elements of obstruction of justice….Firing Comey would qualify as an obstructive act if it had the natural and probable effect of interfering with or impeding the investigation….And the President followed with public statements that were highly critical of the investigation; for example three days after firing Comey, the President
referred to the investigation as a “witch hunt” and asked “when does it end?” Those actions had the potential to affect a successor director’s conduct of the investigation….The anticipated effect of removing the FBI director, however, would not necessarily be to prevent or impede the FBI from continuing its investigation.

75 Substantial evidence indicates that the catalyst for the President’s decision to fire Comey was Comey’s unwillingness to publicly state that the President was not personally under investigation, despite the President’s repeated request that Comey make such an announcement….And the President’s final termination letter included a sentence, at the President’s insistence, that Comey had told the President on three separate occasions that he was not under investigation.

76 Rosenstein articulated his criticism of Comey’s handling of the Clinton investigation after the President had already decided to fire Comey. The President’s draft termination letter also stated that morale in the FBI was at an all-time low and Sanders’ told the press after Comey’s termination that the White House had heard from “countless” FBI agents who had lost their confidence in Comey. But the evidence does not support those claims. The President told Comey at their January 27 dinner that “the people of the FBI really like [him],” no evidence suggests that the President heard otherwise before deciding to terminate Comey, and Sanders acknowledged to investigators that her comments were not founded on anything….After the President learned of Session’s recusal from the Russia investigation, the President was furious and said he wanted an Attorney General who would protect him the way he perceived Robert Kennedy and Eric Holder to have protected their presidents. The President also said he wanted to be able to tell his Attorney General “who to investigate.” …Although the President publicly stated during and after the election that he had no connection to Russia, the Trump Organization, through Michael Cohen, was pursuing the proposed Trump Tower Moscow project through June 2016 and candidate Trump was repeatedly briefed on the progress of those efforts.

77 In the immediate aftermath of the firing, the President dictated a press statement suggesting that he had acted based on the DOJ recommendations, and White House press officials repeated that story. But the President had decided to fire Comey before the White House solicited those recommendations…..The Acting Attorney General appointed a Special Counsel on May 17, 2017, prompting the President to state that it was the end of his presidency and that Attorney General Sessions had failed to protect him and should resign. Sessions submitted his resignation, which the President ultimately did not accept. The President told senior advisors that the Special Counsel had conflicts of interest, but they responded that those claims were “ridiculous” and posed no obstacle to the Special Counsel’s service.

78 On May 17, 2017, acting Attorney General Rosenstein appointed Robert S. Mueller, III as Special Counsel and authorized him to conduct the Russia investigation and matters that arose from the investigation…..According to notes written by Hunt, when Sessions told the President that a Special Counsel had been appointed, the President slumped back in his chair and said “Oh my God. This is terrible. This is the end of my Presidency. I’m fucked. The President lambasted the Attorney General for his decision to recuse from the investigation, stating, “How could you let this happen, Jeff?”

79 The President then told Sessions that he should resign as Attorney General. Sessions agreed to submit his resignation and left the Oval Office……on May 18, 2017, Sessions finalized a resignation letter…the President shook Sessions hand but did not return the resignation letter….When Priebus and Bannon learned that the President was holding onto Session’s resignation letter, they became concerned that it could be used to influence the Department of Justice. Priebus told Sessions it was not good for the President to have
the letter because it would function as a sort of “shock collar” that the President could use any time he wanted; Priebus said the President had “DOJ by the throat.” Priebus and Bannon told Sessions they would try to get the letter back from the President with a notation he was not accepting Sessions’ letter.

80 In the days following the Special Counsel’s appointment, the President repeatedly told advisors…that Special Counsel Mueller had conflicts of interest. The President’s advisors pushed back on his assertion of conflicts, telling the President that they did not count as true “conflicts.”

81 On May 23…the Department of Justice announced that ethics officials had determined that the Special Counsel’s prior law firm position did not bar his service, generating media reports that Mueller had been cleared to serve.

82 On June 8, 2017, Comey testified before Congress about his interactions with the President before his termination, including the request for loyalty, the request that Comey “let Flynn go,” and the request that Comey “lift the cloud” over the presidency caused by the ongoing investigation. Comey’s testimony led to a series of news reports about whether the President had obstructed justice…The investigators intended to interview intelligence community officials who had allegedly been asked by the President to push back against the Russian investigation.

84 On the evening of June 14, 2017, the Washington Post published an article that the Special Counsel was investigating whether the President had attempted to obstruct justice. This was the first public report that the President was under investigation by the Special Counsel’s office, and cable networks quickly picked up the report.

85 On Saturday, June 17, the President called McGahn and directed him to have the Special Counsel removed….McGahn was perturbed by the call and did not intend to act on the request. He and other advisors believed the asserted conflicts [about Mueller] were “silly” and “not real,” and they previously communicated that view to the President.

86 McGahn recalled that he had already said no to the President’s request and he was worn down, so he just wanted to get off the phone….McGahn decided he had to resign. He called his personal lawyer and then called his chief of staff…he then drove to the office to pack his belongings and submit his resignation letter.

87 Priebus recalled that McGahn said that the President had asked him to “do crazy shit,”…

88 Substantial evidence…supports the conclusion that the President went further and in fact directed McGahn to call Rosenstein to have the Special Counsel removed….McGahn’s clear recognition was that the President directed him to tell Rosenstein not only that conflicts existed but also that “Mueller has to go.”

