



## CONSIDERING COLLUSION: A PRIMER ON POTENTIAL CRIMES

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### In brief

Although “collusion” is not the name of a codified crime,<sup>1</sup> the term has come to be shorthand for the possibility that the Trump campaign, its advisors or the president himself coordinated with Russia to help Trump win the 2016 presidential election. Indeed, Special Counsel Robert Mueller has been authorized to investigate “any links and/or coordination between the Russian government and individuals associated with the campaign of President Donald Trump” and to prosecute federal crimes arising from that investigation.<sup>2</sup>

The president and his proxies have frequently advanced the claim that such coordination, even if it occurred, would not be unlawful. Their refrain that “collusion is not a crime” is in one sense correct. Collusion is not a single crime. It is instead a rubric that encompasses many possible offenses. We detail some of the principal ones in this report.

All turn on the possibility that Trump or his associates took action in connection with Russia’s attempts to impact the outcome of our country’s presidential election. The criminal nature of the Russian effort is already well-known. The special counsel’s 191 charges brought against 35 individuals and companies spell out some of the crimes allegedly committed in furtherance of the Russian attack on our democracy. Those include indictments of Russian individuals and entities for their participation in conspiracies to hack into the computer and email systems of

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<sup>1</sup> The president himself has invoked the term to suggest various wrongdoing by opponents. For example, when then-presidential candidate Ted Cruz formed an alliance with other Republican presidential candidates in the final days of their campaigns, then-candidate Trump accused them of “collusion.” See, e.g., Alexander Burns, Matt Flegenheimer, Jonathan Martin and Molly Ball, [Ted Cruz-John Kasich Alliance Against Donald Trump Quickly Weakens](https://www.nytimes.com/2016/04/26/us/politics/ted-cruz-john-kasich-donald-trump.html), *New York Times*, Apr. 25, 2016, <https://www.nytimes.com/2016/04/26/us/politics/ted-cruz-john-kasich-donald-trump.html>. Trump also invoked the term to suggest that the FBI, Department of Justice, and Department of State ‘colluded’ to “make Hillary Clinton look like an innocent person when she’s guilty of very high crimes.” Glenn Kessler, [Trump’s Claim of ‘Collusion’ by the FBI and State to Make Hillary Clinton ‘Look Less Guilty’](https://www.washingtonpost.com/news/fact-checker/wp/2016/10/19/trumps-claim-of-collusion-by-the-fbi-and-state-to-make-hillary-clinton-look-less-guilty/?utm_term=.7033b06daf49), *Washington Post*, Oct. 19, 2016, [https://www.washingtonpost.com/news/fact-checker/wp/2016/10/19/trumps-claim-of-collusion-by-the-fbi-and-state-to-make-hillary-clinton-look-less-guilty/?utm\\_term=.7033b06daf49](https://www.washingtonpost.com/news/fact-checker/wp/2016/10/19/trumps-claim-of-collusion-by-the-fbi-and-state-to-make-hillary-clinton-look-less-guilty/?utm_term=.7033b06daf49).

<sup>2</sup> Rod Rosenstein, [Order No. 3915-2017](https://www.justice.gov/opa/press-release/file/967231/download), *Office of the Deputy Attorney General*, May 17, 2017, <https://www.justice.gov/opa/press-release/file/967231/download>.

Trump's political opponents and release damaging information and to engage in a social media disinformation campaign using fake identities.

It logically follows that if the president or his campaign aides worked with the Russians in connection with those efforts, they too may be liable. That is not just common sense—it is also the law. The specific “collusion” crimes that may be implicated by any coordinated efforts between the president or his campaign aides and Russian operatives principally fall under the rubric of conspiracy: an agreement to further illegal action. The core federal conspiracy statute, 18 U.S.C. § 371, would be implicated if there was any agreement between members of the Trump campaign (or Trump himself) and Russian agents to do something that the law prohibits. For example, if, in connection with the infamous June 2016 Trump Tower meeting, the Russians and a Trump representative tacitly or explicitly agreed about the release or use of illegally obtained information, that could credibly support a conspiracy charge. In fact, there is already enough evidence of this potential “collusion” crime to warrant a searching review of those events, including the fact that within hours of the Russian offer of “dirt” regarding Hillary Clinton in June 2016, Mr. Trump announced a major speech promising revelations about his opponent.

Another example of a “collusion” crime is conspiracy to defraud the United States, which the special counsel charged against Russian social media propagandists and hackers in a February 2018 indictment. Their cyber-misconduct—which included buying political advertisements on social media and organizing political rallies without revealing their Russian identities—defrauded the U.S. by interfering with our 2016 federal elections. If Trump campaign operatives played a role in these activities—for example, by strategically advising the social media disinformation efforts carried out by Russian operatives, or planning speeches or other campaign events around that disinformation—then the Trump campaign could also plausibly be a part of Russia's broader conspiracy to defraud the United States.

These kinds of possible campaign encouragement of, or involvement in, illegal Russian activity do not just implicate conspiracy law. Russians have been indicted for violating the Computer Fraud and Abuse Act, and their conduct could potentially implicate the Wiretap Act as well. And even if the campaign did not encourage or direct the Russian hacking, individuals associated with the campaign could still be subject to prosecution for aiding and abetting—in lay terms, helping—a violation of those statutes. Aiding and abetting liability could become a factor if, for example, campaign operatives took action to encourage the Russians to publish or otherwise use the hacked materials.

The criminal statutes that may have been violated by possible “collusion” with Russia do not end there. If the president or his surrogates knowingly accepted something of value from the Russians, such as harmful information about his opponent, that could be an illegal campaign contribution by foreign nationals. That is an election law crime. And if the president accepted that information in exchange for the promise of some future action he or his administration would take if his campaign proved successful (such as taking a more accommodating posture toward the Russian invasion of Ukraine), that could constitute an illegal quid pro quo—that is, bribery. If the Russians only informed the campaign about their plans to disseminate stolen emails after the hacking and the campaign took any steps to conceal the crime, that could constitute the separate criminal offense of misprision of a felony.

This primer analyzes six potential offenses that are most likely to be relevant to the special counsel's investigation of "collusion." They include:

- Conspiracy to Commit Offense or to Defraud the United States, 18 U.S.C. § 371, (Page 15);
- Computer Fraud and Abuse Act ("CFAA"), 18 U.S.C § 1030,<sup>3</sup> (Page 19);
- Federal Wiretap Act, 18 U.S.C. § 2511,<sup>4</sup> (Page 22);
- Contributions and Donations by Foreign Nationals, 52 U.S.C. § 30121, (Page 25);
- Bribery of Public Officials and Witnesses, 18 U.S.C. § 201(b)(2), (Page 28); and,
- Misprision of Felony, 18 U.S.C. § 4, (Page 30).

Conspiracy is the most sweeping of these crimes, and it can have as its object the commission of the other crimes enumerated here. But it is a separate and distinct crime that stands on its own. In other words, a person can be guilty of conspiracy even if he does not successfully carry out the conspiracy's illegal aims.

As with any investigation or prosecution, the law's reach is informed by the specific facts. Certain crimes may not ultimately be substantiated in light of what took place, while others may be conclusively shown to have occurred. There are nuances to the applicability of each of the statutes discussed below that will depend on facts yet to be disclosed, and with more information additional crimes may also be revealed.

This list is also only a selection of the potential criminal collusion that may be implicated by the Trump campaign's role in the Russian interference in the 2016 election. There is of course the possible cover-up of any collusion, which implicates a host of additional crimes such as obstruction of justice and perjury.

In short, any suggestion that "collusion is not a crime" is false. While there may not yet be definitive proof that the Trump campaign or its associates engaged in criminal collusion with Russia, there are legitimate questions regarding whether the president and those close to him worked with or alongside the Russians in their efforts to interfere in the 2016 presidential election, questions that demand answers. The American people have a fundamental right to know if the president of the United States or those close to him worked with Russia to win the election and undermine American democracy—in violation of our criminal law.

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<sup>3</sup> The Computer Fraud and Abuse Act of 1986 amended an existing computer fraud statute codified at 18 U.S.C § 1030. Consistent with common practice, for purposes of this report we refer to 18 U.S.C § 1030 as the CFAA.

<sup>4</sup> The Wiretap Act is codified at 18 U.S.C. §§ 2510–2522. For purposes of this report we refer to section 2511, which contains the Act's criminal prohibition on unauthorized interceptions of communications, as the Wiretap Act.

## Historical perspective

Since our nation's founding, lawmakers have sought to zealously guard against foreign interference in American affairs, particularly secret or corrupting influence, in order to protect our fundamental interest in democratic self-governance and our nation's sovereignty. Indeed, concern about guarding against foreign interference was one of the reasons the founders sought to create a union stronger than that provided for by the Articles of Confederation,<sup>5</sup> and influenced the structure and content of the Constitution. For example, in debating what would constitute grounds for impeachment under the new constitution, Gouverneur Morris cited the Treaty of Dover—a deal between Charles II and Louis XIV with secret provisions in which Charles II was given an annual stipend by the French and in exchange promised to break an alliance with the Swedish and Dutch and eventually publicly convert to Catholicism (he converted on his deathbed)<sup>6</sup>—as just the type of self-dealing and foreign corrupt influence impeachment must protect against:<sup>7</sup>

Our Executive was not like a Magistrate having a life interest, much less like one having an hereditary interest in his office. He may be bribed by a greater interest to betray his trust; and no one would say that we ought to expose ourselves to the danger of seeing the first Magistrate in foreign pay, without being able to guard agst. it by displacing him. One would think the King of England well secured agst. bribery. He has as it were a fee simple in the whole Kingdom. Yet Charles II was bribed by Louis XIV. The Executive ought therefore to be impeachable for treachery....

That same concern animated other provisions in the Constitution, such as the requirement that the president be a natural born citizen;<sup>8</sup> that presidential treaties be subject to the advice and consent of the Senate;<sup>9</sup> and that public officers be prohibited from accepting “any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state” without

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<sup>5</sup> See, e.g., John Jay, The Federalist No. 3 (Jay argued that a “united America” would protect “against dangers from foreign arms and influence.”); James Madison's Notes of the Constitutional Convention, Jun. 19, 1787 (Madison, when arguing against the New Jersey Plan proposed by William Paterson, asked whether it would “promise satisfaction” in several respects, including whether it would “secure the Union agst. the influence of foreign powers over its members.”).

<sup>6</sup> Gail Savage, [Why the Founders Feared Foreign Influence in American Politics](https://www.washingtonpost.com/news/made-by-history/wp/2018/07/19/why-the-founders-feared-foreign-influence-in-american-politics/?utm_term=.f83c0a50ac8a), *Washington Post*, Jul. 19, 2018, [https://www.washingtonpost.com/news/made-by-history/wp/2018/07/19/why-the-founders-feared-foreign-influence-in-american-politics/?utm\\_term=.f83c0a50ac8a](https://www.washingtonpost.com/news/made-by-history/wp/2018/07/19/why-the-founders-feared-foreign-influence-in-american-politics/?utm_term=.f83c0a50ac8a).

