

United States Senate

WASHINGTON, DC 20510

May 8, 2019

The Honorable Lindsey O. Graham
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

We are writing as members of the Judiciary Committee to follow up on our request that the Committee hold a hearing with Special Counsel Mueller regarding his report on Russian electoral interference and obstruction of justice.

The Mueller report is a seminal document that caps the Special Counsel's nearly two year investigation into Russian interference in the 2016 election. However, as comprehensive as the report is, it's clear there are **many outstanding questions** that remain unanswered. Having Special Counsel Mueller before the committee is necessary to get those questions answered.

The attached document identifies at least **60 unanswered questions** related to both Russian interference and obstruction of justice. We believe Robert Mueller would be best-suited to answer these and other questions – from both sides of the aisle – and we feel the Committee would benefit greatly from his testimony.

We therefore respectfully request a hearing so Members might have the opportunity to ask these and other questions of Special Counsel Mueller directly and receive his answers. I appreciate your consideration of this request.

Sincerely,


DIANNE FEINSTEIN
Ranking Member


PATRICK LEAHY
United States Senator



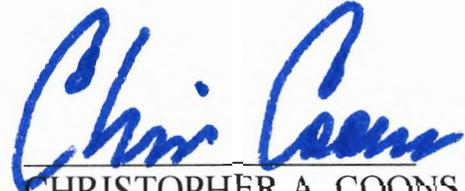
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Unanswered Questions from the Mueller Report

Set out below are several key issues and questions based on the redacted version of the “Report on the Investigation Into Russian Interference In the 2016 Presidential Election,” released to the public on April 18, 2019. This is not an exhaustive list of issues or questions, and Members may have additional areas of concern and questions.

Russian Interference

Offers of assistance from Russia or its potential intermediaries to the Trump campaign, including the June 9, 2016 Trump Tower meeting.

- Did the investigation uncover any evidence that called into question the veracity of the reports from foreign allies, informing US officials that George Papadopoulos had told them that Russia had “dirt” on Hillary Clinton and that Russia could assist the campaign? [Vol. I, pp. 66, 81, 89]
- To what degree was your office able to assess the credibility of assertions by various campaign officials or associates that they “could not recall” if Papadopoulos told them that Russia had “dirt” on Clinton and that Russia could assist the campaign? [Vol. I, pp. 93-94].
- Was your office able to access all of the documents, including emails, that might have shed light on claims by Trump campaign officials or associates that they “could not recall” Papadopoulos informing them that Russia had “dirt” on Clinton and could assist the campaign?
- The report recounts communications between Trump campaign advisor George Papadopoulos and Sergei Millian, who claimed to have “insider knowledge and direct access to the top hierarchy in Russian politics.” [Vol. I, pp. 94-95]. Was the investigation able to verify whether Millian had access to Russian officials and, if so, the extent of those contacts?
- To what degree was your office able to assess the credibility of George Papadopoulos’ claim to have “no recollection” of Millian’s offer to “share with you a disruptive technology that might be instrumental in your political work for the campaign”? [Vol. I, p. 95]
- Did the investigation discover any additional contacts between Sergei Millian and anyone associated with the Trump campaign?
- The report recounts extensive communications between Trump campaign officials, including Jared Kushner, and Dmitri Simes, who had been approached by a Russian oligarch close to Putin about arranging a back channel between the Trump campaign and the Kremlin and provided the Trump campaign with derogatory information about Bill Clinton’s alleged ties to Russia. [Vol. I, pp. 103-10, 163-64]. Was the investigation able

to verify the extent of Simes' ties to Russian officials and whether the Kremlin was aware of his engagement with the Trump campaign?

- Why did the office elect not to pursue an interview with Donald Trump Jr. and did his refusal to be interviewed impact the investigation? If so, how?
- Was the office able to determine why none of the Trump campaign officials who learned of offers of assistance from Russia or who received such offers directly never reported those offers to US law enforcement officials?

Trump campaign manager Paul Manafort's sharing of internal campaign strategy and polling data with Russian operative Konstantin Kilimnik.