89 …McGahn explicitly warned the President that his “biggest exposure” was not his act of firing Comey but his “other contacts” and “calls”…

90 On June 13, 2017, the Acting Attorney General testified before Congress that no good cause for removing the Special Counsel existed, and the President dictated a press statement to Sanders saying he had no intention of firing the Special Counsel. But the next day, the media reported that the President was under investigation for obstruction of justice and the Special Counsel was interviewing witnesses about events relating to possible obstruction spurring the President to write critical tweets about the Special Counsel’s investigation….The evidence accordingly indicates that news that an obstruction investigation had been opened is what led the President to call McGahn to have the Special Counsel terminated….after the media reported on the President’s actions, he denied that he ever ordered McGahn to have the Special Counsel terminated and made repeated efforts to have McGahn deny the story….On June 19, 2017 the President meet one-on-one with Corey Lewandowski in the Oval Office and dictated a
message to be delivered to Attorney General Sessions that would have the effect of limiting the Russia investigation to future election interference only.

The President asked Lewandowski to deliver a message to Sessions and said “write this down.” The President directed that Sessions should give a speech publicly announcing: “I know that I recused myself from certain things having to do with certain areas. But our POTUS...is being treated very unfairly. He shouldn’t have a Special Prosecutor/Counsel b/c he hasn’t done anything wrong. I was on the campaign w/him for nine months, there were no Russians involved with him. I know it for a fact b/c I was there. He didn’t do anything wrong except he ran the greatest campaign in American history....I am going to meet with the Special Prosecutor to explain this is very unfair and let the Special Prosecutor move forward with investigating election meddling for future elections so that nothing can happen in future elections.

Lewandowski recalled that the President told him that if Sessions did not meet with him, Lewandowski should tell Sessions he was fired.

...on July 21, 2017, the Washington Post reported that the US intelligence intercepts shows that Sessions had discussed campaign-related matters with the Russian ambassador, contrary to what Sessions had said publicly.

McGahn and Priebus discussed the possibility that they would both have to resign rather than carry out the President’s order to fire Sessions.

By the end of that weekend, Priebus recalled that the President relented and agreed not to ask Sessions to resign.

The President’s effort to send Sessions a message through Lewandowski would qualify as an obstructive act if it would naturally obstruct the investigation and grand jury proceedings that might flow from the inquiry....Substantial evidence indicates that the President’s effort to limit the scope of the Special Counsel’s investigation to future election interference was intended to prevent further investigative scrutiny of the President’s and his campaign’s conduct.

The manner in which the President acted provides additional evidence of his intent. Rather than rely on official channels, the President met with Lewandowski alone in the Oval Office. The President selected a loyal “devotee” outside the White House to deliver the message [to fire the Special Counsel], supporting an inference that he was working outside the White House channels, including McGahn, who had previously resisted contacting the Department of Justice about the Special Counsel. The President also did not contact the Acting Attorney General, who had just testified publicly that there was no cause to remove the Special Counsel....By June, 2017, the President became aware of emails setting up the June 9 meeting between senior campaign officials and Russians who offered derogatory information on Hillary Clinton as “part of Russia and its government’s support for Mr. Trump.” On multiple occasions in late June and early July 2017, the President directed aides not to publicly disclose the emails, and he then dictated a statement about the meeting to be issued by Donald Trump Jr. describing the meeting as about adoption.....In mid-June 2017...senior Administration officials became aware of emails exchanged during the campaign arranging a meeting between Donald Trump Jr., Paul Manafort, Jared Kushner, and a Russian attorney. As described in Volume I...the emails stated that the “Crown [P]rosecutor of Russia” had offered “to provide the Trump campaign with some official documents and information that would incriminate Hillary ad her dealings with Russia” as part of “Russia and its government’s support for Mr. Trump. Trump Jr. responded, “[I]f it’s what you say I love it,” and he, Kushner, and Manafort met with the Russian attorney and several other Russian individuals at Trump Tower on June 9, 2016.
According to written answers submitted by the President in response to questions from this Office, the President had no recollection of learning of the meeting or the emails setting it up at the time the meeting occurred or at any other time before the election....Trump Organization attorneys became aware of the June 9 meeting no later than the first week of June 2017, when they began interviewing participants, and the Trump Organization attorneys provided the emails setting up the meeting to the President’s personal counsel....Priebus recalled learning about the June 9 meeting from Fox News host Sean Hannity in late June 2017.

Communications advisors Hope Hicks and Josh Raffel recalled discussing with Jared Kushner and Ivanka Trump that the emails [setting up the June 9 meeting] were damaging and would inevitably be leaked. On or about June 22, 2017, Hicks attended a meeting in the White House residence with the President, Kushner, and Ivanka Trump....Kushner brought a folder of documents to the meeting and tried to show them to the President, but the President stopped Kushner and said he didn’t want to know about it, shutting the conversation down....On June 28...Hicks viewed the emails at Kushner’s attorney’s office. She recalled being shocked by the emails because they looked “really bad.”

Later that day, Hicks, Kushner and Ivanka Trump went together to talk to the President....Hicks recalled that Kushner told the President the June 9 meeting was not a big deal and was about Russian adoption, but that emails existed setting up the meeting. Hicks said she wanted to get in front of the story and have Trump Jr. release the emails as part of the interview with “softball questions.” The President said he did not want to know about it and they should not go to the press....Hicks recalled that the President asked her what the meeting had been about and she said that she had been told the meeting was about Russian adoption. The President responded, “Then just say that.”

Later that day, the media reported that the President had been personally involved in preparing Trump Jr.’s initial statement to the New York Times that had claimed that the meeting “primarily” concerned “a program about the adoption of Russian children.” Over the next several days, the President’s personal counsel repeatedly and inaccurately denied that the President played any role in drafting Trump Jr.’s statement. After consulting with the President on the issue, White House Press Secretary Sarah Sanders told the media that the President “certainly didn’t dictate” the statement, but that “he weighed in, offered suggestions like any father would.”