<sup>7</sup> James Madison, Notes of the Constitutional Convention, July 20, 1787.

<sup>8</sup> U.S. Const. art. 2, § 1, cl. 5; see St. George Tucker, *Blackstone's Commentaries 1* (1803), App. 316-s25, 328-29 (“That provision in the constitution which requires that the president shall be a native-born citizen (unless he were a citizen of the United States when the constitution was adopted,) is a happy means of security against foreign influence, which, where-ever it is capable of being exerted, is to be dreaded more than the plague.”).

<sup>9</sup> U.S. Const. art. 2, § 2, cl. 2; see James Madison, Notes of the Constitutional Convention, Aug. 29, 1787 (James Madison argued that a super-majority would further protect against “[t]he power of foreign nations to obstruct our retaliating measures on them by a corrupt influence”); Zephyr Teachout, [Extraterritorial Electioneering and the Globalization of American Elections](#), 27 *Berkeley J. Int'l L.* 162, 168 (2009).

the consent of Congress.<sup>10</sup> By enshrining these provisions in the Constitution, the framers sought to protect the nation against foreign interference and to ensure that our elected officials were not corrupted by or beholden to any other nation state. That concern was so deep that in his farewell address George Washington cautioned the citizenry of our young nation to be ever vigilant against the threat of foreign influence: “Against the insidious wiles of foreign influence (I conjure you to believe me, fellow-citizens) the jealousy of a free people ought to be constantly awake, since history and experience prove that foreign influence is one of the most baneful foes of republican government.”<sup>11</sup> Perhaps more prescient still, he warned that party conflict “opens the door to foreign influence and corruption, which finds a facilitated access to the government itself through the channels of party passions.”<sup>12</sup>

Heeding that caution, Congress has passed numerous pieces of legislation over the years to limit foreign influence on our domestic affairs and democratic processes. For example:

- In the early 20<sup>th</sup> century Congress passed The Radio Act of 1927<sup>13</sup> and The Communications Act of 1934<sup>14</sup> out of a concern for “espionage and propaganda.” In upholding the laws against constitutional challenge, the Court of Appeals for the D.C. Circuit noted that the laws “reflect a long-standing determination to ‘safeguard the United States from foreign influence’ in broadcasting.”<sup>15</sup>
- In 1938, after investigations into activities by the Nazis in the United States, Congress passed the Foreign Agents Registration Act (“FARA”) “to protect Americans from foreign propaganda” by mandating identification and disclosure for foreign agents.<sup>16</sup> Following hearings over foreign funding of President Nixon’s 1960 campaign, Congress amended FARA in 1966 (after earlier amendments in 1942) to prohibit foreigners from funding election campaigns and to require registration of foreign lobbyists.<sup>17</sup> In 1974, after the Watergate investigations revealed foreign funding of President Nixon’s 1972 campaign, Congress

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<sup>10</sup> U.S. Const. art. 1, § 9, cl. 8; see James Madison, Notes of the Constitutional Convention, Aug. 23, 1787 (Charles Pinckney “urged the necessity of preserving foreign Ministers & other officers of the U.S. independent of external influence,” and his motion to insert the Foreign Emoluments Clause into the Constitution passed unanimously.).

<sup>11</sup> George Washington, Farewell Address, Sept. 19, 1796.

<sup>12</sup> *Id.*

<sup>13</sup> Teachout, 27 Berkeley J. Int’l L. at 170-71.

<sup>14</sup> Bruce D. Brown, Alien Donors: The Participation of Non-Citizens in the U.S. Campaign Finance System, 15 Yale L. & Pol’y Rev. 503, 509 (1997), citing 47 U.S.C. § 310 (Law. Co-op. 1995 & Supp. May 1996).

<sup>15</sup> *Moving Phones Partnership L.P. v. F.C.C.*, 998 F.2d 1051, 1055 (D.C. Cir. 1993) (quotation and citation omitted).

<sup>16</sup> Teachout, 27 Berkeley J. Int’l L. at 171-72; see Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* The Department of Justice describes FARA as “Congress’ response to the large number of German propaganda agents in the pre-WWII U.S.” U.S. DEP’T OF JUSTICE, GENERAL FARA FREQUENTLY ASKED QUESTIONS, <https://www.justice.gov/nsd-fara/general-fara-frequently-asked-questions>.

<sup>17</sup> Teachout, 27 Berkeley J. Int’l L. at 172, citing Act to Amend the Foreign Agents Registration Act of 1938, Pub. L. No. 89-486, 80 Stat. 3, §§ 244-50 (1966).

amended the Federal Election Campaign Act of 1971, which formed the basis of what is now 52 U.S.C. § 30121, to prohibit foreign donations.<sup>18</sup>

- And in 2002, partly in response to scandals surrounding foreign contributions in the 1996 election,<sup>19</sup> Congress passed the Bipartisan Campaign Reform Act of 2002, also known as the McCain-Feingold Act, which “amended [the Federal Election Campaign Act] to expand the ban on campaign contributions from foreign nationals and foreign-based groups to include donations, expenditures, independent expenditures, disbursements for electioneering communications, and contributions or donations to any political party committee.”<sup>20</sup>

Recognizing the legitimate interest in protecting our democratic institutions from foreign influence, the Supreme Court has upheld restrictions on the involvement of foreign nationals in activities “intimately related to the process of democratic self-government,” including voting and service as a juror.<sup>21</sup> Under the political function doctrine, the Supreme Court has affirmed the prohibition on campaign contributions and expenditures by foreign nationals, effectively barring them from, in the words of the district court whose decision the Supreme Court affirmed, “participating in the campaign process that seeks to influence how voters will cast their ballots in [ ] elections.”<sup>22</sup>

Thus, the concern over possible “collusion” with a foreign power and foreign influence in our political process is neither new nor a creation of the current political environment. To the contrary, the American people’s interest in protecting its democratic institutions from foreign influence is deeply embedded in our nation’s fabric. From the Constitution, to Congressional legislation, to the Court’s jurisprudence—each reflects a profound respect for the project of self-governance and the need to safeguard it and the nation’s sovereignty against interference by foreign powers. And when a public official tramples on the people’s fundamental interest in self-government, they also provide a means of redress, whether by criminal sanction, impeachment or other appropriate remedy.

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<sup>18</sup> *Id.*, citing Pub. L. No. 93-443, tit. I, § 101, 88 Stat. 1263 (1974) and stating that a revision by Senator Lloyd Bentsen was incorporated into FECA by Pub. L. No. 94-283, § 112(2), 90 Stat. 493 (1976). Brown states that the amendments form the basis of 2 U.S.C. § 441(e), which has since been editorially reclassified as 52 U.S.C. § 30121.

<sup>19</sup> Brown, 15 Yale L. & Pol’y Rev. at 506-507; Sean J. Wright, Reexamining Criminal Prosecutions Under the Foreign Nationals Ban, 32 Notre Dame J.L. Ethics & Pub. Pol’y 563, 570 (2018).

<sup>20</sup> Wright, 32 Notre Dame J.L. Ethics & Pub. Pol’y at 570 (quotation and citation omitted).

<sup>21</sup> *Bernal v. Fainter*, 467 U.S. 216, 220 (1984).

<sup>22</sup> *Bluman v. Fed. Election Comm’n*, 800 F. Supp. 2d 281, 288 (D.D.C. 2011), *aff’d*, 565 U.S. 1104 (2012).

## Abbreviated summary of key events

Beginning in the summer or early fall of 2015 and continuing into 2016, emails from the Democratic National Committee (DNC) and from the account of Hillary Clinton’s campaign chair John Podesta were stolen by hackers believed to be associated with the Russian government. Those emails were then released at points in the campaign that appear to have been calculated to maximize political damage to Clinton.<sup>23</sup>

Between April 2016 and President Trump’s inauguration, there were at least 87 contacts between Trump’s campaign and transition team and Russia-linked operatives.<sup>24</sup> Some of these contacts may have violated criminal laws, and two Trump campaign associates—Michael Flynn and George Papadopoulos—have pleaded guilty to lying about their contacts with foreign officials. In all, at least 26 high-level Trump campaign officials and Trump advisers were aware of such contacts. Several of these contacts reportedly involved discussion of possible foreign assistance to the Trump campaign.

One such meeting occurred at Trump Tower on June 9, 2016, after incriminating evidence about Hillary Clinton was promised. That meeting involved several of the most important figures in the Trump campaign: then-candidate Trump’s son Donald Trump Jr., the candidate’s son-in-law Jared Kushner, and his campaign chairman Paul Manafort.

During the same period, the Russian government engaged in a social media campaign aimed at sowing discord in the U.S. electorate and, eventually, supporting the candidacy of Donald Trump. Through both human-run accounts that impersonated Americans and automated accounts or “bots,” these social media efforts garnered millions of impressions on Facebook, Twitter, and to a lesser extent, YouTube.

### **A. Foreign interference in the 2016 presidential campaign and possible coordination with the Trump campaign**

According to allegations in an indictment obtained by the special counsel and unveiled on February 16, 2018, beginning as early as 2014, a group of individuals and companies collectively known as the “Internet Research Agency” engaged in a social media campaign to influence the 2016 election.<sup>25</sup> The campaign involved the creation and dissemination of political content on human-operated social media accounts that impersonated accounts of American influencers and voters. It also included the use of social media “bots” to promote messages distributed by the Internet Research Agency or consistent with its goals.<sup>26</sup> By early to mid-2016,

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<sup>23</sup> A longer chronology is provided in an Appendix to this primer.

<sup>24</sup> Trump’s Russia Cover-Up by the Numbers – 87+ Contacts with Russia-Linked Operatives, *The Moscow Project – Center for American Progress*, Mar. 21, 2018 (updated Oct. 9, 2018), <https://themoscowproject.org/explainers/trumps-russia-cover-up-by-the-numbers-70-contacts-with-russia-linked-operatives/>. While there were at least 87 contacts between Trump associates and Russia-linked operatives, some of these contacts were during the transition period after the election.

<sup>25</sup> Indictment, U.S. v. Internet Research Agency, No. 18-cr-32 (D.D.C. Feb. 16, 2018) (hereafter “Russian Interference Indictment”) at ¶¶ 1-2, <https://www.justice.gov/file/1035477/download>.

