**Assumptions:**

We’re not crazy conspiracy theorists. That could get you anywhere.

1. Mueller was diligent, thorough, and honest
2. Barr did not materially lie about the contents of the Mueller Report
3. Rosenstein actually did consult with Barr on his conclusions

But:

1. Barr is a Trump loyalist who auditioned for and got the job by writing an incredibly slanted memo arguing that the President couldn’t be questioned for collusion.
2. He’s been a lawyer for 42 years.
3. And he’s Rosentstein’s mentor.

So it’s reasonable to assume the Barr Summary is meant to portray Trump in the best possible light; and we’ll walk through exactly why it was written the way it was.

Dilanian tweet

<https://twitter.com/KenDilanianNBC/status/1109904678987411456>

**My overall take:**

1. Politics – Mueller She Wrote has a good take as always. I think it’s kind of like the first days of hot takes on the ’18 midterms. It’s demoralizing now, but I don’t think despair is warranted. VERY careful, lawyerly document. Need to know why it was written the way it was. I’ll help you parse it.

Why has Trump been relentlessly attacking Mueller and covering things up if there’s no ‘there’ there? Because there is. And when the Mueller report comes out, we’ll see that. This is the BEST they can do, to try and prime the pump now. But we’ll see Mueller’s own words.

It’s why Randall Eliason has penned the op-ed, “Trump Owes Mueller An Apology” that will NEVER come.

<https://t.co/MasBsWDjoH>

1. Disaggregation. Still 19 open investigations (!). Biggest ones in my view are the Congressional investigations and the SDNY-Trump Inaugural. Released Cohen search warrants. Much of this we said in episode 259:

<https://openargs.com/oa259-your-guide-to-the-congressional-investigations/>

This is how obstruction gets proven. When someone says one thing in one proceeding, but another in a different one. That’s what got Bill Clinton impeached.

1. Explanation of findings – 4 key findings

As soon as you read this closely, you realize that it will embolden & support the release of the full report. And there’s every reason to believe that the full report looks REALLY bad. We’re going to go into it.

If it didn’t, Trump would be racing to get it out. I think they rushed to win the news cycle at the expense of the long term, but we’ll see.

1. No Sealed Indictment of Trump: Top of p.2: “The report does not recommend any further indictments, nor did the Special Counsel obtain any sealed indictments that have yet to be made public.” That seems obviously incorrect; for example, we learned in November of 2018 that Julian Assange was indicted due to a redaction error. That’s never been publicly confirmed. Maybe it’s just spin? Just today we learned that the Supreme Court denied cert in the case of “Company A”’s noncompliance with the Mueller subpoena – racking up $50,000 per day in fines that are now over $2 million. So… it seems like there’s a lot of open stuff out there?
2. Russians did interfere in our election. **That’s kind of a big deal that’s going unreported**. Confirms the Senate Intelligence Committee report we talked about in Episode 190.

<https://openargs.com/oa190-good-news-everyone-on-abortion-rights-more/>

1. Part 1 (Conspiracy): limited to two *very* narrow inquiries: a) “Cambridge Analytica”: efforts by the Russian troll farm and other agents to engage in social media disinformation and b) “Wikileaks” -- hacking of Clinton emails. **WHY NOT the actual collusion we’re worried about which is Trump changing the RNC platform and then U.S. policy to favor Russia, lift sanctions, overturn the Magnitsky Act, etc.?** I imagine the full report explains why.

The topline paragraph quotes the report. Says: “As the report states, “[T]he investigation did not establish that members of the Trump Campaign conspired or coordinated with the Russian government in its election interference activities.”

UPLOAD screenshot

So… that means there’s a predicate to that sentence. Pretty certain it says “Although we found X, and Y, and Z,…” Could be innocent! Could have written differently. Don’t know.