On July 19, 2017, the President...met with reporters for the New York Times.... “As I’ve said – most other people, you know, when they call up and say, ‘By the way, we have information on your opponent,’ I think most politicians.... ‘Who wouldn’t have taken a meeting like that?’”

On June 29...The President...dictated a statement to Hicks that said the meeting was
about Russian adoption…The statement dictated by the President did not mention the offer of derogatory information about Clinton….Each of these efforts by the President involved his communication team and was directed at the press. They would amount to obstructive acts only if the President, by taking these actions, sought to withhold information from or mislead congressional investigators to the Special Counsel. But the evidence does not establish that the President took steps to prevent the emails or other information about the June 9 meeting from being provided to Congress or the Special Counsel.

107 From summer 2017 through 2018, the President attempted to have Attorney General Sessions reverse his recusal, take control of the Special Counsel’s investigation, and order an investigation of Hillary Clinton….at some point after the May 17, 2017 appointment of the Special Counsel, Sessions recalled, the President called him at home and asked if Sessions would “unrecuse” himself. According to Sessions, the President asked him to reverse his recusal so that Sessions could direct the Department of Justice to investigate and prosecute Hillary Clinton, and the “gist” of the conversation was that the President wanted Sessions to unrecuse from “all of it,” including the Special Counsel’s Russia investigation. Sessions listened but did not respond, and he did not reverse his recusal or order an investigation of Clinton.

111 To determine if the President’s efforts to have the Attorney General unrecuse could qualify as an obstructive act, it would be necessary to assess evidence on whether these actions would naturally impede the Russia investigation. That inquiry would take into account the supervisory role that the Attorney General, if unrecused, would play in the Russia investigation.

112 On multiple occasions in 2017, the President spoke with Sessions about reversing his recusal so that he could take over the Russia investigation and begin an investigation and prosecution of Hillary Clinton. The duration of the President’s efforts—which spanned from March 2017 to August 2018—and the fact that the President repeatedly criticized Sessions in public and private for failing to tell the President that he would have to recuse is relevant to assessing whether the President’s efforts to have Sessions unrecuse could qualify as obstructive acts….By the summer of 2017, the President was aware that the Special Counsel was investigating him personally for obstruction of justice. And in the wake of the disclosures of emails about the June 9 meeting between Russians and senior members of the campaign…it was evident that the investigation into the campaign now included the President’s son-in-law and former campaign manager.

113 A reasonable inference from those statements and the President’s actions is that the President believed that an unrecused Attorney General would play a protective role and could shield the President from the ongoing Russia investigation….In late January, 2018, the media reported that in June 2017 the President had ordered McGahn to have the Special Counsel fired based on purported conflicts of interest but McGahn had refused, saying he would quit instead. After the story broke, the President, through his personal counsel and two aides, sought to have McGahn deny that he had been directed to remove the Special Counsel.

114 On January 26, 2018, the President’s personal counsel called McGahn’s attorney and said that the President wanted McGahn to put out a statement denying that he had been asked to fire the Special Counsel and that he had threatened to quit in protest. McGahn’s attorney spoke with McGahn about that request and then called the President’s personal counsel to relay that McGahn would not make a statement.

116 …on February 6, 2018, [John] Kelly [White House Chief of Staff] scheduled time for McGahn to meet with him and the President in the Oval Office….The President began…by telling McGahn that the New York Times story did not “look good” and
McGahn needed to correct it. McGahn recalled the President said, “I never said to fire Mueller. I never said ‘fire.’ This story doesn’t look good…."

117 In response, McGahn acknowledged that he had not told the President that he planned to resign but said that the story otherwise was accurate….“What you said is, ‘Call Rod [Rosenstein], tell Rod that Mueller has conflicts and can’t be the Special Counsel.’”

118 …when the President spoke with McGahn in the Oval Office, he focused on whether he had used the word “fire.” The President’s assertion…that he had never directed McGahn to have the Special Counsel removed thus runs counter to the evidence.

119 McGahn again…told the President’s Counsel that the President had in fact ordered him to have Rosenstein remove the Special Counsel…..To establish a nexus, it would be necessary to show that the President’s actions would have the natural tendency to affect such a proceeding [investigation] or that they would hinder, delay, or prevent the communication of information to investigators.

120 …the President’s statements reflect his understanding – and his displeasure – that those events would be part of an obstruction-of-justice inquiry…..In addition to the interactions with McGahn described above, the President has taken other actions directed at possible witnesses in the Special Counsel’s investigation, including Flynn, Manafort, and as described in the next section, Cohen….During Manafort’s prosecution and while the jury was deliberating, the President repeatedly stated that Manafort was being treated unfairly and made it known that Manafort could receive a pardon….the President asked for Flynn’s resignation on February 13, 2017. Following Flynn’s resignation, the President made positive public comments about Flynn, describing him as a “wonderful man,” a “fine person,” and a “very good person.”

121 The President also privately asked advisors to pass messages to Flynn conveying that the President still cared about him and encouraging him to stay strong….In late November 2017, Flynn began to cooperate with this Office. On November 22, Flynn withdrew from a joint defense agreement he had with the President….The President’s personal counsel said that he interpreted what they said to him as a reflection of Flynn’s hostility toward the President.

122 On December 1, Flynn pleaded guilty to making false statements pursuant to a cooperation agreement….On December 15, the President responded to a press inquiry about whether he was considering a pardon for Flynn by saying, “I don’t want to talk about pardons for Michael Flynn yet. We’ll see what happens.” …On October 27, a grand jury in the District of Columbia indicted Manafort and former deputy campaign manager Richard Gates on multiple felony counts, and on February 22, 2018, a grand jury in the Eastern District of Virginia indicted Manafort and Gates on additional felony counts.