<sup>26</sup> *Id.* at ¶¶ 76-79.

these efforts reflected a strategic goal of sowing discord in the U.S. political system, supporting then-candidate Donald Trump, and disparaging Hillary Clinton.<sup>27</sup>

According to a second indictment obtained by the special counsel and unveiled on July 13, 2018, officers of Russia's military intelligence agency GRU participated in a criminal conspiracy that conducted "large-scale cyber operations to interfere with the 2016 U.S. presidential election."<sup>28</sup> The indictment alleges that starting in at least March 2016, Russian intelligence officers hacked the email accounts of volunteers and officials working for the Clinton campaign.<sup>29</sup> By April 2016, the Russian intelligence officers had also hacked into the computer networks of two organizations of the Democratic party: the Democratic Congressional Campaign Committee ("DCCC") and the Democratic National Committee ("DNC").<sup>30</sup> According to news reports, the hacking of the DNC began as early as 2015<sup>31</sup> and allowed the hackers to access the DNC's opposition research on Donald Trump and all of its email traffic.<sup>32</sup> In November 2015, the FBI informed the DNC that one of its computers was sending information to Russia.<sup>33</sup>

The public first became aware of the hacking on June 14, 2016, when *The Washington Post* reported that Russian government hackers had penetrated the computer network of the DNC.<sup>34</sup> Nonetheless, similar attacks continued throughout the summer of 2016. On or about July 27, 2016, Russian officers attempted to spearfish a domain used by Clinton's personal office as well as 76 email addresses at the Clinton campaign.<sup>35</sup> Those attacks appear to have occurred on the same day that then-candidate Trump said in reference to a report of Russian hacking of the Clinton campaign, "By the way, if they hacked, they probably have her 33,000 emails. I hope they do," and "They probably have her 33,000 emails that she lost and deleted."<sup>36</sup> Trump also added, "Russia, if you're listening, I hope you're able to find the 30,000 emails that are missing."<sup>37</sup>

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<sup>27</sup> *Id.* at ¶ 6.

<sup>28</sup> Indictment, U.S. v. Netyksho, No. 18-cr-215 (D.D.C. Jul. 13, 2018) (hereafter "Netyksho Indictment") at ¶ 1, <https://www.justice.gov/file/1080281/download>.

<sup>29</sup> *Id.* at ¶ 3.

<sup>30</sup> *Id.* at ¶¶ 4-5.

<sup>31</sup> See Jim Sciutto, How One Typo Helped Let Russian Hackers In, *CNN*, Jun. 27, 2017, <https://www.cnn.com/2017/06/27/politics/russia-dnc-hacking-csr/index.html>.

<sup>32</sup> Ellen Nakashima, Russian Government Hackers Penetrated DNC, Stole Opposition Research on Trump, *Washington Post*, Jun. 14, 2016, [https://www.washingtonpost.com/world/national-security/russian-government-hackers-penetrated-dnc-stole-opposition-research-on-trump/2016/06/14/cf006cb4-316e-11e6-8ff7-7b6c1998b7a0\\_story.html](https://www.washingtonpost.com/world/national-security/russian-government-hackers-penetrated-dnc-stole-opposition-research-on-trump/2016/06/14/cf006cb4-316e-11e6-8ff7-7b6c1998b7a0_story.html).

<sup>33</sup> Sciutto, *CNN*, Jun. 27, 2017.

<sup>34</sup> Nakashima, *Washington Post*, Jun. 14, 2016.

<sup>35</sup> Netyksho Indictment at ¶ 22.

<sup>36</sup> Morgan Winsor, Michael Hayden, Candace Smith and John Santucci, Trump Says He Hopes Russian Hackers Find Clinton's Deleted Emails, *ABC News*, Jul. 27, 2016, <https://abcnews.go.com/Politics/donald-trump-spoken-vladimir-putin-urges-russian-president/story?id=40922483>.

<sup>37</sup> *Id.*



Using fake identities like “DCLeaks” and “Guccifer 2.0,” the Russian officers communicated with U.S. persons about the release of stolen documents. For instance, the indictment alleges that on or about August 15, the Russian officers sent an email to “a person who was in regular contact with senior members of the presidential campaign of Donald J. Trump.”<sup>38</sup> According to the indictment, the Russian officers wrote, “thank u for writing back . . . do u find anyt[h]ing interesting in the docs I posted?” Two days later, they added, “please tell me if i can help u anyhow . . . it would be a great pleasure to me.”<sup>39</sup> Trump associate Roger Stone has acknowledged that he is probably the person referred to in the indictment.<sup>40</sup>

The indictment further alleges that using the Guccifer 2.0 persona, the Russian officers discussed the timing of the release of stolen documents with WikiLeaks to maximize the impact of those documents on the election.<sup>41</sup> For instance, on July 22, WikiLeaks released over 20,000 emails and documents stolen by Russian officers from the DNC—only days before the start of the Democratic National Convention.<sup>42</sup>

The emails of Clinton’s campaign chairman were released starting on October 7, 2016.<sup>43</sup> The first release of those emails came on the same day as two other major events: First, the Department of Homeland Security and the Office of the Director of National Intelligence on Election Security released a joint statement asserting that “[t]he U.S. Intelligence Community (USIC) is confident that the Russian Government directed the recent compromises of e-mails from US persons and institutions, including from US political organizations.”<sup>44</sup> Second, *The Washington Post* published a video showing Trump bragging about assaulting women behind the scenes of a 2005 appearance on Access Hollywood.<sup>45</sup> The WikiLeaks release occurred less than one hour after the *Post*’s story.<sup>46</sup>

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<sup>38</sup> Netyksho Indictment at ¶ 44.

<sup>39</sup> *Id.*

<sup>40</sup> See <https://twitter.com/ChrisCuomo/status/1017939029143113729>; Charles Ventura, Roger Stone: I’m ‘probably’ Unnamed Person Mentioned in Robert Mueller Indictment, *USA Today*, Jul. 14, 2018, <https://www.usatoday.com/story/news/politics/onpolitics/2018/07/14/roger-stone-robert-mueller-indictment-russia-hacking-donald-trump/785103002/>.

<sup>41</sup> Netyksho Indictment at ¶ 47.

<sup>42</sup> *Id.* at ¶ 48; see also Joe Uchill, WikiLeaks Posts 20,000 DNC Emails, *The Hill*, Jul. 22, 2016, <http://thehill.com/policy/cybersecurity/288883-wikileaks-posts-20000-dnc-emails>.

<sup>43</sup> Netyksho Indictment at ¶ 49; see also Eric Lipton, David E. Sanger and Scott Shane, The Perfect Weapon: How Russian Cyberpower Invaded the U.S., *New York Times*, Dec. 13, 2016, <https://www.nytimes.com/2016/12/13/us/politics/russia-hack-election-dnc.html>.

<sup>44</sup> Joint Statement from the Department Of Homeland Security and Office of the Director of National Intelligence on Election Security, Oct. 7, 2016, <https://www.dhs.gov/news/2016/10/07/joint-statement-department-homeland-security-and-office-director-national>.

<sup>45</sup> Watch: Donald Trump Recorded Having Extremely Lewd Conversation About Women in 2005, *Washington Post*, Oct. 7, 2016, [https://www.washingtonpost.com/video/national/watch-donald-trump-recorded-having-extremely-lewd-conversation-about-women-in-2005/2016/10/07/3bf16d1e-8caf-11e6-8cdc-4fbb1973b506\\_video.html?utm\\_term=.81d63f2a6ab5](https://www.washingtonpost.com/video/national/watch-donald-trump-recorded-having-extremely-lewd-conversation-about-women-in-2005/2016/10/07/3bf16d1e-8caf-11e6-8cdc-4fbb1973b506_video.html?utm_term=.81d63f2a6ab5).

<sup>46</sup> Aaron Sharockman, It’s True: WikiLeaks Dumped Podesta Emails Hour After Trump Video Surfaced, *Politifact*, Dec. 18, 2016, <http://www.politifact.com/truth-o-meter/statements/2016/dec/18/john-podesta/its-true-wikileaks-dumped-podesta-emails-hour-afte/>.

Prior to President-elect Trump's inauguration, the United States intelligence community released a public version of an otherwise classified report explaining its assessment that Russia was behind these and other actions and had been seeking to influence the 2016 U.S. presidential election.<sup>47</sup> The report assessed that "Russia's goals were to undermine public faith in the US democratic process, denigrate Secretary Clinton, and harm her electability and potential presidency."<sup>48</sup> The report further assessed that "[Russian President Vladimir] Putin and the Russian Government developed a clear preference for President-elect Trump."<sup>49</sup> The July 13, 2018 indictment demonstrates that the special counsel believes that there is sufficient evidence of Russia's role in the hacking to charge 12 Russian military officers with charges for their role in the criminal conspiracy.

## **B. Contacts between the Trump campaign and Russian individuals and officials—including meetings about "dirt" on Clinton**

Donald J. Trump announced his candidacy for president on June 16, 2015.<sup>50</sup> In the summer of 2016, the FBI began probing possible connections between Russia and the Trump campaign. According to *The New York Times*, when the leaked DNC emails appeared online, the Australian intelligence community informed U.S. authorities that George Papadopoulos, a young foreign policy adviser to the Trump campaign, had disclosed to an Australian diplomat in May 2016 that he was aware that "Russia had political dirt on Hilary Clinton."<sup>51</sup> Another reported "catalyst" for the investigation was a July 7-8, 2016, trip to Moscow by a second Trump campaign foreign policy adviser, Carter Page, during which Page criticized U.S. policy toward Russia.<sup>52</sup> On October 5, 2017, in a sealed court proceeding, Papadopoulos pleaded guilty to making a false statement to FBI investigators about his contacts with Russians.<sup>53</sup>

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<sup>47</sup> Office of the Director of National Intelligence, Assessing Russian Activities and Intentions in Recent US Elections, Jan. 6, 2017, [https://www.dni.gov/files/documents/ICA\\_2017\\_01.pdf](https://www.dni.gov/files/documents/ICA_2017_01.pdf).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> Jose A. Del Real, Donald Trump Announces Presidential Bid, *Washington Post*, Jun. 16, 2015, <https://www.washingtonpost.com/news/post-politics/wp/2015/06/16/donald-trump-to-announce-his-presidential-plans-today/>.

<sup>51</sup> Sharon LaFraniere, Mark Mazzetti and Matt Apuzzo, How the Russia Inquiry Began: A Campaign Aide, Drinks and Talk of Political Dirt, *New York Times*, Dec. 30, 2017, <https://www.nytimes.com/2017/12/30/us/politics/how-fbi-russia-investigation-began-george-papadopoulos.html>.

<sup>52</sup> Scott Shane, Mark Mazzetti and Adam Goldman, Trump Adviser's Visit to Moscow Got the F.B.I.'s Attention, *New York Times*, Apr. 19, 2017, <https://www.nytimes.com/2017/04/19/us/politics/carter-page-russia-trump.html>; Michael S. Schmidt, Major Takeaways From Carter Page's Congressional Interview on Russian Election Meddling, *New York Times*, Nov. 7, 2017, <https://www.nytimes.com/2017/11/07/us/politics/trump-adviser-carter-page-transcript-meeting-2016-campaign-russia.html>. Christopher Steele, a former British intelligence officer reached out independently to the FBI during the summer and fall of 2016 with information about possible ties between the Russians and the Trump campaign that he had documented in a series of reports comprising 35 pages commonly referred to as the "Steele Dossier." The Steele Dossier contained compromising and "salacious" allegations about then-candidate Trump and those in his orbit, referring to Page and others by name. LaFraniere, Mazzetti and Apuzzo, *New York Times*, Dec. 30, 2017; Nicholas Fandos, Matthew Rosenberg and Sharon LaFraniere, Democratic Senator Releases Transcript of Interview With Dossier Firm, *New York Times*, Jan. 9, 2018, <https://www.nytimes.com/2018/01/09/us/politics/feinstein-fusion-gps-glenn-simpson-transcript.html>.