1. SCO “Did not find that any US person or Trump campaign official or associate conspired or knowingly coordinated with the IRA in its efforts.” We know from the mistakenly redacted Manafort filing that Paul Manafort shared confidential Trump polling data in the spring of 2016 with Konstantin Kilimnik, a Russian intelligence asset. So… “knowingly”?
2. SCO “did not find that the Trump campaign, or anyone associated with it, conspired or coordinated with the Russian government in these efforts, despite multiple offers from Russian-affiliated individuals to assist the Trump campaign.” Seems VERY weird given that the Trump Tower meeting in June 2016 is still open. No DTJr., no Kushner, both of whom were present.

Refresher on the June 9, 2106 Trump Tower meeting: Set up by Rob Goldstone, a British music publicist and Trump supporter. Goldstone emailed Trump Jr.: "I can also send this info to your father via Rhona, but it is ultra sensitive so wanted to send to you first". Goldstone also emailed Graff herself in July 2015, appearing to offer to help set up a meeting between Trump and Russian President Vladimir Putin.

Attended by 8 people, all 8 subjects of the Congressional Investigation. 3 from Trump Campaign: Donald Trump Jr., Jared Kushner, and Paul Manafort. Goldstone was there. Rinat Akhmetshin, a Russian-American lobbyist who was working to lift sanctions imposed on Moscow over human rights violations and against the Magnitsky Act. Russian Lawyer Natalia Veselnitskaya. **OPEN SDNY criminal trial as of 1/8/2019 for obstruction of justice**

<https://www.justice.gov/usao-sdny/pr/russian-attorney-natalya-veselnitskaya-charged-obstruction-justice-connection-civil>

7th: Veselnitskaya’s translator, Anastoly Samochornov.

8th: Irakly Kaveladze, the representative of the Agalarov family, which include Russian oligarch Aras Agalarov and his son, Azerbaijani singer Emin Agalarov. **Russian agents** who reached out to Rhona Graff.

Set your google alerts for Rhona Graff. She’s on Nadler’s radar.

1. Part 2 (Obstruction): I don’t know why this isn’t being reported as being REALLY BAD news for the President? Let’s break this down sentence-by-sentence. There are 10 of these:

-WILL support the public release

1. “The report's second part addresses a number of actions by the President — **most of which have been the subject of public reporting**”

-so that means not all! You’d think journalists would want to know that.

1. “that the Special Counsel investigated as potentially raising obstruction-of-justice concerns. After making a "thorough factual investigation" into these matters, the Special Counsel considered whether to evaluate the conduct under Department standards governing prosecution and declination decisions but ultimately determined not to make a traditional prosecutorial judgment.

-**this is really the key line**. The *only* reason not to make a “traditional prosecutorial judgment” is because it’s the President. There’s a later bit about how *Barr* didn’t make his determination based on his view as to whether a President can be indicted, but it’s pretty clear that *Mueller* did.

Let’s be clear: that *is* a hard question. I’ve changed my mind from a hard “no, name as an unindicted co-conspirator and indict when he leaves office” to “indict but stay proceedings.” But it’s not resolved and people of good will could conclude “no.”

1. “The Special Counsel **therefore** did not draw a conclusion — one way or the other — as to whether the examined conduct constituted obstruction.”

-that’s the most important **word** in this letter. “Therefore.” *Because of the unique status of the President, we did not indict the President*.

1. “Instead, for each of the relevant actions investigated, the report sets out evidence on both sides of the question and leaves unresolved what the Special Counsel views as "difficult issues" of law and fact concerning whether the President's actions and intent could be viewed as obstruction.

-There is evidence that the President committed multiple crimes! Why isn’t THAT a big issue??!?

1. “The Special Counsel states that "while this report does not conclude that the President committed a crime, it also does not exonerate him."”

**-another half-quote**

-Getting quoted, but that’s a HUGE caveat for Mueller to say. Last report was for the NFL over its response to the Ray Rice assault. Doesn’t say anything *like* that:

<http://static.nfl.com/static/content/public/photo/2015/01/08/0ap3000000455484.pdf>

 -would recommend reading that, starting at page 45. Criticizes NFL’s response.