123 In January 2018, Manafort told Gates that he had talked to the President’s personal counsel and they were “going to take care of us.” …Gates asked Manafort outright if anyone mentioned pardons and Manafort said no one used that word….On June 15, 2018, before a scheduled court hearing…the President told the press: “I feel badly about a lot of them because I think a lot of it is very unfair.”

124 In response to a question about whether he was considering a pardon for Manafort or other individuals involved in the Special Counsel’s investigation, the President said, “I don’t want to talk about that….But look, I do want to see people treated fairly.” …Immediately following the revocation of Manafort’s bail, the President’s personal lawyer, Rudolph Giuliani, gave a series of interviews in which he raised the possibility of a pardon for Manafort.

125 On July 31, 2018, Manafort’s criminal trial began in the Eastern District of Virginia,
generating substantial news coverage. The next day, the President tweeted, “This is a terrible situation and Attorney General Jeff Sessions should stop this Rigged Witch Hunt right now, before it continues to stain our country any further. Bob Mueller is totally conflicted, and his 17 angry democrats that are doing his dirty work are a disgrace to USA!”

126 On August 17, as jury deliberations continued, the President commented on the trial from the South Lawn of the White House… the President twice called the Special Counsel’s investigation a “rigged witch hunt.” …On August 21, the jury found Manafort guilty on eight felony counts. Also, on August 21, Michael Cohen pleaded guilty to eight offenses, including a campaign-finance violation that he said had occurred “in coordination with, and at the direction of, a candidate for federal office.”

127 [August 23, 2018] …Giuliani told the Washington Post that the President had asked his lawyers for advice on the possibility of a pardon for Manafort and other aides, and had been counseled against considering a pardon until the investigation concluded…. On September 14, Manafort pleaded guilty to charges in the District of Columbia and signed a plea agreement that required him to cooperate with investigators…. On November 26, the Special Counsel’s Office disclosed a public court filing that Manafort had breached his plea agreement by lying about multiple subjects.

131 The President’s actions towards the witnesses in the Special Counsel’s investigation would qualify as obstructive if they had the natural tendency to prevent particular witnesses from testifying truthfully, or otherwise would have the probable effect of influencing, delaying, or preventing their testimony to law enforcement…. With respect to Manafort, there is evidence that the President’s actions had the potential to influence Manafort’s decision whether to cooperate with the government. The President and his personal counsel made repeated statements suggesting that a pardon was a possibility for Manafort….[June 17, 2018] …the President’s personal counsel stated that individuals involved in the Special Counsel’s investigation could receive a pardon…. While jurors were instructed not to watch or read news stories about the case and are presumed to follow those instructions, the President’s statements during the trial generated substantial media coverage that could have reached jurors if they happened to see the statements or learned about them from others.

132 Evidence concerning the President’s conduct towards Manafort indicates that the President intended to encourage Manafort to not cooperate with the government…. In light of the President’s counsel’s previous statements that the investigation “might get cleaned up with some presidential pardons” and that a pardon would be possible if the President “come[s] to the conclusion that you have been treated unfairly,” the evidence supports the inference that the President intended Manafort to believe that he could receive a pardon, which would make cooperation with the government as a means of obtaining a lesser sentence unnecessary.

134 After the media began questioning Trump’s connections to Russia, Cohen promoted a “party line” that publicly distanced Trump from Russia and asserted he had no business there…. In an attempt to minimize the President’s connections to Russia, Cohen submitted a letter to Congress falsely stating that he only briefed Trump on the Trump Tower Moscow project three times, that he did not consider asking Trump to travel to Russia, that Cohen had not received a response to an outreach he made to the Russian government, and that the project ended in January 2016, before the first Republican caucus or primary. While working on the congressional statement, Cohen had extensive discussions with the President’s personal counsel, who, according to Cohen, said that Cohen should not contradict the President and should keep the statement short and
“tight.” …As described in detail in Volume I, from September 2015 until at least June, 2016, the Trump Organization pursued and Trump Tower Moscow project in Russia…

137 On May 5, 2016, [Felix] Sater [Real estate developer who worked with Michael Cohen to develop a Trump Tower Moscow Project, sent an invitation to Cohen]: “[Dmitry] Peskov [Chief of Staff of and press secretary for the Russian administration] would like to invite you as his guest to the St. Petersberg Forum….June 16-19.” …Cohen recalled discussing the invitation to the St. Petersberg Economic Forum with candidate Trump and saying that Putin or Russian Prime Minister Dmitry Medvedev might be there….Cohen remembered that Trump said that he would be willing to travel to Russia if Cohen could “lock and load” the deal…..Cohen decided not to attend the St. Petersburg Economic Forum because Slater had not obtained a formal invitation for Cohen from Peskov….During the summer of 2016, Cohen recalled that candidate Trump publicly claimed that he had nothing to do with Russia and then shortly afterwards privately checked with Cohen about the status of the Trump Tower Moscow project…

138 …during the 2016 Presidential campaign, Trump denied having any personal, financial, or business connection to Russia, which Cohen described as the “party line” or “message” to follow for Trump and his senior advisors….Cohen was concerned that truthful answers about the Trump Tower Moscow project might not be consistent with the “message” that the President-Elect had no relationship with Russia.

139 Cohen said that he discussed the talking points [about the Moscow project] with Trump but that he did not explicitly tell Trump he thought they were untrue because Trump already knew they were untrue….At that time, Cohen understood Congress’s interest in him to be focused on the allegations in the Steele reporting concerning a meeting Cohen allegedly had with Russian officials in Prague during the campaign.