Other individuals associated with the Trump campaign who reportedly had contact with Russian individuals and officials during the campaign include Roger Stone, who served as Donald Trump's political advisor and consultant for a number of years before, and for a brief period during, the 2016 campaign<sup>54</sup>; Paul Manafort, who joined the campaign in March 2016 and eventually served as Trump's campaign manager<sup>55</sup>; and Michael Flynn, an advisor to the Trump campaign and Trump's first National Security Advisor (who in December 2017 also pleaded guilty to lying about his contacts with the Russian government).

In June 2016, senior members of the Trump campaign met with Russian individuals who they had been led to believe would provide incriminating information about Hillary Clinton on behalf of the Kremlin.<sup>56</sup> On June 3, 2016, Rob Goldstone, a former tabloid reporter and entertainment publicist long acquainted with the Trump family,<sup>57</sup> emailed Donald Trump Jr.:

Emin [Agalarov] just called and asked me to contact you with something very interesting.

The Crown prosecutor of Russia met with his father Aras this morning and in their meeting offered to provide the Trump campaign with some official documents and information that would incriminate Hillary and her dealings with Russia and would be very useful to your father.

This is obviously very high level and sensitive information but is part of Russia and its government's support for Mr. Trump - helped along by Aras and Emin.

What do you think is the best way to handle this information and would you be able to speak to Emin about it directly?

I can also send this info to your father via Rhona, but it is ultra sensitive so wanted to send to you first.<sup>58</sup>

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<sup>53</sup> See Statement of the Offense, United States v. Papadopoulos, No. 17-cr-182 (D.D.C. Oct. 5, 2017), <https://www.justice.gov/file/1007346/download>.

<sup>54</sup> Ben Schreckinger, Trump's Debate "Dirty Trickster", *Politico*, Aug. 6, 2015, <https://www.politico.com/story/2015/08/donald-trumps-debate-dirty-trickster-121098>.

<sup>55</sup> Emily Flitter and Emily Stephenson, Trump Fires Campaign Manager in Shakeup for Election Push, *Reuters*, Jun. 20, 2016, <https://www.reuters.com/article/us-usa-election-idUSKCN0Z61L5>.

<sup>56</sup> Jo Becker, Adam Goldman and Matt Apuzzo, Russian Dirt on Clinton? 'I Love It,' Donald Trump Jr. Said, *New York Times*, Jul. 11, 2017, <https://www.nytimes.com/2017/07/11/us/politics/trump-russia-email-clinton.html>.

<sup>57</sup> *Id.*; Shawn Boburg & Jack Gillum, Who Is Rob Goldstone, Whose Email to Trump Jr. on Russia Caused a Sensation, *Washington Post*, Jul. 25, 2017, [https://www.washingtonpost.com/investigations/who-is-rob-goldstone-whose-email-to-trump-jr-on-russia-caused-a-sensation/2017/07/15/8471f520-68c0-11e7-8eb5-cbcc2e7bfb\\_story.html?utm\\_term=.0c9958302cc5](https://www.washingtonpost.com/investigations/who-is-rob-goldstone-whose-email-to-trump-jr-on-russia-caused-a-sensation/2017/07/15/8471f520-68c0-11e7-8eb5-cbcc2e7bfb_story.html?utm_term=.0c9958302cc5).

<sup>58</sup> Read the Emails on Donald Trump Jr.'s Russia Meeting, *New York Times*, Jul. 11, 2017, <https://www.nytimes.com/interactive/2017/07/11/us/politics/donald-trump-jr-email-text.html>.

Seventeen minutes later, Trump Jr. replied, “Thanks Rob I appreciate that. I am on the road at the moment but perhaps I just speak to Emin first. Seems we have some time and if it’s what you say I love it especially later in the summer.”<sup>59</sup>

A meeting was scheduled for June 9, 2016, (“the June 9 meeting”), at Trump Tower. During a speech on June 7—after the meeting was scheduled—Donald Trump announced that “I am going to give a major speech on probably Monday of next week and we’re going to be discussing all of the things that have taken place with the Clintons. I think you’re going to find it very informative and very, very interesting.”<sup>60</sup>

Trump Jr., Paul Manafort, and Jared Kushner attended the June 9 meeting on behalf of the Trump campaign.<sup>61</sup> They met with several individuals, including Rob Goldstone, Russian lawyer Natalia Veselnitskaya, Russian-American lobbyist Rinat Akhmetshin, Russian translator Anatoli Samochornov, and real estate financier Irakly Kaveladze.<sup>62</sup> Veselnitskaya has since acknowledged that she has been a source of information for the Russian government since 2013 and has been “actively communicating with the office of the Russian prosecutor general.”<sup>63</sup>

According to press accounts, Veselnitskaya brought a memorandum to the meeting claiming that an entity that financed President Obama’s election campaign—and “cannot be ruled out” to have financed the Clinton campaign—had allegedly invested funds in a Moscow-based firm and evaded tens of millions of dollars of Russian taxes.<sup>64</sup>

According to Veselnitskaya’s statement to the Senate Judiciary Committee on November 20, 2017, “Donald Trump, Jr. asked if [she] had any financial documents proving that what may have been illegally obtained funds were also being donated to Mrs. Clinton’s foundation. [She] said that [she] did not and that it was not [her] issue.”<sup>65</sup> (The speech Trump had pledged to give about the Clintons on June 7 never took place). Veselnitskaya also claims that Trump Jr. said

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<sup>59</sup> *Id.*

<sup>60</sup> Ryan Teague Beckwith, [Read Donald Trump’s Subdued Victory Speech After Winning New Jersey](http://time.com/4360872/donald-trump-new-jersey-victoryspeech-transcript/), *Time*, Jun. 8, 2016, <http://time.com/4360872/donald-trump-new-jersey-victoryspeech-transcript/>.

<sup>61</sup> Dan Merica, [Recreating June 9: A Very Consequential Day in the 2016 Campaign](http://www.cnn.com/2017/07/11/politics/trump-campaign-june-9/index.html), *CNN*, Jul. 12, 2017, <http://www.cnn.com/2017/07/11/politics/trump-campaign-june-9/index.html>.

<sup>62</sup> Sharon LaFraniere and Adam Goldman, [Guest List at Donald Trump Jr.’s Meeting with Russian Expands Again](https://www.nytimes.com/2017/07/18/us/politics/trump-meeting-russia.html), *New York Times*, Jul. 18, 2017, <https://www.nytimes.com/2017/07/18/us/politics/trump-meeting-russia.html>; Eileen Sullivan, Kenneth P. Vogel, Adam Goldman and Jo Becker, [Russian-American Lobbyist Attended Meeting Organized by Trump’s Son](https://www.nytimes.com/2017/07/14/us/politics/russian-american-lobbyist-meeting-trump.html?mcubz=3), *New York Times*, Jul. 14, 2017, <https://www.nytimes.com/2017/07/14/us/politics/russian-american-lobbyist-meeting-trump.html?mcubz=3>.

<sup>63</sup> [Russian Lawyer Who Met with Kushner, Don Jr. Admits to Being an Informant](https://www.nbcnews.com/nightly-news/video/russian-lawyer-who-met-with-kushner-don-jr-admits-to-being-an-informant-1221063235886), *NBC News*, Apr. 27, 2018, <https://www.nbcnews.com/nightly-news/video/russian-lawyer-who-met-with-kushner-don-jr-admits-to-being-an-informant-1221063235886>.

<sup>64</sup> Elias Groll, [Here’s the Memo the Kremlin-Linked Lawyer Took to the Meeting with Donald Trump Jr.](http://foreignpolicy.com/2017/10/16/heres-memo-kremlin-lawyer-took-to-meeting-donald-trump-jr/), *Foreign Policy*, Oct. 16, 2017, <http://foreignpolicy.com/2017/10/16/heres-memo-kremlin-lawyer-took-to-meeting-donald-trump-jr/>.

<sup>65</sup> [Testimony of Natalia Veselnitskaya Before the Senate Judiciary Committee](https://www.scribd.com/document/366458588/2017-11-20-Veselnitskaya-to-Grassley-June-9-Meeting-FARA-Visa), Nov. 20, 2017, <https://www.scribd.com/document/366458588/2017-11-20-Veselnitskaya-to-Grassley-June-9-Meeting-FARA-Visa>.

that should his father win the presidential election they would revisit U.S. sanctions under the Magnitsky Act.<sup>66</sup>

On July 11 and 12, 2016, Trump campaign officials reportedly worked behind the scenes at the Republican National Convention to strip a provision of the foreign policy platform that would have called for providing weapons to Ukraine to fight Russian and Russian-backed forces.<sup>67</sup>

### C. Contacts between WikiLeaks and the Trump campaign

Several Trump associates had contact with WikiLeaks during the final months of the 2016 general election campaign. In October and November of 2016, Trump commented on his love of WikiLeaks during various campaign rallies.<sup>68</sup> Trump associates Roger Stone, Trump Jr. and Alexander Nix all apparently had contact with WikiLeaks or its founder Julian Assange, in the weeks leading up to the election.<sup>69</sup>

For example, on October 12, 2016, WikiLeaks contacted Trump Jr. to suggest that then-candidate Trump tweet out the link “wlsearch.tk” to help Trump followers search the leaked emails for stories, noting, “Btw we just released Podesta Emails Part 4.” Fifteen minutes later, then-candidate Trump tweeted, “Very little pick-up by the dishonest media of incredible information provided by WikiLeaks. So dishonest! Rigged system!” Two days later, Trump Jr. tweeted the same link that WikiLeaks had sent him.<sup>70</sup>

Additionally, after the data firm Cambridge Analytica was retained by the Trump campaign, the company’s CEO Alexander Nix reportedly reached out to Julian Assange to offer his firm’s

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<sup>66</sup> Irina Reznik and Henry Meyer, Trump Jr. Hinted at Review of Anti-Russia Law, Moscow Lawyer Says, *Bloomberg*, Nov. 6, 2017, <https://www.bloomberg.com/news/articles/2017-11-06/trump-jr-said-anti-russia-law-may-be-reviewed-moscow-lawyer-says>.

<sup>67</sup> See Josh Rogin, Trump Campaign Guts GOP’s Anti-Russia Stance on Ukraine, *Washington Post*, Jul. 18, 2016, [https://www.washingtonpost.com/opinions/global-opinions/trump-campaign-guts-gops-anti-russia-stance-on-ukraine/2016/07/18/98adb3b0-4cf3-11e6-a7d8-13d06b37f256\\_story.html?utm\\_term=.1f71ad368e6e](https://www.washingtonpost.com/opinions/global-opinions/trump-campaign-guts-gops-anti-russia-stance-on-ukraine/2016/07/18/98adb3b0-4cf3-11e6-a7d8-13d06b37f256_story.html?utm_term=.1f71ad368e6e); Tim Mak and Alexa Corse, Trump Campaign Changed Ukraine Platform, Lied About It, *Daily Beast*, Aug. 3, 2016, <https://www.thedailybeast.com/trump-campaign-changed-ukraine-platform-lied-about-it>.