1. “The Special Counsel's decision to describe the facts of his obstruction investigation without reaching any legal conclusions leaves it to the Attorney General to determine whether the conduct described in the report constitutes a crime.”

**-Not true**. Explicitly up to Congress. Clinton – standards for impeachment are VERY different. Would Republicans have been satisfied by asking Janet Reno if Bill Clinton had committed any crimes??!?

1. “…Deputy Attorney General Rod Rosenstein and I have 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.”

-I do want to highlight this, because In Rod We Trust.

1. “Our determination was made without regard to, and is not based on, the constitutional considerations that surround the indictment and criminal prosecution of a sitting president. “

-key word there is “our”

1. In making this determination, we noted that the Special Counsel recognized that "the evidence does **not establish that the President was involved in an underlying crime related to Russian election interference**," and that, while not determinative, the absence of such evidence bears upon the President's intent with respect to obstruction. Generally speaking, to obtain and sustain an obstruction conviction, the government would need to prove beyond a reasonable doubt that a person, acting with corrupt intent, engaged in obstructive conduct with a sufficient nexus to a pending or contemplated proceeding.

-Not sure why THAT isn’t getting more coverage. That’s the position Barr took in his memo, that you can’t “obstruct” without an underlying crime, and it’s fucking preposterous. Going to ask Randall Eliason about it.

1. In cataloguing the President's actions, many of which took place in public view, the report identifies no actions that, in our judgment, [1] constitute obstructive conduct, [2] had a nexus to a pending or contemplated proceeding, and [3] were done with corrupt intent, **each of which**, under the Department's principles of federal prosecution guiding charging decisions, **would need to be proven beyond a reasonable doubt to establish an obstruction-of-justice offense**.

-HOLY SHIT we saved the best for last.

* Could have concluded there were actions that met all 3 – constituted obstructive conduct, had a nexus to a pending/contemplated proceeding, *and* were done with corrupt intent – but didn’t think they could prove it beyond a reasonable doubt. AND/OR
* Could have concluded that they could prove beyond a reasonable doubt any behavior that meets 2-out-of-3! So… corrupt intent to obstruct inquiry into something where there wasn’t yet a pending proceeding (e.g., firing Comey). Or corruptly intended to obstruct a pending proceeding but failing to do so (e.g., directing Michael Cohen to lie to Congress). Or obstructing a pending proceeding but we can’t quite prove intent (everything else)

Open Investigations

-Trump Inaugural, SDNY

We’ll talk about these on Friday!

Eliason questions:

1. Initial findings contain this sentence: “The report does not recommend any further indictments, nor did the Special Counsel obtain any sealed indictments that have yet to be made public.” That seems obviously incorrect; for example, we learned in November of 2018 that Julian Assange was indicted due to a redaction error. That’s never been publicly confirmed. Thoughts?
2. Just today we learned that the Supreme Court denied cert in the case of “Company A”’s noncompliance with the Mueller subpoena – racking up $50,000 per day in fines that are now over $2 million. So… it seems like there’s a lot of open stuff out there?
3. According to Barr, Part 1 (Conspiracy) is limited to a) IRA social media disinformation and b) hacking of Clinton emails/Wikileaks. Assuming that’s it, why would it not cover what we generally think of as “collusion” – Trump/his campaign changing U.S. foreign policy in exchange for support?
4. Why would Mueller reach a conclusion on Part 1 (Conspiracy) while Stone (the main guy on Wikileaks!) is still pending?
5. Why would Mueller reach a conclusion on Part 1 (Conspiracy) without indicting (or at least interviewing) Donald Trump Jr. and Jared Kushner?
6. Why would Mueller reach a conclusion on Part 1 (Conspiracy) knowing that Manafort lied about sharing polling data with Kilimnik?
7. On Part 2 (Obstruction), why would Mueller be satisfied with Trump’s written answers? Why not try and get him to testify to the grand jury? That’s what Starr did with Clinton, after all.
8. Why would Mueller reach a conclusion on Part 2 (Obstruction) while the Assange sealed indictment is still pending?
9. What about Barr’s conclusion being driven by collusion requires an underlying crime?
10. Ultimate question: why give out sweetheart deal to Flynn if that’s it? Gates I get -- that brought down Manafort.