140 Cohen said that the President’s personal counsel also conveyed that, as part of the JDA (Joint Defense Agreement), Cohen was protected, which he would not be if he went “rogue.”

142 Cohen anticipated he might be asked questions about the proposed Trump-Putin meeting when he testified before Congress because he had talked about the potential meeting on Sean Hannity’s show. Cohen said that his “agenda” in submitting the statement to Congress with false representations about the Trump Tower Moscow project was to minimize the links between the project and the President, give the false impression that the project had ended before the first presidential primaries, and shut down further inquiry into Trump Tower Moscow, with the aim of limiting the ongoing Russia investigation.

143 After Cohen later pleaded guilty to making false statements to Congress about the Trump Tower Moscow project, this Office sought to speak with the President’s personal counsel about these conversations with Cohen, but counsel declined, citing potential privilege concerns….At the same time that Cohen finalized his written submission to Congress, he served as a source for a Washington Post story published on August 27, 2017, that reported in depth for the first time that the Trump Organization was “pursuing a plan to develop a massive Trump Tower in Moscow” at the same time as candidate Trump was “running for president in late 2015 and early 2016.”

144 On October 24 and 25, 2017, Cohen testified before Congress and repeated the false statements he had included in his written statement about Trump Tower Moscow. Phone records show that Cohen spoke with the President’s personal counsel immediately after his testimony on both days.

145 On February 13, 2018, Cohen released a statement to news organizations that stated, “In a private transaction in 2016, I used my own personal funds to facilitate a payment of $130,000 to [the woman]. Neither the Trump Organization nor the Trump campaign was
a party to the transaction with [the woman] and neither reimbursed me for the payment, either directly or indirectly....On April 9, FBI agents working with the US Attorney’s Office for the Southern District of New York executed search warrants on Cohen’s home, hotel room and office. That day, the President spoke to reporters and said that he “just heard they broke into the office of one of my personal attorneys — a good man.” The President called the searches “a real disgrace” and said, “It’s an attack on our country, in a true sense.”

146 A few days after the searches the President called Cohen. 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.” …Cohen recalled that [redacted] a friend of the President’s, reached out to say he was with “the Boss” in Mar-a-Lago and the President has said “he loves you” and not to worry.

147 Cohen said that following these messages he believed he had the support of the White House if he continued to toe [sic] the party line, and he determined to stay on message and be part of the team….Cohen also recalled speaking with the President’s personal counsel about pardons after the searches of his home and office had occurred, at a time when the media had reported that pardon discussions were occurring at the White House.

148 On April 24, 2018, the President responded to a reporter’s inquiry whether he would consider a pardon for Cohen with, “Stupid question.” …Beginning on July 20, 2018, the media reported on the existence of a recording Cohen had made of a conversation he had with candidate Trump about a payment made to a second woman who said she had an affair with Trump…On July 27, after the media reported that Cohen was willing to inform investigators that Donald Trump Jr. told his father about the June 9, 2016, meeting to get “dirt” on Hillary Clinton, the President tweeted: “[S]o the Fake News doesn’t waste my time with dumb questions, NO, I did NOT know of the meeting with my son, Don Jr. Sounds to me like someone is trying to make up stories in order to get himself out of an unrelated jam (Taxi cabs, maybe?) He even retained Bill and Crooked Hillary’s lawyer. Gee, I wonder if they helped him make the choice.”

149 On August 21, 2018, Cohen pleaded guilty in the Southern District of New York to eight felony charges, including two counts of campaign finance violations based on the payments he made during the final weeks of the campaign to women who said they had affairs with the President….On November 20, the President submitted responses that did not answer those questions about Trump Tower Moscow directly and did not provide any information about the timing of the candidate’s discussion with Cohen about the project or whether he participated in any discussion about the project being abandoned or no longer pursued.

150 On November 29, 2018, Cohen pleaded guilty to making false statements to Congress based on his statements about the Trump Tower Moscow project. In a plea agreement with this Office, Cohen agreed to “provide truthful information regarding any and all matters as to which this office deems relevant.” Later on November 29, after Cohen’s guilty plea had become public, the President spoke to reporters about the Trump Tower Moscow project, saying:

I decided not to do the project...There would have been nothing wrong if I did do it...I was focused on running for President...There was a good chance that I wouldn’t have won, in which case I would’ve gone back into the business.

In light of the President’s public statements following Cohen’s guilty plea that he “decided not to do the project,” this Office again sought information from the President about whether he participated in any discussions about the project being abandoned or no longer pursued, including when he “decided not to do the project,” who he spoke to about that decision, and what motivated the decision.
In response, the President’s personal counsel declined to provide additional information from the President and stated that “the President has fully answered all the questions at issue….On December 12, Cohen was sentenced to three years of imprisonment. 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 reduced prison sentence…*

…in January, 2019, Giuliani gave press interviews that appeared to confirm Cohen’s account that the Trump Organization pursued the Trump Tower Moscow project well past January 2016.

…while there is evidence…that the President knew Cohen provided false testimony to Congress about the Trump Tower Moscow project, the evidence available to us does not establish that the President directed or aided Cohen’s false testimony….Cohen said that his statements followed a “party line” that developed within the campaign to align with the President’s public statements distancing the President from Russia….But Cohen said that he and the President did not explicitly discuss whether Cohen’s testimony…would be or was false, and the President did not direct him to provide false testimony.