<sup>68</sup> David Choi, 5 Times Trump Praised WikiLeaks During His 2016 Election Campaign, *Business Insider*, Nov. 13, 2017, <http://www.businessinsider.com/trump-wikileaks-campaign-speeches-julian-assange-2017-11>.

<sup>69</sup> Tom Hamburger, Josh Dawsey, Carol D. Leonnig and Shane Harris, Roger Stone claimed contact with WikiLeaks founder Julian Assange in 2016, according to two associates, *Washington Post*, Mar. 13, 2018, [https://www.washingtonpost.com/politics/rogerstone-claimed-contact-with-wikileaks-founder-julian-assange-in-2016-according-to-twoassociates/2018/03/13/a263f842-2604-11e8-b79d-f3d931db7f68\\_story.html?utm\\_term=.e61b9f0e3477](https://www.washingtonpost.com/politics/rogerstone-claimed-contact-with-wikileaks-founder-julian-assange-in-2016-according-to-twoassociates/2018/03/13/a263f842-2604-11e8-b79d-f3d931db7f68_story.html?utm_term=.e61b9f0e3477); Julia Ioffe, The Secret Correspondence Between Donald Trump Jr. and Wikileaks, *The Atlantic*, Nov. 13, 2017, <https://www.theatlantic.com/politics/archive/2017/11/the-secret-correspondencebetween-donald-trump-jr-and-wikileaks/545738/>; Kara Scannell, Dana Bash and Marshall Cohen, Trump campaign analytics company contacted WikiLeaks about Clinton emails, *CNN*, Oct. 25, 2017, <http://www.cnn.com/2017/10/25/politics/cambridge-analytica-julian-assange-wikileaks-clintonemails/index.html>.

<sup>70</sup> Julia Ioffe, *The Atlantic*, Nov. 13, 2017.

services in organizing the stolen communications in WikiLeaks' possession into a searchable database.<sup>71</sup>

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<sup>71</sup> Rebecca Ballhaus, Trump-Linked Company Reached Out to WikiLeaks on Hacked Emails, *Wall Street Journal*, Oct. 25, 2017, <https://www.wsj.com/articles/wikileaks-assange-says-he-rejected-overture-from-trump-linked-group-1508961298>.

## Potentially relevant criminal statutes

The facts that have been publicly reported thus far raise serious questions as to whether the president and those in his inner circle were involved in activity related to Russian efforts to undermine the 2016 U.S. election that would constitute one or more federal crimes.

### Conspiracy to Commit Offense or to Defraud the United States, 18 U.S.C. § 371

Elements – 18 U.S.C. § 371 (conspiracy to commit an offense against the United States):

- an agreement between two or more people to pursue an illegal goal;
- the defendant's knowledge of the illegal goal and voluntary agreement to join the conspiracy;
- an overt act by one or more of the conspirators in furtherance of the conspiracy.

Elements – 18 U.S.C. § 371 (conspiracy to defraud the United States):

- an agreement between two or more people to defraud the United States;
- knowing participation in the scheme with intent to defraud the United States;
- an overt act by one or more of the conspirators in furtherance of the conspiracy.

If evidence indicates that anyone affiliated with the Trump campaign agreed to support Russian efforts to interfere with the election, there may be a basis to bring charges under the core federal conspiracy statute, 18 U.S.C. § 371. Because it is written in the disjunctive, Section 371 criminalizes two distinct types of conspiracies. The first part of the statute, known as the “offense clause,” prohibits conspiring to commit offenses that are specifically defined in other federal statutes and may be charged regardless of whether the underlying offense was completed. Offense-clause conspiracies are applicable to the sections that follow in connection with federal statutes that may have been violated by Russian interference in the 2016 election, including statutes proscribing computer hacking, foreign contributions to election campaigns, and bribery.

This section addresses the second part of Section 371, known as the “defraud clause.” A defraud-clause conspiracy stands on its own, *i.e.*, it prohibits conspiracies to “defraud the United States” without the need to prove any other offense. It is a broad statute that allows the government to prosecute any

agreement “to interfere with or obstruct one of its lawful governmental functions by deceit, craft, or trickery, or at least by means that are dishonest.”<sup>72</sup> The government need not suffer loss of money or property as a result of the fraud, only the frustration of an official action or purpose.<sup>73</sup> The statute “is designed and intended to protect the integrity of the United States and its agencies, program and policies.”<sup>74</sup> The U.S. Attorneys’ Manual expansively interprets the defraud clause to prohibit “obstructing, in any manner, a legitimate government function.”<sup>75</sup>

<sup>72</sup> *Hammerschmidt v. United States*, 265 U.S. 182, 188 (1924); *United States v. Conti*, 804 F.3d 977, 980 (9th Cir. 2015) (requiring the government to show that the defendant entered into an agreement “to obstruct a lawful government function . . . by deceitful or dishonest means.”).

<sup>73</sup> *Hammerschmidt*, 265 U.S. at 188.

<sup>74</sup> *United States v. Burgin*, 621 F.2d 1352, 1356 (5th Cir. 1980).

<sup>75</sup> U.S. DEP’T OF JUSTICE, UNITED STATES ATTORNEYS’ MANUAL: CRIMINAL RESOURCE MANUAL § 925, <https://www.justice.gov/jm/criminal-resource-manual-925-obstructing-or-impairing-legitimate-government-activity>.

The February 16, 2018 indictment of thirteen Russians and three companies for alleged interference in the 2016 election charged all defendants with conspiracy to defraud the United States and provides insight into how this legal theory could be leveraged against Americans alleged to have been involved. The indictment alleges that the defendants—operating on behalf of a Russian organization known as the Internet Research Agency—knowingly and intentionally conspired to obstruct the lawful functions of the Federal Election Commission (FEC), the Department of Justice, and the Department of State “in administering federal requirements for disclosure of foreign involvement in certain domestic activities.”<sup>76</sup> The indictment details the governmental functions allegedly impaired by defendants’ “fraud and deceit”:

- The FEC administers the Federal Election Campaign Act, which prohibits foreign nationals from making contributions or expenditures on candidates’ behalf and requires the reporting of certain federal campaign expenditures. The FEC is statutorily required to provide the American public with accurate identifying information about individuals and entities who support candidates for federal office. Defendants are alleged to have impaired the FEC’s function by making expenditures related to the 2016 U.S. presidential election “without proper regulatory disclosure.”<sup>77</sup>
- The Department of Justice administers the Foreign Agents Registration Act (FARA), which prohibits a person from acting as a foreign agent without registration and requires foreign agents to submit periodic registration statements. Defendants are alleged to have impaired the DOJ’s oversight of foreign agents by failing to register as foreign agents carrying out political activities in the United States.<sup>78</sup>
- The Department of State issues non-immigrant visas and requires foreign nationals to provide truthful information about their employment and the purpose of any visit to the United States. Defendants are alleged to have obtained visas through false and fraudulent statements.<sup>79</sup>

A conspiracy requires that the parties share the same agreement to defraud.<sup>80</sup> An affiliate of the Trump campaign could potentially be criminally liable as a co-conspirator of the indicted Russian defendants if he or she agreed to participate in Russia’s scheme to impair any of these government functions—the most likely being interference with the FEC’s regulation of campaign expenditures. We now know that Trump campaign officials reportedly had at least 82 contacts with Russian individuals and officials during the 2016 election cycle, including the now infamous meeting at Trump Tower between Russian nationals and senior members of the Trump campaign. Those contacts potentially presented opportunities to agree to support Russian interference in the 2016 election.

But even without evidence of an explicit agreement between co-conspirators, courts permit triers of fact to infer the presence of an agreement based entirely on circumstantial evidence

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<sup>76</sup> Russian Interference Indictment.

<sup>77</sup> *Id.* at ¶¶ 1, 7, 25.

<sup>78</sup> *Id.* at ¶¶ 1, 26.

<sup>79</sup> *Id.* at ¶¶ 1, 27.

<sup>80</sup> See e.g., *United States v. Rosenblatt*, 554 F.2d 36, 37-38 (2d Cir. 1977) (finding a lack of agreement between defendant and co-conspirator “concerning the type of fraud in which they were engaged.”).



due to the secretive nature of conspiracies.<sup>81</sup> Relevant circumstantial evidence includes: concert of action among co-defendants,<sup>82</sup> the relationship among co-defendants, negotiations in furtherance of the conspiracy, mutual representations to third parties, and evidence suggesting “unity of purpose or common design or understanding among conspirators to achieve the goals of the conspiracy.”<sup>83</sup>

Based on the known facts, there already is circumstantial evidence of possible agreements by Trump associates to conspire with the Russians. Two episodes potentially relevant to the agreement analysis are detailed in the July 13, 2018 indictment filed by the special counsel’s office against twelve Russian military intelligence officials:

- On August 15, 2016, Russian military officers posing as Guccifer 2.0 sent a direct message via Twitter to Roger Stone (described in the indictment as “a person who was in regular contact with senior members of the presidential campaign”) thanking Stone for “writing back” and asking him “do u find anyt[h]ing interesting in the docs i posted.” Two days later, Guccifer 2.0 added, “please tell me if i can help u anyhow ... it would be a great pleasure to me.” On August 21, 2016, Stone tweeted, “Trust me, it will soon [be] Podesta’s time in the barrel.” On September 9, 2016, Guccifer 2.0 and Stone discussed a document stolen from the Democratic Congressional Campaign Committee that detailed voter turnout methods.<sup>84</sup>
- On October 7, 2016, WikiLeaks (described in the indictment as “Organization 1”) released the first set of emails that Russian operatives had stolen from Clinton campaign chair John Podesta.<sup>85</sup> Although not detailed in the special counsel’s indictment, we know that Donald Trump Jr. was in direct contact with WikiLeaks during this time. On October 12, 2016, WikiLeaks contacted Donald Trump Jr. via Twitter to suggest that then-candidate Trump tweet a link to the stolen emails. Fifteen minutes later, candidate Trump tweeted: “Very little pick-up by the dishonest media of incredible information provided by WikiLeaks. So dishonest! Rigged system!” On October 14, 2016, Trump Jr. tweeted the same link to Podesta’s stolen emails. If there is evidence of additional contacts between WikiLeaks and the campaign—particularly any contacts before October 7—that evidence would be probative of whether there was an agreement.