**PATREON SPECIAL**

Clinton impeachment

-1994, Paula Jones sued Bill Clinton for sexual harassment for an incident that allegedly took place in Arkansas in 1991. LOTS of procedural questions around that, led to Jones v. Clinton, which says that yes, a sitting President does have to respond to a civil lawsuit even though you’re the president – no blanket immunity.

(Was wait until he’s out of office)

In July 1995, Monica Lewinsky started work at the White House, initially as an intern. She and the president developed a flirtatious rapport, which intensified during a weeklong government shutdown, during which interns served as support staff. By early 1996, White House aides had grown concerned about the relationship. In April 1996, Lewinsky was reassigned to the Pentagon, where she became friends with Linda Tripp, a career civil servant who disliked the Clintons. Lewinsky told Tripp that she had had a sexual relationship with the president.

Tripp started recording the conversations. One-sided. And she started telling everyone. She told Newsweek reporter Michael Isikoff.

She also told Jones’s lawyers. So, on December 5, 1997, the president’s lawyers received a witness list that included the name Monica Lewinsky. Ten days later, Jones’s lawyers requested that the White House “produce documents that related to communications between the President and Monica Lewisky [sic].” Around 2 a.m. on December 17, Clinton called Lewinsky and told her, as she later recalled, that it “broke his heart” to see her name on the list. Meanwhile, others were scrambling, including the Washington lawyer Robert Bennett, who was representing Clinton in the Jones case.

-Jones civil suit: December 1997 – Lewinsky on the Paula Jones witness list

-those lawyers told Kenneth Starr

-that’s when Starr (empaneled since 1994) learned of her.

-Lewinsky was brought in to Starr’s office and wore a wire during a Jan. 13 lunch with Linda Tripp

BACK TO THE OTHER CASE

-January 17, 1998: Clinton was deposed in the Jones civil suit and asked a lot of questions about Monica Lewinsky, and he gave VERY evasive answer. For example:

\* Paula Jones's lawyers asked him during his deposition whether he had ever been alone in the Oval Office with Monica Lewinsky, Clinton was careful not to make an outright denial. Rather, he responded that he remembered one or two times during a government shutdown when Lewinsky came to drop off some papers for him in the Oval Office. This statement was apparently true, as far as it went: Lewinsky did come by the Oval Office during the government shutdown, and seems to have brought along some papers, perhaps merely for the sake of appearances. But what Clinton does not mention is that she apparently did some more interesting things than just dropping off some boring government documents. Moreover, they seem to have been alone in the Oval Office more like ten to fifteen times.

-**92-word** definition of “sexual relationship”

At the request of plaintiff's counsel, the term "sexual relations" was defined as follows during the deposition: "For the purposes of this deposition, a person engages in `sexual relations' when the person knowingly engages in or causes ... contact with the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to arouse or gratify the sexual desire of any person.... `Contact' means intentional touching, either directly or through clothing." *See* Depo. Ex. 1.

-AT THE SAME TIME, negotiations and investigations, Starr reached an immunity deal with Lewinsky, got the dress, corroborated details of her story

-July 17: subpoenaed the president to testify before the grand jury

-agreed to testify voluntarily on closed-circuit TV (that’s kinda like the skype of the 1990s)

-August 17: testified

Was asked “were you truthful in affirming that ‘there is absolutely no sex of any kind’ with Lewinsky?” Answered “it depends on what the meaning of ‘is’ is.”

if 'is' means is and never has been, that is not—that is one thing. If it means there is none, that was a completely true statement"

Q .... And so the record is completely clear, have you ever had sexual relations with Monica Lewinsky, as that term is defined in Deposition Exhibit 1, as modified by the Court? ...