- To what degree was the investigation able to determine why Paul Manafort volunteered to work for the Trump campaign for free, and whether he discussed the possibility of joining the Trump campaign team with foreign nationals?
- To what degree was your investigation able to determine whether members of the campaign other than Rick Gates were aware that internal campaign strategy and polling data was being shared with Kilimnik? [Vol. I, p. 136]
- To what degree was your investigation able to determine whether Manafort, who told your office that if Trump won, Deripaska “would want to use Manafort to advance whatever interests Deripaska had in the United States and elsewhere” [Vol. I, p. 137], was being cultivated as or serving as a long-term asset for Deripaska, Russia, or other foreign nationals or governments?
- To what degree was your investigation able to determine whether internal Clinton campaign data analytics and voter-turnout models that were stolen as part of the Russian hacking operation were used by Russia or shared with anyone working for or with the Trump campaign?
- In what specific ways did the non-cooperation of witnesses, including efforts to conceal or destroy evidence, impact your ability to assess Manafort's interactions with Kilimnik – including the purpose of sharing campaign information and pro-Russia plans, and what was done with the information and documents that were shared?
- Did your investigation uncover gaps in existing laws that Congress should address? Do you believe that Congress should strengthen our laws to prevent foreign governments from being provided with non-public campaign information?

Trump campaign efforts to benefit from Russian hacking and WikiLeaks' release of stolen documents.

- To what degree did your investigation examine the role of Cambridge Analytica, AggregateIQ (AIQ), or SCL Group in the 2016 election? Did your investigation examine the possibility that US election or Trump campaign information was shared with Russia through these entities?
- The report examines various avenues through which Russian intelligence services may have transferred documents to Julian Assange and WikiLeaks. [Vol. I, pp. 44-47]. The report states that “the Office cannot rule out that stolen documents were transferred to WikiLeaks through intermediaries who visited during the summer of 2016.” [Vol. I, p. 47]. Were you able to rule out the possibility that US persons were aware of or involved in transferring documents, or arranging for the transfer of documents, to Assange or WikiLeaks?
- How did the non-cooperation of witnesses, including efforts to conceal or destroy evidence, impact your ability to uncover all contacts between individuals associated with the Trump campaign and Julian Assange or other representatives of WikiLeaks?
- The report states that Jerome Corsi told your office that “he was convinced that his efforts had caused WikiLeaks to release” the stolen John Podesta emails about an hour after the Washington Post reported on the *Access Hollywood* tape of Donald Trump making offensive comments about women. [Vol. I, p. 59]. The report states that your office found “little corroboration” for Corsi’s account. Did your investigation uncover evidence of alternate explanations for the timing and release of the Podesta emails on October 7, 2016?
- Are there ways, consistent with the First Amendment, that Congress could strengthen existing laws to deter and punish the transfer of information stolen from protected computer systems?

Trump Campaign efforts to obtain Hillary Clinton’s emails.

- To what degree was the office able to determine whether any of the efforts to obtain Clinton’s emails resulted in contact with foreign intelligence services or Russian hackers, as had been proposed by Trump allies? Did the investigation examine whether individuals involved in these efforts had engaged in criminal misconduct?
- Was the Office able to determine whether then-candidate Trump was updated on the efforts to obtain Clinton’s emails?

Trump campaign efforts to establish “back channel” communications with Russia.

- To what degree was your investigation able to determine the Trump campaign’s and the Russian government’s purpose in pursuing back channel communications, including between:
 - Jared Kushner and Russian Ambassador Sergey Kislyak, which Kushner suggested be arranged using “secure facilities at the Russian Embassy” [Vol. I, pp. 159-61];
 - Kushner and Sergey Gorkov, the head of a Russian-government-owned bank who has “a direct line to Putin” [Vol. I, pp. 161-63];
 - Rick Gerson, a friend of Kushner, and Kirill Dmitriev, the head of Russia’s sovereign wealth fund who reports directly to Putin [Vol. I, pp. 156-59]; and
 - Erik Prince, a “trusted associate” of the Trump transition team, and Dmitriev. [Vol. I, pp. 153-55]
- To what degree was your investigation able to determine the content of these back channel communications between Trump campaign and Russian government representatives?
- To what degree was your investigation able to determine whether and when members of the Trump campaign became aware of Erik Prince’s January 2017 meeting in the Seychelles with Kirill Dmitriev and Rick Gerson’s communications with Dmitriev?
- In what specific ways did the non-cooperation of witnesses, including efforts to conceal or destroy evidence, impact your ability to assess the Trump campaign and Russian government efforts to communicate via back channels, including the purpose of the back channels, the content of the communications, and who was aware of the communications?

