

THE DEBATE WE MAY BE HAVING TOMORROW: IF TRUMP OBSTRUCTED JUSTICE TO HIDE COMPROMISE BY RUSSIA, COULD THAT BE A CRIME?

In my How to Read the Mueller Report post, I said that if Bill Barr's memo (which claims the report is broken into just two sections, one on the trolls and hack-and-leak activities, and one on the obstruction question) is to be believed, the report won't provide much detail about the second half of Mueller's mandate: to figure out the nature of links between Trump's flunkies and various Russians.

But we have good reason to believe Barr's memo is not reliable.

Plus, there's this passage that came out during the pushback from Mueller's team.

According to a senior law enforcement official who has spoken to members of Mueller's team, Mueller team members say it includes detailed accounts of Trump campaign contacts with Russia. While Mueller found no coordination or criminal conspiracy, the official said, some on the special counsel's team say his findings paint a picture of a campaign whose members were manipulated by a sophisticated Russian intelligence operation. Some of that information may be classified, the official said, so it's not clear whether it will be released in a few weeks when Barr makes public a redacted version of the Mueller report.

At the time Mueller's prosecutors were leaking to correct Barr's misleading portrayal of their report, a story said that the report actually shows that Trump's team was susceptible to the manipulation of people working for Russia.

That is, it may not so much be that Mueller's team found Trump and his flunkies' conduct criminal. Rather, maybe they found their conduct naive – susceptible to compromise by Russia.

Their venality likely contributed to their vulnerability as well.

Such a conclusion is what I was pointing to when I suggested one question the report will answer is, "Did Mueller decide Don Jr is simply too stupid to enter into a conspiracy?" The evidence already in the public record, after all, shows that Don Jr took a meeting offering dirt at a time when he believed that cozying up to Russia could help the family business land a ridiculously lucrative \$300 million real estate deal. At the end of the meeting, he told Russians who might be deemed agents of the government that the Trumps would revisit sanctions relief if his dad got elected. And contrary to the Trump camp's public claims, there not only was follow-up after Trump won, but Trump himself did make moves towards giving Russia that sanctions relief.

That exchange could fit all the elements of a conspiracy charge: an agreement to trade dirt and real estate for sanctions relief and overt acts to further the conspiracy. Unless you figured the key player at the center of the agreement to enter into a conspiracy, Don Jr, is too stupid to know what he's doing.

The leaked conclusion that Trump's flunkies were manipulated by a sophisticated intelligence operation sure seems to support the "too stupid to enter into a conspiracy" conclusion.

All that said, the only way that such analysis would be consistent with both the regulatory mandate of the report (limiting the report to a discussion of prosecutions and declinations) and

Barr's description of it (saying it was split into the hack-and-leak and trolling section, and the obstruction section) would be if that analysis appeared in the obstruction section. (Frankly, I suspect Barr's memo is wrong on this point, as Mueller would need to explain *that* Don Jr is too stupid to enter into a conspiracy, if that's why he decided not to charge him in one).

That is, it may be that what Trump was obstructing was not criminal conduct, a knowingly engaged conspiracy, but stupid conduct, his failson saying all the words that amount to entering into a conspiracy, without realizing he was entering into one.

The reason Trump may have fired Mike Flynn and Jim Comey and pushed Michael Cohen to lie to Congress may be to hide that he got badly used by Putin's envoys who appealed to Trump's narcissism and greed to get him (in the form of his especially stupid son) to agree to sanctions relief.

Such a conclusion would be consistent with the reason Barr exonerated Trump, in usurping Congress' authority to make that judgment: Trump and his failson didn't so much knowingly commit a crime – they didn't *mean* to enter into a conspiracy with the Russians, it just happened because they're too weak to resist. Under such analysis, because Trump didn't commit a crime, he had no crime to obstruct, and therefore did not obstruct.

Again, this is all hypothesis based on the known outlines of the report, at least as presented by an Attorney General who can't be trusted.

Given that it's a possibility, however, I want to prepare for the possibility that tomorrow we'll be debating whether a President can obstruct justice to prevent voters from learning how badly he and his dumb son compromised themselves in an foreign intelligence operation in the course of running a presidential election to get rich.

As I disclosed last July, I provided

information to the FBI on issues related to the Mueller investigation, so I'm going to include disclosure statements on Mueller investigation posts from here on out. I will include the disclosure whether or not the stuff I shared with the FBI pertains to the subject of the post.