In addition to sharing an agreement to impair a government function, each participant in a defraud-clause conspiracy must have known of the illegal goal and willfully joined the unlawful plan. Evidence need not show that a conspirator had specific knowledge of the regulations or government functions alleged to have been impaired. The government must only show that the defendant had “a general awareness” of the scope and objective of the plan, not necessarily

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<sup>81</sup> See *United States v. Wardell*, 591 F.3d 1279, 1287 (10th Cir. 2009); see also *United States v. Mickelson*, 378 F.3d 810, 821 (8th Cir. 2004) (explaining that the existence of a conspiracy may be inferred based on the parties actions “because the details of a conspiracy are often shrouded in secrecy”); *United States v. Casilla*, 20 F.3d 600, 603 (5th Cir. 1994) (“Direct evidence of a conspiracy is unnecessary; each element may be inferred from circumstantial evidence.”).

<sup>82</sup> *United States v. Fisch*, 851 F.3d 402, 407 (5th Cir. 2017).

<sup>83</sup> *Wardell*, 591 F.3d at 1287-88.

<sup>84</sup> Netyksho Indictment at ¶ 44.

<sup>85</sup> *Id.* at ¶ 49.

that a defendant knew every detail.<sup>86</sup> Therefore, a Trump affiliate could potentially be criminally liable so long as he or she had knowledge of Russia's plan to disseminate hacked emails; he or she need not also have had knowledge of the means and methods of Russian hacking. Nor would American co-conspirators need to have known that Russia's hacking and dissemination of campaign-related emails impaired the FEC's ability to carry out its regulatory mission. Similar to proving an agreement to enter a conspiracy under Section 371, knowledge may be established using circumstantial evidence.<sup>87</sup>

Intent to defraud the United States may also be inferred from circumstantial evidence related to "the relationship of the parties, their overt acts, and the totality of their conduct."<sup>88</sup> For example, in *United States v. Hopkins*, defendants were bank savings-and-loan officers accused of conspiracy to defraud the Federal Election Commission by using employees to disguise illegal corporate political contributions to political action committees.<sup>89</sup> The Fifth Circuit held there was sufficient evidence to conclude that defendants knew their scheme was illegal where defendants attempted to conceal their activity and were active in deciding how to reimburse employees for campaign contributions.<sup>90</sup> Accordingly, evidence that tends to show President Trump or his associates attempted to conceal interactions with Russian nationals, helped guide Russia's social media influence efforts, or attempted to direct the distribution of stolen emails could be used to prove intent to join a conspiracy. Of the reported facts, Roger Stone's purported technical and sustained discussions of stolen campaign documents with Russian military officers posing as Guccifer 2.0 tends to show the type of active participation that courts have found sufficient to infer intent to participate in a conspiracy to defraud.

The final element under Section 371 requires an overt act intended to further the conspiracy. Critical for the potential criminal liability of domestic actors who may have conspired to help the Russians who have already been indicted, an overt act need only be performed by one of the conspiracy's members and need not itself be a crime.<sup>91</sup> As a result, the overt acts detailed in the special counsel's twin indictments alleging Section 371 conspiracies against Russian nationals may also satisfy this element against American co-conspirators.

As detailed above, the facts already known raise serious questions as to whether certain individuals affiliated with the Trump campaign may be criminally liable under the conspiracy statute. The ultimate issue to be determined is whether individuals associated with the campaign entered into explicit or implicit agreements with the Russians to further the goal of illegally interfering with the election, and took steps in furtherance of the conspiracy.

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<sup>86</sup> *United States v. Pulido-Jacobo*, 377 F.3d 1124, 1130 (10th Cir. 2004).

<sup>87</sup> *United States v. Snow*, 462 F.3d 55, 68-69 (2d Cir. 2006) (quoting *United States v. Samaria*, 239 F.3d 228, 235 (2d Cir. 2001)).

<sup>88</sup> *United States v. Cueto*, 151 F.3d 620, 635 (7th Cir. 1998).

<sup>89</sup> 916 F.2d 207 (5th Cir. 1990).

<sup>90</sup> *Id.* at 213-14.

<sup>91</sup> See *Salinas v. United States*, 522 U.S. 52, 63-64 (1997) ("The partners in the criminal plan must agree to pursue the same criminal objective and may divide up the work, yet each is responsible for the acts of each other.").

## Computer Fraud and Abuse Act (“CFAA”), 18 U.S.C § 1030

Elements:

Where a person:

- intentionally;
- accesses a computer that affects interstate or foreign commerce;
- in the absence or in excess of their authorization to access the computer;
- and in doing so obtains information from the computer,

they are guilty of a criminal violation of 18 U.S.C § 1030(a)(2)(C).

When this crime is committed “in furtherance of any criminal or tortious act” in violation of federal or state law, or when the information obtained through the unauthorized access is worth in excess of \$5,000, the violation is a felony punishable by imprisonment of up to five years. See 18 U.S.C § 1030.

Elements of Conspiracy Charge under the CFAA:

The CFAA was expanded in 2008 to include its own provision establishing criminal liability for those who conspire to commit a violation of the CFAA. 18 U.S.C § 1030(b). Congress declined to incorporate an “overt act” element into the statute, so to establish liability for conspiring to violate the CFAA, it must only be shown:

- that the co-conspirators agreed to collectively take action to violate all the elements of a subsection of the CFAA such as § 1030(a)(2)(C); and
- that the defendant knowingly and voluntarily joined the conspiracy.

Note, however, that due to a lack of clarity on penalties for a section 1030(b) conspiracy charge, federal prosecutors generally charge conspiracy to violate the CFAA under the general conspiracy statute, 18 U.S.C §371, which does require an “overt act.”

Among the charges the special counsel has brought against Russian operatives are violations of the Computer Fraud and Abuse Act. As detailed in the indictment, members of the Russian military intelligence unit known as the “GRU” violated the CFAA through a variety of illegal conduct, including spearphishing attacks against Podesta and others; hacking into computer systems used by the DCCC and DNC and installing malware that allowed the GRU to explore the networks and steal data; and publicly releasing the stolen information through WikiLeaks and other online platforms.<sup>92</sup>

As discussed below, public information raises serious questions as to whether an individual working on behalf of the Trump campaign may have violated the CFAA by personally accessing a computer without authorization and thereby obtaining information. Other members of Trump’s 2016 campaign, including President Trump himself, could potentially also face liability for violations of the CFAA as co-conspirators under 18 U.S.C § 1030(b) or 18 U.S.C § 371.<sup>93</sup> If it can be shown that Donald Trump or a member of his campaign was aware of the Russian hacking activity and that they agreed to disseminate or otherwise assist in the publication of the stolen information in violation of state or federal law, this could be sufficient to implicate a

member of the Trump team as a co-conspirator in, or an aider and abettor of, a scheme to

<sup>92</sup> Netyksho Indictment.

<sup>93</sup> While the Department of Justice recommends that prosecutors charge CFAA conspiracies under 18 U.S.C § 371, (see U.S. DEP’T OF JUSTICE, COMPUTER CRIME AND INTELLECTUAL PROPERTY SECTION, CRIMINAL DIVISION, OLE LITIGATION SERIES: PROSECUTING COMPUTER CRIMES (2015) at 56, <https://www.justice.gov/sites/default/files/criminal-ccips/legacy/2015/01/14/ccmanual.pdf>), 18 U.S.C. § 1030(b) has been used to successfully prosecute individuals for conspiring to violate the CFAA. Ross Ulbricht, the creator and operator of the now-defunct “dark web” e-commerce site “Silk Road,” was charged with and convicted of a § 1030(b) violation. See *United States v. Ulbricht*, 858 F.3d 71 (2d Cir. 2017), cert. denied, 138 S. Ct. 2708 (2018).

violate the CFAA.<sup>94</sup> As discussed in the previous section, the existence of such an agreement can be proven by circumstantial evidence,<sup>95</sup> and the agreement need not be explicit.<sup>96</sup>

Statements from members of the Trump campaign, including from President Trump, as well as communications between the campaign and WikiLeaks, suggest the existence of potential circumstantial evidence of a conspiracy to violate the CFAA. For example, after data firm Cambridge Analytica was retained by the Trump campaign, the company's CEO Alexander Nix reportedly reached out to Julian Assange to offer his firm's services in organizing the stolen communications in WikiLeaks' possession into a searchable database. Nix's actions could indicate a desire on his part—and potentially others—to enter into a conspiracy to disseminate hacked private communications in violation of the CFAA.

#### A note on the conscious avoidance doctrine

In considering whether individuals associated with the Trump campaign may face criminal liability as co-conspirators for violations of the CFAA, it is important to understand the concept of “conscious avoidance.” Under the conscious avoidance doctrine—sometimes referred to as “willful blindness” or the “ostrich doctrine”—a defendant who deliberately shields him or herself from clear evidence of critical facts is considered equally liable as someone who has actual knowledge. A defendant may not escape guilt by “clos[ing] his eyes, when he pleases, upon all sources of information, and then excuse his ignorance by saying that he does not see anything.” *Glob.-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 768 (2011) (quoting *United States v. Houghton*, 14 F. 544, 547 (D.N.J. 1882)). As the Supreme Court has explained, the doctrine applies when the defendant (1) subjectively believes that there is a high probability that a particular fact exists; and (2) takes deliberate actions to avoid learning that fact. *Id.* at 770-71.

Applying these principals here, individuals associated with the Trump campaign could potentially face criminal liability for a conspiracy to violate the CFAA even if they did not have actual knowledge of the Russian hacking activity, as long as they believed there was a high likelihood that it occurred, they took steps to avoid learning the truth, and the other elements of a conspiracy were satisfied.

Roger Stone, a long-time associate and supporter of Donald Trump, repeatedly made public statements describing his communications with WikiLeaks. After previewing an upcoming release of documents from WikiLeaks as “devastating” in early August, 2016, Stone went on to say he had just spoken with candidate Trump and had dinner with Assange the previous evening.<sup>97</sup> A month later he announced his expectation that Assange would begin to release a new batch of stolen documents on a weekly basis. Throughout the late stages of the campaign, Roger Stone was also in touch with “Guccifer 2.0,” the online façade that Russian military intelligence used as a mouthpiece to publicize the contents of stolen documents.

<sup>94</sup> Note that, under *Alleyne v. United States*, when a criminal statute allows for higher penalties to be instituted based on an aggravating fact or facts, those facts become elements of the crime that must be proven beyond a reasonable doubt. 570 U.S. 99 (2013). Thus, when a CFAA violation is committed to the end of publishing the stolen information in violation of another state or federal law, publication of the stolen information becomes an element of the crime.

<sup>95</sup> See *United States v. Rosa*, 17 F.3d 1531, 1543 (2d Cir. 1994).

<sup>96</sup> *United States v. Hubbard*, 96 F.3d 1223, 1226 (9th Cir. 1996).

<sup>97</sup> Andrew Kaczynski and Gloria Berger, Stone, On Day He Sent Assange Dinner Email, Also Said ‘Devastating’ WikiLeaks Were Forthcoming, *CNN*, Apr. 4, 2018, <https://www.cnn.com/2018/04/04/politics/roger-stone-julian-assange-email-wikileaks/index.html>.