…we considered whether the President took actions that would have the natural tendency to prevent Cohen from providing truthful information to criminal investigators or to Congress….Before Cohen began to cooperate with the government, the President publicly and privately urged Cohen to stay on message and not “flip.” …Cohen also recalled discussing the possibility of a pardon with the President’s personal counsel, who told him to stay on message and everything would be fine….The evidence concerning this sequence of events could support an inference that the President used inducements in the form of positive messages in an effort to get Cohen not to cooperate, and then turned to attacks and intimidation to deter the provision of information or undermine Cohen’s credibility…

During and after the campaign, the President made repeated statements that he had “no business” in Russia and said that there were “no deals that could happen in Russia, because we’ve always stayed away.” …In his written answers, the President did not provide details about the timing and substance of his discussion with Cohen about the project and gave no indication that he had decided to no longer pursue the project.

…after Cohen pleaded guilty to making false statements to Congress, the President said, “what Cohen is trying to do is get a reduced sentence.” …But the President also appeared to defend the underlying conduct, saying, “Even if [Cohen] was right, it doesn’t matter because I was allowed to do whatever I wanted during the campaign.” …Three features of this case render it atypical…First, the conduct involved actions by the President. Some of the conduct did not implicate the President’s constitutional authority and raises garden-variety obstruction-of-justice issues.

Second, many obstruction cases involve the attempted or actual cover-up of an underlying crime….in applying the obstruction sentencing guideline…(“obstruction of a criminal investigation is punishable even if the prosecution is ultimately unsuccessful or even if the prosecution reveals no underlying crime.”) Obstruction of justice can be motivated by a desire to protect non-criminal personal interests, to protect against investigations where underlying criminal liability falls into a gray area, or to avoid personal embarrassment. The injury to the integrity of the justice system is the same regardless of whether a person committed an underlying wrong …the evidence does not establish that the President was involved in an underlying crime related to Russian election interference. But the evidence does point to a range of other possible personal motives animating the President’s conduct….Third, many of the President’s acts directed at witnesses, including discouragement of cooperation with the government and
suggestions of possible future pardons, occurred in public view….If the likely effect of
the acts is to intimidate witnesses or alter their testimony, the justice system’s integrity is
equally threatened….it is important to view the President’s pattern of conduct as a
whole….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. The incidents were often carried out through
one-on-one meetings in which the President sought to use his official power outside of
the usual channels. These actions ranged from efforts to remove the Special Counsel and
to reverse the effect of the Attorney General’s recusal; to the attempted use of official
power to limit the scope of the investigation; to direct and indirect contacts with
witnesses with the potential to influence their testimony.

158 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. Comey did not end the investigation of Flynn, which ultimately
resulted in Flynn’s prosecution and conviction for lying to the FBI. McGahn did not tell
the Acting Attorney General that the Special Counsel must be removed, but was instead
prepared to resign over the President’s order. Lewandowski and Dearborn did not deliver
the President’s message to Sessions that he should confine the Russia investigation to
future election meddling only. And McGahn refused to recede from his recollection about
events surrounding the President’s direction to have the Special Counsel removed,
despite the President’s multiple demands that he do so. Consistent with that pattern, the
evidence we obtained would not support potential obstruction charges against the
President’s aides and associates beyond those already filed….Soon after he fired
Comey….the President became aware that investigators were conducting an obstruction-
of-justice inquiry into his own conduct. That awareness marked a significant change in
the President’s conduct and the start of a second phase of action. The President launched
public attacks on the investigation and individuals involved in it who could possess
evidence adverse to the President, while in private, the President attempted to remove the
Special Counsel; he sought to have Attorney General Sessions unrecuse himself and limit
the investigation; he sought to prevent public disclosure of information about the June 9,
2016 meeting between Russians and campaign officials; and he used public forums to
attack potential witnesses who might offer adverse information and to praise witnesses
who declined to cooperate with the government. Judgments about the nature of the
President’s motives during each phase would be informed by the totality of the evidence.

159 The President’s personal counsel has written to this Office to advance statutory and
constitutional defenses to the potential application of the obstruction-of-justice statutes to
the President’s conduct. As a statutory matter, the President’s counsel has argued that a
core obstruction-of-justice statute, 18 U.S.C §1512(c)(2) does not cover the President’s
actions. As a constitutional matter, the President’s counsel argued that the President
cannot obstruct justice by exercising his constitutional authority to close Department of
Justice investigations or terminate the FBI director….In analyzing counsel’s statutory
arguments, we concluded that the President’s proposed interpretation of Section
1512(c)(2) is contrary to the litigating position of the Department of Justice and is not
supported by principles of statutory construction…..Article II of the Constitution does not
categorically and permanently immunize the President from potential liability for conduct
that we investigated. Rather, 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.

162 Section 1512(c)(2) provides:
(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 an official proceeding, or attempts to do so, shall be fined under this title or imprisoned not more than 20 years, or both.

On its face, therefore, Section 1512(c)(2) applies to all corrupt means of obstructing a proceeding, pending or contemplated – including by improper exercises of official power. In addition, other statutory provisions that are potentially applicable to certain conduct we investigated broadly prohibit obstruction of proceedings that are pending before courts, grand juries, and Congress….Congress has also specifically prohibited witness tampering.

162 Courts have not limited Section 1512(c)(2) to conduct that impairs evidence, but instead have read it to cover obstructive acts in any form…. [It] applies to corrupt acts – including by public officials – that frustrate commencement or conduct of a proceeding, and not just to acts that make evidence unavailable or impair its integrity…. Section 1512(c)(2) overlaps with other obstruction statutes, but it does not render them superfluous. Section 1503, for example, which covers pending grand jury and judicial proceedings, and Section 1505, which covers pending administrative and congressional proceedings, reach “endeavors to influence, obstruct, or impede” the proceedings – a broader test for inchoate violations than Section 1512(c)(2)’s “attempt” standard, which requires a substantial step towards a completed offense…. (“The requisite knowledge and intent [under Section 1519] can be present even if the accused lacks knowledge that he is likely to succeed in obstructing the matter.”)