Trump personal and business ties with Russia, including Trump Tower Moscow (2015-2016).

- To what degree was your investigation able to determine whether the Kremlin encouraged Russian oligarch Aras Agalarov or his son Emin to develop a personal and business relationship with Donald Trump and members of his family?
- To what degree was your investigation able to determine the extent of efforts by Michael Cohen and Felix Sater, who had served as “an informal agent of the Trump Campaign in Moscow” [Vol. I, p. 69], to garner Kremlin support for the Trump Tower Moscow project and Donald Trump’s campaign for president? Was the investigation able to determine the extent of the ties between the Kremlin and intermediaries in Russia who were in contact with Sater?
- The report recounts offers of assistance to the campaign from Dmitry Klokov, the Director of a Russian electricity company and former press secretary to Russia’s energy minister. [Vol. I, pp. 72-73]. In emails to Michael Cohen, Klokov described himself as

“a ‘trusted person’ who could offer the Campaign ‘political synergy’ and ‘synergy on a government level,’” including support for Trump from “the person of interest” (identified in the report as Vladimir Putin). [Vol. I, pp. 72-73]. Was the investigation able to determine whether Klovov was acting with the knowledge or at the direction of the Kremlin?

- To what degree was your investigation able to determine the extent to which the Kremlin was aware of or directing discussions regarding possible travel to Russia, and proposed meetings between Trump or his campaign or business associates and Russian officials, including Putin?
- To what degree was your investigation able to determine whether the Trump Tower Moscow project was part of an effort to gain influence over Donald Trump?
- To what degree was your investigation able to determine whether the Kremlin encouraged any other efforts to develop personal and business ties to Donald Trump?

Obstruction of Justice

No traditional prosecutorial decision on whether the President obstructed justice.

- The Department of Justice Office of Legal Counsel (OLC) has issued an Opinion finding that “while a sitting president may not be prosecuted . . . a criminal investigation during the President’s term is permissible.” According to your report, you “accepted OLC’s legal conclusion for the purpose of exercising prosecutorial jurisdiction.” [Vol. II, p. 1]. But for the OLC Opinion, would you have reached a decision on obstruction?
- How did the OLC opinion or interactions with OLC guide your investigation, if at all?
- When Attorney General Barr testified before the Judiciary Committee on May 1, 2019, he said that he “did not understand exactly why the special counsel was not reaching a decision” on whether the President obstructed justice, and that “he didn’t want to try to put words in Bob Mueller’s mouth.” He also said that he was “surprised” by your decision. What did you tell Barr regarding why you chose not to make a traditional prosecutorial judgment?
- Did you discuss with Barr what your decision would have been if you had made a traditional prosecutorial judgment?
- Did Barr ever tell you that he intended to make a traditional prosecution decision? If so, did you and Barr discuss Barr’s intention to do so, or what his decision would be?
- Barr told the Judiciary Committee that he disagreed with your decision not to reach a traditional prosecutorial judgement. He said: “I think if [the Special Counsel] felt that he shouldn’t go down the path of making a traditional prosecutive decision then he shouldn’t have investigated. That was the time to pull up.” At which point in your investigation did you realize that you could not reach a decision on the question of obstruction? Why did you find it important to complete your work even if you could not render such a decision?
- Your report states that “we recognized that a federal criminal accusation against a sitting President would . . . potentially preempt constitutional processes for addressing presidential misconduct.” [Vol. II, p. 1]. Is this a recognition that Congress has a role to play in evaluating the type of conduct described in this report?
- While the investigation was ongoing, several congressional committees, including the Senate Judiciary Committee, worked to deconflict with your office to ensure that our work would not interfere with your efforts to gather the facts and complete your investigation. Now that your work is done, are you willing to work with Congress to ensure that we have the information needed to carry out our legislative and oversight functions?

