



Charlie Savage @charlie_savage Wed Aug 24 20:01:08 +0000 2022

BREAKING: DOJ has released the full memo to then Attorney General Bill Barr analyzing why Trump should not be charged with obstruction-of-justice based on the Mueller report. DOJ had fought but lost a @CREWcrew FOIA lawsuit seeking this disclosure. <https://t.co/LfKd9XrdIo>

2/ Vol II of the Mueller report detailed numerous episode raising potential obstruction of justice concerns. Barr purported to clear Trump of all of them, but never publicly discussed many of them. Here are some of the most important ones from the report:

<https://www.nytimes.com/2019/04/23/us/politics/did-trump-obstruct-justice-mueller-didnt-say-but-left-a-trail-to-the-answ>

/3 An overarching premise is that Mueller did not find evidence sufficient to charge Trump with conspiring with Russia, so there was no underlying crime. (It does not raise the possibility that Mueller failed to get that evidence because his investigation was obstructed.) <https://t.co/EAaavxRZPb>

The Special Counsel's obstruction theory would not only be novel, but, based on his own analysis, it would also be unusual because Volume I of the Special Counsel's Report is conclusive that the evidence developed "was not sufficient to charge that any member of the Trump Campaign [including the President] conspired or coordinated with representatives of the Russian government to interfere in the 2016 election." Given that conclusion, the evidence does not establish a crime or criminal conspiracy involving the President toward which any obstruction or attempted obstruction by the President was directed. It would be rare for federal prosecutors to bring an obstruction prosecution that did not itself arise out of a proceeding related to a separate crime.

4/ The Mueller report strongly suggested that the Mueller team thought Trump dangling a pardon at Manafort to induce him not to cooperate with their investigation met the necessary elements of obstruction. <https://t.co/nsYBf4x1Nt>

Trump encouraged Manafort not to cooperate.

After the indictment of his former campaign chairman Paul Manafort, Mr. Trump repeatedly dangled the possibility of a pardon and publicly praised him for not “flipping.” Mr. Manafort eventually pleaded guilty and agreed to cooperate with investigators, but prosecutors said he violated that deal and [continued to lie to them](#).

[Vol. 2, Pages 122-133]

OBSTRUCTIVE?

Potentially. The report said that “there is evidence that the president's actions had the potential to influence Manafort's decision whether to cooperate with the government” and that his statements “suggested that a pardon was a more likely possibility if Manafort continued not to cooperate.”

LINKED TO AN INVESTIGATION?

Yes. Mr. Trump's “conduct towards Manafort was directly connected to the official proceedings involving” Mr. Manafort's criminal trial and occurred as the special counsel continued to oversee grand jury proceedings into the Trump campaign and Russia.

IMPROPER INTENT?

Yes. The evidence indicates that Mr. Trump “intended to encourage Manafort to not cooperate with the government,” the report said.

Bottom line: The report suggests there is sufficiently plausible evidence to ask a grand jury to consider charging Mr. Trump with obstruction.

5/ The Barr memo -- which reads like a defense lawyer's brief -- never mentions pardon dangling and characterizes Trump as merely praising or condemning witnesses based on whether they cooperated with investigators.

<https://t.co/BRIPxtMgK>

public and private statements concerning witnesses, whom he appeared to praise or condemn based upon whether they were fighting the charges against them or cooperating with the investigation.

6/ The memo argues for interpreting this as Trump not wanting Manafort etc to make up false evidence against him. It again bolsters that by characterizing Mueller's failure to obtain sufficient evidence to charge any conspiracy with Russia as meaning there was none. <https://t.co/FAdwvsyOvP>

We likewise do not believe that the President's public statements exhorting witnesses like

Subject: *Review of Special Counsel's Report*

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Flynn, Manafort, Stone, or Cohen, not to “flip” should be viewed as obstruction of justice. The Report makes clear that the President equated a witness's decision to “flip” with being induced by prosecutors to manufacture false evidence against others. We cannot say that the evidence would prove beyond a reasonable doubt that the President's statements, most of which were made publicly, were intended to induce any of those witnesses to conceal truthful evidence or to provide false evidence. Once again, this conclusion is buttressed by the absence of any clear evidence that these witnesses had information that would prove the President had committed a crime. The President's public statements could be viewed as efforts to defend himself from public criticism related to the Special Counsel's investigation or to discourage the witnesses from making what the President believed might be false statements in exchange for a lesser sentence. Those statements do not warrant a prosecution for obstruction of justice.