164 The relevant section of the statute was entitled “Tampering with a Record or Otherwise Impeding an Official Proceeding.”

165 [A] Senate Committee (in 1982) explained that:
[T]he purpose of preventing an obstruction of or miscarriage of justice cannot be fully carried out by a simple enumeration of the commonly prosecuted obstruction offenses. There also must be protection against the rare type of conduct that is the product of the inventive criminal mind which also thwarts justice.

As with other criminal laws, the Supreme Court has “exercised restraint” in interpreting obstruction-of-justice provisions, both out of respect for Congress’s role in defining crimes and in the interest of providing individuals with “fair warning” of what a criminal statute prohibits.

166 In several obstruction cases, the Court has imposed a nexus test that requires that the wrongful conduct targeted by the provision be sufficiently connected to an official proceeding to ensure the requisite culpability….Vagueness doctrine requires that a statute define a crime “with sufficient definiteness that ordinary people can understand what conduct is being prohibited…. “Acting ‘corruptly’ within the meaning of § 1512(c)(2) means acting with an improper purpose and to engage in conduct knowingly and dishonestly with the specific intent to subvert, impede or obstruct” the relevant proceedings…” the term ‘corruptly’ in criminal laws has a long-standing and well-established meaning. It denotes an act done with an intent to give some advantage inconsistent with official duty and the rights of others.”

167 … Section 1505 broadly criminalizes obstructive conduct aimed at pending agency and congressional proceedings.

168 The President has broad discretion to direct criminal investigations. The Constitution
vests the “executive Power” in the President and enjoins him to “take Care that the Laws be faithfully executed.” [Article II, Section 1 and 3] Those powers and duties form the foundation of prosecutorial discretion….The President also has authority to appoint officers of the US and to remove those he has appointed. [Article II, Section 2] …Although the President has broad authority under Article II, that authority coexists with Congress’s Article I powers to enact laws that protect congressional proceedings, federal investigations, the courts, and grand juries against corrupt efforts to undermine their functions. Usually, those constitutional powers function in harmony, with the President enforcing the criminal laws under Article II to protect against corrupt or obstructive acts. 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.

169 The President’s counsel has argued that the “President’s exercise of his constitutional authority…to terminate and FBI Director and to close investigations…cannot constitutionally constitute obstruction of justice…no Department of Justice position or Supreme Court precedent directly resolved this issue. We did not find counsel’s contention, however, to accord with our reading of the Supreme Court authority addressing separation-of-powers issues. Applying the Court’s framework for analysis, we concluded that Congress can validly regulate the President’s exercise of official duties to prohibit actions motivated by a corrupt intent to obstruct justice….Before addressing Article II issues directly, we consider one threshold statutory-construction principle that is unique to the presidency: “The principle that statutes must be read not as applying to the President if they do not expressly apply where application would arguably limit the President’s constitutional role.” [Office of Legal Counsel, Application of 28 USC §458 to Presidential Appointment of Federal Judges]

170 Under OLC’s analysis, Congress can permissibly criminalize certain obstructive conduct by the President, such as suborning perjury, intimidating witnesses, or fabricating evidence, because those prohibitions raise no separation-of-powers questions….A more limited application of a clear-statement rule to exclude from the obstruction statutes only certain acts by the President – for example, removing prosecutors or ending investigations for corrupt reasons – would be difficult to implement. ..an established definition states that “corruptly” means action with an intent to secure an improper advantage “inconsistent with official duty and the rights of others.” …and it would be contrary to ordinary rules of statutory construction to adopt an unconventional meaning of a statutory term only when applied to the President…we proceed to examine the separation-of-powers issues that could be raised in an Article II defense to the application of those statutes…. “Even when a branch does not abrogate power to itself…the separation-of-powers doctrine requires that a branch not impair another in the performance of its constitutional duties.” [Loving vs. United States (1996)] The “separation of powers does not mean,” however, “that the branches ‘ought to have no partial agency in, or no controul [sic] over the acts of each other’” Clinton v. Jones (quoting James Madison, The Federalist No. 47] Applying that test here, 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.

172 The Court has also evaluated other general executive-power claims through a balancing test. For example, the Court evaluated the President’s claim of an absolute privilege for presidential communications about his official acts by balancing that interest against the Judicial Branch’s need for evidence in a criminal case. US vs. Nixon [the “Nixon Tapes”]
But even when a power is exclusive, “Congress’ powers, and its central role in making laws, give it substantial authority regarding many of the policy determinations that precede and follow” the President’s act….For example, although the President’s power to grant pardons is exclusive and not subject to congressional regulation, Congress has the authority to prohibit the corrupt use of “anything of value” to influence the testimony of another person in a judicial, congressional or agency proceeding…The offer of a pardon would precede the act of pardoning and this be within Congress’s power to regulate even if the pardon itself is not…it is taking the bribe, not the performance of the illicit compact, that is a criminal act….The President has no more right than other citizens to impede official proceedings by corruptly influencing witness testimony….Congress cannot reserve for itself the power of removal of an officer charged with the execution of the laws except by impeachment. *Bowshe v. Synar (1986)*….Yet the obstruction-of-justice statutes do not aggrandize power in Congress or usurp executive authority. Instead, they impose a discrete limitation on conduct only when it is taken with the “corrupt” intent to obstruct justice. The obstruction statutes thus would restrict presidential action only by prohibiting the President from acting to obstruct official proceedings for the improper purpose of protecting his own interests.