Obstruction Standard.

- Your report states that while it “does not conclude that the President committed a crime, it also does not exonerate him.” [Vol. II, p. 182]. Nevertheless, Attorney General Barr said in his March 24, 2019 letter that he had concluded that “the evidence developed during the Special Counsel’s investigation is not sufficient to establish that the President committed an obstruction-of-justice offense.” At the Judiciary Committee’s May 1, 2019 hearing, Barr was asked about the discrepancy between your report and his conclusion. He responded: “The difference is I used the proper standard.” Do you believe you applied an improper standard?
- Do you continue to believe that the results of the investigation did not exonerate the President of possible criminal misconduct?
- Your report notes that proof of an underlying crime “is not an element of an obstruction offense” because obstruction can be motivated by other desires, and that “the injury to the integrity of the justice system is the same regardless of whether a person committed an underlying wrong.” [Vol. II, p. 157]. Did the absence of an underlying crime preclude you from making a determination as to whether any of the ten episodes described in your report constituted obstruction?
- Your report also states that “the evidence does indicate that a thorough FBI investigation would uncover facts about the campaign and the President personally that the President could have understood to be crimes or that would give rise to personal and political concerns.” [Vol. II, p. 76]. This statement cuts against the claim that the President believed that he had been “falsely accused” of misconduct. Can you explain what evidence led to this conclusion and what specific crimes the President would have been concerned that he, or his campaign, committed?
- Your report states that “[a]lthough the series of events we investigated involved discrete acts, the overall pattern of the President’s conduct towards the investigations can shed light on the nature of the President’s acts and the inferences that can be drawn about his intent.” [Vol. II, p. 7]. How did the President’s “pattern of conduct” inform your Office’s decisions about whether he acted with corrupt intent in the ten episodes described in your report?
- Many of the acts described in your report, such as tweets, statements, and comments, occurred in public view. You note in your report that “[w]hile it may be more difficult to establish that public-facing acts were motivated by a corrupt intent, the President’s power to influence actions, persons, and events is enhanced by his unique ability to attract attention through use of mass communications. And no principle of law excludes public acts from the scope of obstruction statutes. If the likely effect of the acts is to intimidate witnesses or alter their testimony, the justice system’s integrity is equally threatened.” [Vol. II, p. 157]. Did the fact that an act occurred in public view ever impair your Office’s ability to determine whether it was motivated by a corrupt intent?

Impact of President Trump's limited cooperation.

- President Trump refused your Office's requests that he appear for a voluntary interview, and while he did provide written responses to questions about "certain Russia-related topics," he claimed to "not recall" or "not remember" particular information or events more than 30 times. Other answers were "incomplete or imprecise." [Appx. C, pp. 1-2]. Please identify all instances where the President's testimony would have been helpful to shed more light on whether his conduct satisfied the elements of criminal obstruction.
- Your report states that "[j]udgments about the nature of the President's motives during each phase" before and after firing FBI Director Comey "would be informed by the totality of the evidence." [Vol. II, p. 7]. Would testimony from the President be part of the "totality of the evidence"?

President Trump's conduct towards Michael Cohen.

- Your investigation found that President Trump "used inducements in the form of positive messages in an effort to get [his personal attorney Michael] Cohen not to cooperate, and then turned to attacks and intimidation to deter the provision of information or undermine Cohen's credibility once Cohen began cooperating." You also found evidence that "the President intended to discourage Cohen from cooperating with the government because Cohen's information would shed adverse light on the President's campaign period conduct and statements." [Vol. II, p. 155]. Did your investigation determine what campaign period conduct and statements President Trump wished to conceal?
- Could efforts to conceal such campaign period conduct and statements from the government satisfy the standard for obstruction of justice, regardless of whether the conduct and statements at issue were criminal in and of themselves?