Donald Trump Jr. also engaged in conduct that raises questions of whether he faces criminal exposure under the CFAA, both as a co-conspirator and as a principal violator of the statute. On October 12, 2016, WikiLeaks sent Trump Jr. a message thanking him and his father for “talking about our publications” and asking his father to tweet a link to the WikiLeaks website. Minutes later, candidate Trump tweeted that there had been “[v]ery little pick-up by the dishonest media of incredible information provided by WikiLeaks.” Trump Jr. would personally tweet the link that the organization had sent him two days after their request that his father do so. WikiLeaks also sent Trump Jr. the password for an anti-Trump website that they had “guessed,” which Trump Jr. subsequently used to access the site,<sup>98</sup> potentially implicating him in a direct violation of the CFAA.<sup>99</sup>

The ultimate issue is whether there was an agreement among agents of Russian military intelligence, WikiLeaks, and members of the Trump campaign to unlawfully obtain and disseminate emails stolen from the Clinton campaign and the Democratic party. Given the offers of “dirt” made by Russian intermediaries to Trump Jr. and Papadopoulos, Trump’s stated hope that Russia would be able to find Hillary Clinton’s “missing” emails, the publication of documents stolen from Trump’s opponent, and reports from the media and the U.S. government identifying Russia as being responsible for the hacking, it appears that Trump and members of his campaign were potentially aware of Russian efforts to illegally obtain emails from the Clinton campaign and the Democratic party.<sup>100</sup> If they agreed with WikiLeaks to coordinate publication of the contents of such illegally obtained emails in violation of state or federal law, that could constitute a conspiracy to violate 18 U.S.C § 1030.

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<sup>98</sup> See Minority Views re: Report on Russian Active Measures, Mar. 22, 2018, House Permanent Select Committee on Intelligence Minority, [https://www.justsecurity.org/wpcontent/uploads/2018/04/House\\_minority.pdf](https://www.justsecurity.org/wpcontent/uploads/2018/04/House_minority.pdf) at 33.

<sup>99</sup> Other legal analysts have considered Trump Jr.’s potential liability under the CFAA for this conduct. See Orin Kerr, Did Donald Trump Jr. Admit to Violating the Computer Fraud and Abuse Act?, *Lawfare*, Apr. 29, 2018, <https://www.lawfareblog.com/did-donald-trump-jr-admit-violating-computer-fraud-and-abuse-act>. See also *United States v. Morris*, 928 F.2d 504 (2d Cir. 1991) (upholding CFAA conviction where individual wrote computer virus to guess user passwords); *United States v. Nosal*, 844 F.3d 1024, 1051 (9th Cir. 2016) (Judge Reinhardt noting in dissent that even a narrow construction of the CFAA would cover “individuals who steal or guess passwords or otherwise force their way into computers without the consent of an authorized user”).

<sup>100</sup> Note that individuals have been found guilty of conspiracy to violate the CFAA where they have hired hackers to steal information. See, e.g., *United States v. Cioni*, 649 F.3d 276 (4th Cir. 2011); *United States v. Rake*, No. 01-13921, 2002 WL 34376595 (11th Cir. Mar. 26, 2002).

## Federal Wiretap Act, 18 U.S.C. § 2511

Elements:

A person who:

- intentionally discloses;
- the contents of an illegally intercepted communication;
- with the knowledge or reason to know the intercept was illegal;

has violated 18 U.S.C. § 2511(1)(c).

Or

- Intentional use;
- of an illegally intercepted communication;
- where the individual had knowledge or reason to know the information was intercepted illegally;

is a violation of 18 U.S.C. § 2511(1)(d).

The Wiretap Act, also referred to as “Title III,” prohibits the intentional, unauthorized interception of the contents of a wire, oral, or electronic communication or “procur[ing]” another to do so. The interception must be achieved through the use of a “device,” meaning that simply overhearing a conversation or looking over someone’s shoulder at an email would not run afoul of the law.

The Wiretap Act also outlaws two kinds of conduct that are particularly relevant for an inquiry into potential violations of law by the Trump campaign during the 2016 election: 18 U.S.C. § 2511(1)(c) prohibits the disclosure of communications that were “intercepted” unlawfully, and 18 U.S.C. § 2511(1)(d) prohibits the “use” of such communications.

Most courts have interpreted the word “intercept” to incorporate a temporal component, meaning that to fall within the Wiretap Act prohibition, a communication must be acquired at the time of its

transmission.<sup>101</sup> While this interpretation was adopted prior to the widespread usage of email communications and some courts have questioned whether electronic communications must be intercepted contemporaneously with their transmission to fall within the Wiretap Act,<sup>102</sup> prosecutors generally bring charges under the Wiretap Act only when the communications at issue were unlawfully acquired by the defendant at the time they were sent.<sup>103</sup> In some circumstances, individuals may be prosecuted for accessing electronic communications “at rest” under the Stored Communications Act.<sup>104</sup>

To be guilty of illegal disclosure of an intercepted communication, the defendant must have knowledge that the communications were intercepted without authorization.<sup>105</sup> Liability under the Wiretap Act can also result where the defendant had “reason to know” that the communications

<sup>101</sup> See, e.g., *United States v. Turk*, 526 F.2d 654, 658 (5th Cir. 1976); *Steve Jackson Games, Inc. v. United States Secret Service*, 36 F.3d 457, 460-463 (5th Cir. 1994); *Fraser v. Nationwide Mut. Ins. Co.*, 352 F.3d 107, 113-114 (3d Cir. 2003).

<sup>102</sup> See *In re Pharmatrak, Inc.*, 329 F.3d 9, 21 (1st Cir. 2003) (noting in dicta the court’s concern “about the judicial interpretation of a statute written prior to the widespread usage of the internet and the World Wide Web in a case involving purported interceptions of online communications”). See also *United States v. Councilman*, 418 F.3d 67, 81 (1st Cir. 2005) (holding that unauthorized interception of email during the “momentary intervals, intrinsic to the communication process, at which the message resides in transient electronic storage” violates the Wiretap Act).

<sup>103</sup> See PROSECUTING COMPUTER CRIMES (2015) at 65.

<sup>104</sup> See 18 U.S.C. § 2701(a). This statute is invoked less frequently by prosecutors and no charges under the SCA were included in the Netyksho Indictment. See PROSECUTING COMPUTER CRIMES (2015) at 65.

<sup>105</sup> See, e.g., *United States v. Wuliger*, 981 F.2d 1497, 1503 (6th Cir. 1992); *Thompson v. Dulaney*, 970 F.2d 744, 749 (10th Cir. 1992); *Williams v. Poulos*, 11 F.3d 271, 284 (1st Cir. 1993).

had been illegally intercepted.<sup>106</sup> Note also that, to be held liable under the disclosure prong of the Wiretap Act, the communications disclosed must in fact be private—in other words, “[o]ne cannot ‘disclose’ what is already in the public domain.”<sup>107</sup>

There are also limitations imposed by the First Amendment on prosecutions for disclosure under 18 U.S.C. § 2511(1)(c). In *Bartnicki v. Vopper*, the Supreme Court considered a case involving a newspaper’s publication and a radio show’s replay of an illegally intercepted telephone conversation between two teachers’ union leaders regarding negotiations with the local school board in which the leaders discussed potential acts of violence against members of the board. Taking into account the fact that the newspaper and the radio station had played no role in the illegal interception, that they had obtained the communications lawfully, and that the subject of the communications was a matter of public interest, the Court held that the publication of the communications was an activity entitled to First Amendment protection.<sup>108</sup>

The Wiretap Act also prohibits the “use” of illegally intercepted communications. Courts have interpreted “use” in a broad sense,<sup>109</sup> with application of 2511(1)(d) being limited primarily by the requirement that the user of hacked information have knowledge or reason to know that the information was produced via an illegal intercept.<sup>110</sup> Examples of “use” under 2511(1)(d) include an attorney’s use of communications that he knew were illegally intercepted to prepare for depositions and cross-examinations,<sup>111</sup> a person’s use of an illegally intercepted password to log in to another person’s email account,<sup>112</sup> and a bookseller’s use of illegally intercepted email communications to gain commercial advantage over his competitors.<sup>113</sup>

While the known facts concerning the conduct of Russian government agents and members of the Trump campaign suggest the possibility of Wiretap Act violations, significant additional information will be required to overcome the legal hurdles to a prosecution under 18 U.S.C. § 2511.

In order to convict an individual for the “use” or “disclosure” of an illegally intercepted communication, prosecutors would first have to prove that an illegal interception of a

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<sup>106</sup> *McCann v. Iroquois Memorial Hosp.*, 622 F.3d 745, 753 (7th Cir.2010) (quoting *Nix v. O’Malley*, 160 F.3d 343, 349-50 (6th Cir. 1998) (“[t]o be liable under § 2511(1)(c) or § 2511(1)(d), a defendant must know or have reason to know ‘sufficient facts concerning the circumstances of the interception such that the defendant could, with presumed knowledge of the law, determine that the interception was prohibited in light of the Wiretap Act.’”).

<sup>107</sup> *Bartnicki v. Vopper*, 532 U.S. 514, 546 (2001) (Rehnquist, J., dissenting). See also *Fultz v. Gilliam*, 942 F.2d 396, 403 (6th Cir. 1991) (“The legislative history of sections 2511(1)(c) and (d) does state that the disclosure of the contents of an intercepted communication that had already become public information or common knowledge would not be prohibited”) (internal quotations omitted).

<sup>108</sup> *Bartnicki*, 532 U.S. at 535.

<sup>109</sup> See *Fultz*, 942 F.2d at 401 (6th Cir. 1991) (“Sections 2511(1)(c) and (d) plainly forbid *all* intentional disclosures and uses of the contents of intercepted communications where the individual knows or should know that the source of the material is an unauthorized interception”) (emphasis in original).

<sup>110</sup> See, e.g., *McCann*, 622 F.3d 745.

<sup>111</sup> *Wuliger*, 981 F.2d 1497 (conviction reversed where jury instructions failed to require a finding that defendant knew the communications that he used were illegally intercepted).

<sup>112</sup> *Brahmana v. Lembo*, No. 09-106 RMW, 2009 WL 1424438, at n.1 (N.D. Cal. May 20, 2009).

<sup>113</sup> *Councilman*, 418 F.3d at 70.

communication in violation of the Wiretap Act occurred. While no charges under the Wiretap Act were included in the special counsel's indictment of Russian GRU members, the factual allegations in the indictment suggest that the hackers may have obtained electronic communications sent by Democratic Party staffers in real-time. According to the indictment, the hackers installed malware on DCCC systems that "allowed them to monitor individual employees' computer activity, steal passwords, and maintain access to the DCCC network."<sup>114</sup> The malware gave the hackers the ability to take screenshots of DCCC employees' computer screens and log their keystrokes as they typed messages to co-workers.<sup>115</sup> Depending on the full scope of the hackers' activity, which has yet to be revealed, their conduct could constitute the contemporaneous interception of an electronic communication in violation of the Wiretap Act. And if that is the case, the question for the Trump team is whether they were aware that the hackers were obtaining the private communications of Democratic Party employees by these means. Information suggesting that any member of the Trump campaign was aware that the Russian government was acquiring the communications of Clinton campaign or Democratic Party staff members in real-time could be sufficient to establish their knowledge of an illegal intercept.