7/ Another significant episode was Trump pressuring McGahn to publicly lie and write a memo for the file falsely denying that Trump had pushed him to fire Mueller, both of which McGahn refused to do. <https://t.co/OPcv9DMQGO>

OBSTRUCTIVE?

Potentially. By pushing Mr. McGahn to issue a statement and create a written record denying facts that he knew Mr. McGahn believed to be true, Mr. Trump's action "would qualify as an obstructive act if it had the natural tendency to constrain McGahn from testifying truthfully or to undermine his credibility as a potential witness if he testified consistently with his memory, rather than with what the record said."

LINKED TO AN INVESTIGATION?

Yes. Mr. Trump knew that Mr. McGahn had already told investigators about the firing attempt and was likely to talk to them again, and his push for an internal memo "indicates the president was not focused solely on a press strategy, but instead likely contemplated the ongoing investigation and any proceedings arising from it."

IMPROPER INTENT?

Yes. "Substantial evidence indicates that in repeatedly urging McGahn to dispute that he was ordered to have the special counsel terminated, the president acted for the purpose of influencing McGahn's account in order to deflect or prevent further scrutiny of the president's conduct towards the investigation."

Bottom line: The report suggests there is sufficiently plausible evidence to ask a grand jury to consider charging Mr. Trump with attempted obstruction.

8/ The memo characterizes McGahn's memory of this episode as "ambiguous" and since Trump denied it, says it could not be proved beyond a reasonable doubt. <https://t.co/iopDXzYAQz>

For instance, when it comes to the President's request that McGahn deny the newspaper accounts, the Special Counsel recognizes that there is evidence suggesting that the President believed the newspaper stories to be false. The President repeatedly protested both to McGahn and to other witnesses that he believed that he had asked McGahn to advise the Deputy Attorney General about the Special Counsel's conflicts of interests and thereby induce the appointment of an unconflicted special counsel. The President vehemently denied telling McGahn that he wanted to "fire" the Special Counsel, and McGahn recalled the President's direction to be more **ambiguous**. While other evidence cuts against this understanding, there is insufficient evidence to conclude beyond a reasonable doubt that the President sought to induce McGahn to lie. In addition,

9/ When McGahn testified under oath about that episode before Congress in 2017, he backed the Mueller report's account as accurate. <https://t.co/cVRldYp6vZ>

Q Page 86, the next sentence after we just went through, it says: McGahn understood the President to be saying that the special counsel had to be removed by Rosenstein.

Is that accurate?

A That was what I took from the call, yes. I understand the President disagrees with that, but that's still my -- that's still my view today.

Q Thank you.

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When the President said, "Mueller has to go, call me back when you do it," what was your response?

A I don't recall my response. I was trying to get off the phone.

Q But do you recall the President telling you, quote, "Mueller has to go," end quote, and, quote, "Call me back when you do it"?

A I do recall -- I do recall that, yes.

Q So was it your understanding --

A And the "it" to me meant call Rosenstein.

Q And convey to him that Mueller has to go?

A Convey the message to Rosenstein, yes.

Q Page 86, first full paragraph, after it says, "McGahn understood the President to be saying that the special counsel had to be removed by Rosenstein," it says, "to end the conversation with the President, McGahn left the President with the impression that McGahn would call Rosenstein."

Do you recall what you said to leave the President with that impression?

A I don't recall specifically if I said something like, "I'll call Rod," or, "Okay," or something. But, at that point, I was trying to get off the phone.