Paul Manafort's failure to cooperate.

- Your report noted that President Trump and his lawyers made public and private comments to his former campaign manager, Paul Manafort, which encouraged Manafort not to "break" or "flip," and "suggested that a pardon was a more likely possibility if Manafort continued not to cooperate with the government." You found that President Trump "intended to encourage Manafort to not cooperate with the government." [Vol. II, pp. 123-24, 126, 131-32]. To what degree did Manafort's failure to cooperate impede your Office's efforts to determine his involvement in the conduct described in Volume I of your report?
- For example, did Manafort's failure to cooperate prevent you from learning the purpose of his interactions with Kilimnik?

President Trump's orders to White House Counsel Don McGahn to fire the Special Counsel.

- Your report found former White House Counsel Don McGahn to be “a credible witness with no motive to lie or exaggerate.” [Vol. II, p. 88]. Please explain the basis for this finding.
- Your investigation found “substantial evidence” that the President ordered McGahn to fire the Special Counsel in June 2017 in response to reports that the Special Counsel had opened an obstruction investigation into [the President's] conduct. [Vol. II, pp. 88-90]. However, Attorney General Barr told the Judiciary Committee that “the government would not be able to establish [that this incident constituted] obstruction” because “there's no question that . . . whatever instruction was given McGahn had to do with . . . Mueller's conflict of interest.” Please clarify whether your investigation concluded that the President ordered McGahn to fire the Special Counsel because of the President's concerns about conflicts of interest, or because of his concerns about the ongoing obstruction of justice investigation.
- Did your Office assess whether the President had any credible reason to be concerned about your purported conflicts of interest? If so, what did you conclude?

President Trump's orders to White House Counsel Don McGahn to create a statement denying that he had been ordered to fire the Special Counsel.

- In January 2018, President Trump ordered McGahn to create a record denying that the President had ordered him to fire the Special Counsel. Your report notes that “the evidence indicates that the President knew by the time [that he ordered McGahn to dispute press reports about the firing incident] that McGahn's account differed and that McGahn was firm in his views. . . . The President nevertheless persisted and asked McGahn to repudiate facts that McGahn had repeatedly said were accurate.” [Vol. II, pp. 118-19]. Under this analysis, even if the President did not actually recall having ordered McGahn to fire you, would his efforts to force McGahn to alter testimony that McGahn “firmly” believed to be true still qualify as an “obstructive act”?
- Attorney General Barr stated that this episode could not qualify as obstruction because McGahn had already testified to your Office by the time it took place, and therefore it would be difficult to establish a nexus to a pending proceeding. However, your report states that “it was foreseeable that [McGahn] would be interviewed again on obstruction-related topics.” [Vol. II, p. 119]. Upon what evidence did you base this conclusion?
- To what extent was the delay between the press reports being released and the President asking McGahn to draft a letter disputing the reports “for our records” relevant to your analysis of the nexus element for this episode? How did it inform your assessment of whether the President intended to impact an ongoing proceeding?

- If McGahn had followed the President’s orders and drafted a statement denying press reports that he had been directed to fire the Special Counsel, would that have been false evidence?

President Trump’s directive to Corey Lewandowski to order Attorney General Sessions to curtail the Special Counsel investigation.

- Your report describes a June 2017 incident in which the President ordered his former campaign manager, Corey Lewandowski, to contact Attorney General Sessions and direct Sessions to give a speech announcing that, among other things, he would meet with the Special Counsel to “limit his jurisdiction to future election interference.” [Vol. II, pp. 90-91]. Attorney General Barr told the Judiciary Committee that “most of the obstruction claims” described in Volume II of your report “involve the exercise of the president’s constitutional authority.” Lewandowski was a private citizen when he received this directive from President Trump. Did your Office assess whether issuing an order to someone who is not an Executive Branch employee qualifies as a constitutionally protected act? If not, why not? If so, what did you conclude?