…a statute that prohibits official action undertaken for…personal purposes furthers, rather than hinders, the evenhanded administration of the law….The President’s removal powers are at their zenith with respect to principal officers – that is, officers who must be appointed by the President and who report to him directly.

The removal of inferior officers, in contrast, need not necessarily be at will for the President to fulfill his constitutionally assigned role in managing the Executive Branch….The category of inferior officers includes both the FBI Director and the Special Counsel, each of whom reports to the Attorney General….Where the Constitution permits Congress to impose a good-cause limitation on the removal of an Executive Branch officer, the Constitution should equally permit Congress to bar removal for the corrupt purpose of obstruction-of-justice….And even if a particular inferior officer’s position might be of such importance to the execution of the laws that the President must have at-will removal authority, the obstruction-of-justice statutes could still be constitutionally applied to forbid removal for a corrupt reason….Accordingly because of the separation-of-powers question is “whether the removal restrictions are of such a nature that they impede the President’s ability to perform his constitutional duty,” a restriction on moving an inferior officer for a corrupt reason – a reason grounded in achieving personal rather than official ends – does not seriously hinder the President’s performance of his duties.

The President retains broad latitude to supervise investigations and remove officials, circumscribed in this context only by the requirement that he not act for corrupt personal purposes….Congress has Article I authority to define generally applicable criminal law and apply it to all persons – including the President….Congress also has authority to establish a system of federal courts, which includes the power to protect the judiciary against obstructive acts….It [is] a crime if “any person or persons shall corruptly…endeavor to influence, intimidate, or impede any juror, witness, or officer, in any court of the United States, in the discharge of his duty, or shall corruptly…obstruct, or impede, or endeavor to obstruct or impede, the due administration of justice therein” *An Act Declaratory of the Law Concerning Contempts of Court, 4 Stat. 487-88 § 2, 1831*….In *Nixon*, the Court rejected the President’s claim of absolute executive privilege because “the allowance of the privilege to withhold evidence that is demonstrably relevant in a criminal trial would cut deeply into the guarantee of due process of law and gravely impair the basic function of the courts. As *Nixon* illustrates, the need to safeguard
judicial integrity is a compelling constitutional interest….Finally, the grand jury cannot achieve its constitutional purpose absent protection from corrupt acts…Serious federal criminal charges generally reach the Article II courts based on an indictment issued by a grand jury…. [T]he whole theory of the [grand jury’s function] is that it belongs to no branch of the institutional government, serving as a kind of buffer or referee between the Government and the people. [United States v. Williams] …In the case of obstruction-of-justice statutes, our assessment of the weighing of interests leads us to conclude that Congress has the authority to impose the limited restrictions contained in those statutes on the President’s official conduct to protect the integrity of important functions of other branches of government….A general ban on corrupt action does not unduly intrude on the President’s responsibility to “take Care that the Laws be faithfully executed.” To the contrary, the concept of “faithful execution” connotes the use of power in the interest of the public, not the office holder’s personal interests….And immunizing the President from the generally applicable criminal prohibition against corrupt obstruction of official proceedings would seriously impair Congress’ power to enact laws “to promote objectives within [its] constitutional authority,” protecting the integrity of its own proceedings and the proceedings of Article III courts and grand juries.

Accordingly, based on the analysis above, we were not persuaded by the argument that the President has blanket constitutional immunity to engage in acts that would corruptly obstruct justice through the exercise of otherwise-valid Article II powers….As an initial matter, the term “corruptly” sets a demanding standard. It requires a concrete showing that a person acted with an intent to obtain an “improper advantage for [him]self or someone else, inconsistent with the official duty and rights of others….And virtually everything that the President does in the routine conduct of office will have a clear governmental purpose and will not be contrary to his official duty….Direct or indirect action by the President to end a criminal investigation into his own or his family members’ conduct to protect against personal embarrassment or legal liability would constitute a core example of corruptly motivated conduct….In those examples, official power is being used for the purpose of protecting the President’s personal interests.

There also is no reason to believe that investigations, let alone prosecutions, would occur except in highly unusual circumstances when a credible factual basis exists to believe that obstruction occurred…Under OLC’s opinion that a sitting President is entitled to immunity from indictment, only a successor administration would be able to prosecute a former President. But that consideration does not suggest that a President would have any basis for fearing abusive investigations or prosecutions after leaving office. There are “obvious political checks” against initiating a baseless investigation or prosecution of a former President.

…the President is absolutely immune from private civil damages actions based on his official conduct….In the rare cases in which a substantial and credible basis justifies conducting an investigation into the President, the process of examining his motivations to determine whether he acted for a corrupt purpose need not have a chilling effect. Ascertaining the President’s motivations would turn on any explanation he provided to justify his actions, the advice he received, the circumstances surrounding the actions, and the regularity or irregularity of the process he employed to make his decisions. But grand juries and courts would not have automatic access to confidential presidential communications on those matters; rather, they could be presented in official proceedings only on a showing of sufficient need….In any event, probing the President’s intent in a criminal matter is unquestionably constitutional in at least one context: the offense of bribery turns on the corrupt intent to receive a thing of value in return for being influenced in official action….There can be no serious argument against the President’s
potential criminal liability for bribery offenses, notwithstanding need to ascertain his purpose and intent….Finally, history provides no reason to believe that any asserted chilling effect justifies exempting the President from obstruction laws….In sum, contrary to the position taken by the President’s counsel, we concluded that, in the 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….And the protection of the criminal justice system from corrupt acts from any person – including the President – accord with the fundamental principle of our government that “[n]o [person] in this country is so high that he is above the law.” [US v. Lee; Clinton v. Jones; US v. Nixon]