Q The next sentence reads: McGahn recalled that he had already said no to the President's request and was worn down, so he just wanted to get off the phone.

10/ It also argues it wasn't obstruction when Trump tried to get McGahn to write a memo denying the attempted firing bc McGahn had already told Mueller about it. It doesn't address that a memo contradicting his testimony would undermine his ability to be a witness in any trial. <https://t.co/FYRpCVJO00>

conclude beyond a reasonable doubt that the President sought to induce McGahn to lie. In addition, at the time of this discussion, McGahn had already provided his recollection to investigators, and the President's principal focus was on rebutting those media reports. Given the timing of this conversation, there is insufficient evidence to conclude that the President's actions toward McGahn, which were themselves ambiguous, were intended to affect the investigation itself. Therefore, the evidence, in our judgment, does not suffice to warrant any criminal prosecution.

11/ As for the attempted firing of Mueller itself.... <https://t.co/yIVncjL4y2>

Trump tried to fire Mueller.

After learning in June 2017 that he was under investigation for obstruction of justice, Mr. Trump ordered the White House counsel Donald F. McGahn II over the phone to have the Justice Department [fire Mr. Mueller](#) based on the president's views that the special counsel had conflicts of interest. Mr. Trump backed off after Mr. McGahn refused to carry out the directive and prepared to resign in protest. [Reference: [Vol. 2, Pages 77-90](#)]

OBSTRUCTIVE?

Potentially. While acknowledging that removing him would not have prevented the investigation from continuing, Mr. Mueller wrote that such an act nevertheless may have “had the potential to delay further action in the investigation, chill the actions of any replacement special counsel or otherwise impede the investigation.”

LINKED TO AN INVESTIGATION?

Yes.

IMPROPER INTENT?

Yes. Among other things, the report cited evidence that Mr. Trump “knew he should not have made those calls” because Mr. McGahn had warned him he should use his personal lawyers to submit any conflict complaints, not use his official powers to remove the special counsel.

Bottom line: While Mr. Mueller hedged a bit on the first of the three criteria, the report suggests there is sufficient evidence to ask a grand jury to consider charging this act as illegal obstruction.

12/ The memo stresses that Trump's aides refused to carry out his orders. While it acknowledges that an unsuccessful attempt to commit a crime is still a criminal act, it argues that since Trump backed down prosecutors could not prove his intent beyond a reasonable doubt. <https://t.co/jKHZtDcn8l>

of his requests to change the supervision of the investigation were actually carried out. The conduct under investigation is based entirely upon “directions” by the President to subordinates to take actions on his behalf that they did not undertake. In each instance, if the President truly wanted to cause those actions, he could have done it himself (for instance, ordering the Deputy Attorney General to terminate the Special Counsel or directing the Attorney General to unrecuse or to resign). After the President provided his direction, in each instance, the orders were not carried out. Of course, it is true that an act may constitute an attempt or an endeavor, even if unsuccessful. But the facts that the President could have given these directions himself, and did not remove any subordinate for failing to convey his directions, weigh against finding an intent to obstruct justice.

13/ The memo uses the same rationale to dispose of Trump's unsuccessful attempts to get aides to curtail or gut the Russia investigation, which it conflated with his unsuccessful attempt to have Mueller fired. <https://t.co/Ui4YWduvZ4>

Trump tried to gut the investigation.

In June 2017, Mr. Trump twice asked his former campaign manager Corey Lewandowski to convey a private order to Attorney General Jeff Sessions, who had recused himself from overseeing the Russia investigation. Mr. Sessions was to intervene and limit Mr. Mueller's jurisdiction to a look at preventing future election interference, ending scrutiny of the Trump campaign's links to Russia in 2016 and whether Mr. Trump obstructed justice. But Mr. Lewandowski delivered neither message. [Vol. 2, [Pages 90-98](#)]

OBSTRUCTIVE?

