

Mueller Report Contains Devastating Evidence of Obstruction of Justice by Trump - *InsiderNJ*

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Put aside the unprofessional and unethical summary of the Mueller Report by Attorney General Barr almost two weeks ago because it is a distraction. Put aside the outright lies by Donald Trump that he was exonerated by the Mueller Report because it's a distraction. And let's have the self-discipline to put aside the pathetic attempt by Attorney General Barr to do a Roy Cohn imitation yesterday and mount a defense of Donald Trump. If we keep our eyes on the ball, the evidence contained in Mueller's Report yesterday paints a compelling picture of obstruction of justice. Make no mistake about it: if the person named in the Mueller Report were a police officer, a local public official, or a business executive he would have been charged with obstruction of justice – and it would be a difficult case to defend.

I have been involved in dozens of investigations or cases involving obstruction of justice through the years of my practice both as a prosecutor and defense lawyer, and the acts or attempted acts which form the basis of an obstruction charge are minimal compared to the pattern of conduct in the Mueller Report. I have seen charges against an employer for telling an employee to lie on a single occasion during an investigation. I have seen a police officer with an unblemished record of over 30 years charged with obstruction by a federal grand jury for deleting from a police report an allegation by an eye witness of another police officer's misconduct. I have seen other individuals with unblemished records charged with obstruction where documents were destroyed after a newscast because a grand jury subpoena was anticipated. The factual basis of those charges are small potatoes to compared to the episodes that Mueller's Report recites as to Donald Trump.

I will not recite in meticulous detail all the evidence of misconduct bearing on obstruction of justice in the Mueller Report that has been reported by the media. However, as a trial lawyer let me suggest how it might play out at trial: the prosecution would start out with the fact that Trump tried to influence James Comey, the director of the FBI, about not investigating Michael Flynn and also tried to pressure Comey into stating that Trump was not under criminal investigation. After Comey did not buckle under the presidential influence, he summarily fired him through an emissary. This set in motion a series of events resulting in the appointment of a Special Counsel of unquestioned integrity and ability, Robert Mueller. Once Mueller was appointed Trump recognized the legal quagmire he was in and according to the Mueller report stated: *“Oh my God. This is terrible. This is the end of my Presidency. I’m fucked.”*

Understand how a skilled prosecutor would utilize this direct quote during any obstruction trial. He or she would put it up on a screen and ask a jury to view every one of Trump’s subsequent statements and/or actions through the lens of the quotation. His attempt to pressure White House Counsel Don McGahn to fire Mueller; his pressuring officials to convince Attorney General Jeff Sessions to resign; his leaning on his media people to draft misleading statements about the June 16 meeting with several Russians at Trump Tower; his dangling a potential for a pardon to Paul Manafort or others prosecuted by Mueller; his criticism of Michael Cohen after he began cooperating – all of this and the other acts laid out in the report would be portrayed as acts of desperation given Trump’s outburst that he was screwed! And there would be heavy emphasis on the testimony of former White House Counsel Don McGahn, which was extracted after painstaking questioning by the Mueller team, because McGahn has no motive to lie.

Let’s look at what could be the counter-narrative at a trial: there was no underlying crime of conspiracy/collusion. Or maybe the one that’s being advanced by (defense) Attorney General Barr: Trump was angry and frustrated because he felt he was the victim of a phony investigation. A defendant similarly situated to Trump could certainly make the first defense, but the law states that a person can be found guilty of obstruction of justice or conspiracy to obstruct without being guilty of the underlying crime. As to the second defense argument, that Trump was only frustrated or outraged at fake news or a witch-hunt investigation, to do that effectively he would probably have to take the witness stand – and to be charitable, taking the witness stand would present its own set of unique problems you don’t have to be a lawyer to imagine.

That there might be a factual defense is rarely a bar to a prosecution, especially when there is strong evidence of guilt. Even in a tough case, prosecutors take the position: let the jury decide.

Volume II of the Mueller report states that Mueller decided not to make “a traditional prosecution or declination decision” because of the long-standing Department of Justice policy against indicting a sitting president. Once he determined he could not indict Donald Trump, Mueller concluded it would be fundamentally unfair to render a judgment that obstruction had been committed when no charges could be brought, since there is no way to contest a finding where there is no underlying charge. However, Mueller took pains to point out that “while this report does not conclude the President committed a crime, it also does not exonerate him.” And Mueller expressly passes the ultimate decision to

Congress where the report states: “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.”

This brings us to impeachment, which is a thorny political question. The Mueller report presents an avalanche of evidence which I believe would cause Trump to be impeached by the House of Representatives, but not convicted in the United States Senate where there is a need for a vote of 2/3 of the Senate. We are now faced with the paradoxical situation where a private citizen could be charged and probably be convicted of obstruction of justice but no charges are being brought against a sitting president. I find this offensive in a nation where no one is above the law. Before I make a final decision about whether impeachment is worth the risk, I would need to hear the testimony of Robert Mueller, subject to rigorous questioning from both sides.