A. I have never had sexual relations with Monica Lewinsky. ...

Later, during the grand jury proceedings, Clinton was interrogated by Starr's lawyers, who clearly thought that his denial should be considered perjury. He explained that the definition referred to the person in question engaging in contact with one of the enumerated body parts of the other: I thought the definition included any activity by the person being deposed, where the person was the actor and came in contact with those parts of the bodies with the purpose or intent or [sic] gratification, and excluded any other activity)

Because Lewinsky engaged in oral sex on him, rather than vice versa, Clinton argued that she had engaged in contact with one of his relevant body parts, which would mean that under the definition she had had sexual relations with him. But he argued that he had never engaged in contact with one of her listed body parts for the purpose of sexually gratifying either him or her, so that under the definition he had not engaged in "sexual relations" with her.

In answering, Clinton makes it evident that he had studied the words of definition and interpreted it as authoritative text. Significantly, he no longer refers to the ordinary meaning of the phrase:

A: Because that is-if the deponent is the person who has oral sex performed on him, then the contact is with-not with anything on that list, but with the lips of another person. It seems to be self-evident that that's what it is. And I thought it was curious. Let me remind you, sir, I read this carefully. And I thought about it. I thought about what "contact" meant. I thought about what "intent to arouse or gratify" meant. And I had to admit under this definition that I'd actually had sexual relations with Gennifer Flowers. Now, I would rather have taken a whipping than done that, after all the trouble I'd been through with Gennifer Flowers ..

Articles of impeachment – House Judiciary recommended 4 articles. Full House voted on two

Each one ended with:

In doing this, William Jefferson Clinton has undermined the integrity of his office, has brought disrepute on the Presidency, has betrayed his trust as President and has acted in a manner subversive of the rule of law and justice, to the manifest injury of the people of the United States.

**THAT’S THE STANDARD**

1. lying to grand jury about Lewinsky – yes

TEXT:

On August 17, 1998, William Jefferson Clinton swore to tell the truth, the whole truth and nothing but the truth before a Federal grand jury of the United States. Contrary to that oath, William Jefferson Clinton willfully provided perjurious, false and misleading testimony to the grand jury concerning one or more of the following: (1) the nature and details of his relationship with a subordinate Government employee; (2) prior perjurious, false and misleading testimony he gave in a Federal civil rights action brought against him; (3) prior false and misleading statements he allowed his attorney to make to a Federal judge in that civil rights action; and (4) his corrupt efforts to influence the testimony of witnesses and to impede the discovery of evidence in that civil rights action.

Bronston v. United States, 409 U.S. 352 (1973)

The issue in Bronston was "whether a witness may be convicted of perjury for an answer, under oath, that is literally true but not responsive to the question asked and arguably misleading by negative implication." The case arose because Mr. Bronston was involved in bankruptcy proceedings. Attorneys for his creditors were examining him, under oath, regarding assets that he personally owned in various countries, as well as assets owned by companies under his control. During this examination, the following exchange occurred:

Q. Do you have any bank accounts in Swiss banks, Mr. Bronston?

A. No, sir.

Q. Have you ever?

A. The company had an account there for about six months, in Zurich.

The "truth" was that Bronston had had a large personal bank account in Switzerland for five years. Bronston was convicted of perjury, and his conviction was affirmed on appeal. But the Supreme Court reversed. The Court acknowledged that in ordinary conversation, Bronston's response would probably be understood to imply that he had never had a personal bank account in Switzerland. But this was a legal proceeding where the parties were represented by lawyers trained in adversarial proceedings. Chief Justice Burger emphasized that the perjury statute refers to what the witness "states," not to what he "implies." If a witness equivocates or gives a vague response, it is the examining lawyer's responsibility to probe more deeply and to clarify the answer.

Shows you how difficult it is to prove perjury

1. perjury in Jones deposition – no

**Backs that up!**

1. obstructing justice – yes: coaching Lewinsky on her story, concealing gifts, trying to find her a job

Not going to read it word for word

1. abuse of office by stonewalling impeachment inquiry - no

“Did Clinton Lie” by Pieter Tiersma in the 2004 Chicago-Kent Law Review

<https://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=3457&context=cklawreview>