Potentially. Mr. Trump's directives "indicate that Sessions was being instructed to tell the special counsel to end the existing investigation into the president and his campaign."

LINKED TO AN INVESTIGATION?

Yes. It was public knowledge by then that Mr. Mueller was working with a grand jury.

IMPROPER INTENT?

Yes. "Substantial evidence" indicates that Mr. Trump was trying "to prevent further investigative scrutiny of the president's and his campaign's conduct." Reaching out to Mr. Sessions surreptitiously via an outside loyalist rather than relying on official White House channels "provides additional evidence of his intent."

14/ As for urging Comey to go easy on Flynn and firing Comey, the memo argues there are explanations for both (e.g., frustration that Comey wouldn't say publicly what he was saying privately) that do not rise to obstruction. The Mueller report also characterized those as murkier. <https://t.co/3jIQVO5EqE>

informing him of those facts. At the same time, the President repeatedly demonstrated his belief that the Russia investigation had cast a cloud on his nascent Administration and that it was being exploited, if not outright conducted, by his political opponents to frustrate his efforts to implement his agenda. As the Report indicates, many of the President's actions in these matters can readily be explained by his desire to have the FBI Director or others in the Administration inform the public that he was not under investigation. Indeed, the Report identifies substantial evidence that the FBI Director's refusal to make such a public statement was the driving force in the President terminating him.

We also do not believe that the President's actions regarding Michael Flynn present any case of obstruction of justice. The Special Counsel did not uncover any evidence that the President had any personal culpability in the Flynn investigation or that his actions were motivated by improper considerations. The President's expression of "hope" that Comey would "let this go" did not clearly direct a particular action in the Flynn investigation, and Comey did not react at the time as though he had received a direct order from the President. By the same token, as the Special Counsel acknowledges, the President's decision to remove the FBI Director did not constitute obstruction either. In our view, none of these actions constitutes a case of obstruction of justice, either as a matter of law or fact.

15/ The memo ends, first, by arguing that "the most compelling interpretation" of Trump's conduct was that he reasonably believe that Mueller's investigation was interfering with his governing agenda. <https://t.co/zcxpuwhueC>

Although we have not identified any actions that present clear violations of the obstruction of justice statutes, there are other factors that would weigh against pursuing the President's actions as criminal violations. The Special Counsel's thorough investigation did not establish that the President committed any underlying crime related to Russian interference. As noted, in every successful obstruction case cited in the Report, the corrupt acts were undertaken to prevent the investigation and prosecution of a separate crime. The existence of such an offense is not a *necessary* element to proving an obstruction charge, but the absence of underlying guilt is relevant and powerful evidence in assessing whether otherwise innocent actions were undertaken with a corrupt motive. In the absence of an underlying offense, the most compelling inference in evaluating the President's conduct is that he reasonably believed that the Special Counsel's investigation was interfering with his governing agenda. Even if the President were objectively wrong about the intentions of the Special Counsel, many, if not all, of his actions could be viewed as lacking the intent element under the relevant statutes.

16/ As a kind of PS, it argues against interpreting obstruction laws as applying to officials with supervisory authority over investigations, which echoes a memo that private citizen Barr wrote for Trump's team in 2018 before he became attorney general.

<https://int.nyt.com/data/documenthelper/549-june-2018-barr-memo-to-doj-mue/b4c05e39318dd2d136b3/optimized/full.pdf>
<https://t.co/OI38TKUymw>

In addition, while our analysis would counsel against pursuing an obstruction charge against an ordinary party in the absence of any effort to impair evidence, there are additional prudential reasons that weigh against such an interpretation in these circumstances. Such a criminal prosecution would involve the application of a novel obstruction theory that arguably would apply to any official with the authority to take acts that could influence an investigation. Such an extension would involve serious questions of public policy and constitutional law that would weigh against pursuing criminal charges except under the clearest of cases.

Some of this analysis has now been incorporated into this conventional news story:
<https://www.nytimes.com/2022/08/24/us/politics/barr-trump-memo-mueller.html>