If a member of the Trump campaign knew of an illegal intercept, criminal liability may result under the "use" or "disclosure" provisions of the law. The mere fact that Trump or a member of his campaign pointed to hacked emails disclosed by WikiLeaks would, however, likely be insufficient under the "disclosure" prong of the statute if the communication had already entered the public domain. Criminal liability articulated under a "use" theory may be more plausible, given the Trump campaign's repeated reference to and use of the contents of hacked communications during the campaign—recall President Trump's October 11, 2016 tweet stating his "hope that people are looking at the disgraceful behavior of Hillary Clinton as exposed by WikiLeaks" and his son's tweet three days later sharing a URL where the hacked communications could be accessed. Whether considered under a "use" or "disclosure" theory, showing that a member of the Trump campaign knew that Russia had illegally intercepted the communications at the time of their transmission could constitute the greatest impediment to establishing their criminal liability under the Wiretap Act.

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<sup>114</sup> Netyksho Indictment at ¶ 24.

<sup>115</sup> *Id.*



## Contributions and Donations by Foreign Nationals, 52 U.S.C. § 30121

Elements (for application to non-foreign nationals):

- a solicitation, acceptance, or receipt by a person of;
- a contribution or donation of money or other thing of value;
- by a foreign national;
- in connection with a Federal, State, or local election; and
- for criminal prosecution, that the acts were committed knowingly and willfully.

See 52 U.S.C. § 30121; 52 U.S.C. § 30109(d)(1)(a).

Contributions and donations by foreign nationals are barred by the Federal Election Campaign Act (“FECA”), and the solicitation or acceptance or receipt of such contributions by non-foreign nationals is prohibited as well. The solicitation, acceptance, or receipt of a “thing of value” from the Russian government or Russian nationals during the 2016 campaign may constitute a crime. Courts and regulators have held in various contexts that information and intangible things can be “thing[s] of value,” and courts focus on the conduct and expectations of the parties involved.<sup>116</sup> Here, the “official documents and information that would incriminate Hillary” promised before the June 2016 Trump Tower meeting, or Russia’s hacking and dissemination of emails, could constitute a contribution or a thing of value, as they very likely

had significant value to the parties involved.<sup>117</sup> Russia was described as offering “very high level and sensitive information” before the Trump Tower meeting, and the Trump campaign and President Trump himself repeatedly touted the hacked emails disseminated via WikiLeaks.

The assistance by the Russian government was likely in connection with a federal, state, or local election, and the Trump campaign likely knew as much: at a minimum, the email ahead of the Trump Tower meeting stated that what was being offered was “part of Russia and its government’s support for Mr. Trump,” and George Papadopoulos was told that the Russians had “dirt” on Hillary Clinton.

There is also evidence that members of the Trump campaign acted knowingly and willfully—that is, that they knew generally that their conduct was unlawful, an element of the crime.<sup>118</sup>

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<sup>116</sup> See, e.g., *United States v. Nilsen*, 967 F.2d 539, 542-43 (11th Cir. 1992) (noting that courts have applied a “broad interpretation” and citing cases); *Citizens for Responsibility and Ethics in Washington*, MUR 5409 (2004), First General Counsel’s Report, at 8 n.12 (a list of conservative activists in 37 states was a “thing of value,” because, though it is “difficult to ascertain a market value for unique goods such as the [list] . . . . The lack of a market, and thus the lack of a ‘usual and normal charge,’ . . . does not necessarily equate to a lack of value”). Courts have found that sexual intercourse or the promise of it, amusement, the testimony of a witness, and an agreement not to run in a primary election are all things of value. *United States v. Girard*, 601 F.2d 69, 71 (2d Cir. 1979) (citations omitted). Information, too, is a “thing of value” under statutes that prohibit theft of government property and statutes that prohibit impersonating a federal officer. *Id.*; *United States v. Fowler*, 932 F.2d 306, 310 (4th Cir. 1991); *United States v. Sheker*, 618 F.2d 607 (9th Cir. 1980) (defendant impersonated a federal officer to get the location of a person he wanted to kill, and that location information was a “thing of value”).

<sup>117</sup> While some commentators have suggested there are First Amendment defenses to a prosecution of this kind, the prohibition on contributions by foreign nationals has been found constitutional. *Bluman v. Fed. Election Comm’n*, 800 F. Supp. 2d 281, 292 (D.D.C. 2011) (in a three-judge opinion written by J. Kavanaugh), *aff’d*, 565 U.S. 1104 (2012). *Bluman* also suggests that broader limitations on attempts to influence opinion by foreigners may be unconstitutional, but courts may be hesitant to apply that logic to the type of assistance here by a foreign government relying on hacked emails.

Evidence that a defendant had the requisite knowledge can be established by, among other things, showing that the defendant attempted to disguise or conceal activity, and status or prior experience as a campaign official, candidate, professional fundraiser, or lawyer.<sup>119</sup> Manafort's prior experience, therefore, is notable, as is the fact that the Trump campaign hid its contacts with Russian nationals from the public and that members of the campaign lied to federal investigators about contacts with Russians. To take just one example, when news of the Trump Tower story broke in July 2017, President Trump "dictated" a misleading statement by Donald Trump Jr. to *The New York Times*.<sup>120</sup>

Donald Trump Jr.'s acknowledgment that he would "love" promised opposition research ahead of the Trump Tower meeting could potentially constitute a solicitation, as could the steps he took in setting up the meeting. Other members of the campaign, such as Paul Manafort, could also be implicated. The statute could potentially apply to President Trump if there were evidence that if he directed the solicitation of Russian nationals or the Russian government before the Trump Tower meeting, or if he had the requisite knowledge before more public solicitations of the Russian government and "acceptance" of the information (such as his public request for Russia to find emails from Clinton's server and his statement that he "love[s] Wikileaks!"<sup>121</sup>).

If a criminal violation of the statute could not be proven (if, for example, courts applied a higher knowledge standard than the one used by the Department of Justice Manual<sup>122</sup>) members of the Trump campaign could still be liable for civil violations. They could also be liable for conspiracy to defraud the United States under 18 U.S.C. § 371, as discussed above.<sup>123</sup> Section 371 has

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<sup>118</sup> The relevant Department of Justice Manual defines the intent standard as only requiring that the defendant "know, generally, that his conduct was unlawful." U.S. DEP'T OF JUSTICE, FEDERAL PROSECUTION OF ELECTION OFFENSES, 152-155 (8th Ed.) (Dec. 2017) (citing *Bryan v. United States*, 524 U.S. 184, 195-196 (1998) and explaining standard).

<sup>119</sup> *Id.* at 13-14, 154-155.

<sup>120</sup> President Trump's attorneys stated in a January 2018 letter to the Special Counsel that President Trump "dictated a short but accurate response to the New York Times article on behalf of his son, Donald Trump, Jr.," under the heading "Statement of July 8, 2017, to the New York Times." This was first reported in June 2018. Michael S. Schmidt, Maggie Haberman, Charlie Savage, & Matt Apuzzo, Trump's Lawyers, in Confidential Memo, Argue to Head Off a Historic Subpoena, *New York Times*, Jun. 2, 2018, <https://www.nytimes.com/2018/06/02/us/politics/trump-lawyers-memo-mueller-subpoena.html>. The acknowledgment that President Trump dictated the message came after repeated public denials by Trump advisors. Matt Apuzzo, Trump Team Pushed False Story Line About Meeting With Kremlin-Tied Lawyer, Memo Shows, *New York Times*, June. 4, 2018, <https://www.nytimes.com/2018/06/04/us/politics/trump-mueller-falsehoods-tower-meeting.html>.

<sup>121</sup> Jenna Johnson and Ashley Parker, After loving WikiLeaks as a candidate, Trump decides he doesn't like leaks as president, *Washington Post*, Mar. 7, 2017, [https://www.washingtonpost.com/politics/after-loving-wikileaks-as-a-candidate-trump-decides-he-doesnt-like-leaks-as-president/2017/03/07/e84f7070-0350-11e7-ad5b-d22680e18d10\\_story.html?utm\\_term=.3a69df2cc723](https://www.washingtonpost.com/politics/after-loving-wikileaks-as-a-candidate-trump-decides-he-doesnt-like-leaks-as-president/2017/03/07/e84f7070-0350-11e7-ad5b-d22680e18d10_story.html?utm_term=.3a69df2cc723).

<sup>122</sup> Defendants may argue that criminal violations require that the defendant knew the specific provision of the law that was being violated, not just that the conduct was generally unlawful. See *Bluman*, 800 F. Supp. at 292 (implying in dicta that criminal prosecution of provisions of the federal election law prohibiting foreign contributions require a higher standard: "There are many aliens in this country who no doubt are unaware of the [] ban on foreign expenditures, in particular."). Such a position, however, is generally not supported by the case law.

<sup>123</sup> See *supra* at page 15.

been used to prosecute what were essentially campaign violations, and proof of specific knowledge of the FECA's provisions is not required.<sup>124</sup>

In short, there is already evidence raising serious questions as to whether members of the Trump campaign—most notably Donald Trump Jr.—violated the prohibition against foreign donors, and could be criminally liable under either 52 U.S.C. § 30121 or 18 U.S.C. § 371. The public evidence surrounding the Trump Tower meeting alone—that the Trump campaign deliberately met with Russian nationals after being told that they had information on the Clinton campaign as part of Russia and its government's support for Trump, and hid this fact—could potentially support criminal liability. Further investigation could strengthen this case, develop evidence around other instances of Russian support, and could point to liability for other members of the Trump campaign, including possibly President Trump himself.

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<sup>124</sup> *Id.* at 17; see *United States v. Hopkins*, 916 F.2d 207, 214 n.7 (5th Cir. 1990) (upholding § 371 conviction where circumstantial evidence was sufficient to show that defendants “knew that corporations could not make political contributions, and that their scheme to disguise corporate contributions as individual contributions would interfere with the proper reporting of campaign contributions to the FEC.”).

## Bribery of Public Officials and Witnesses, 18 U.S.C. § 201(b)(2)

Elements: 18 U.S.C. § 201(b)(2)

- a thing of value was, directly or indirectly, demanded, sought, received, or accepted “personally or for any other person or entity” by;
- a present or future (one who has been “selected to be a public official”) public official;
- for being influenced in the performance of an “official act,” being influenced to commit or aid in committing any fraud on the U.S., or being induced to do or omit to do any act in violation of his or her official duties;
- with corrupt intent or intent to be influenced.

Depending on how the facts develop, President Trump could potentially face criminal liability for violating the bribery statute under a quid pro quo theory. While there does not presently seem to be a sufficient factual basis to support a bribery charge, the fact that the Russians provided Trump with a “thing of value” by interfering with the election to support his candidacy, and that Trump has taken pro-Russian stances both as nominee and president, certainly raises concerns. But even if the facts showed a connection between the Russian aid and Trump’s conduct, there remain novel legal questions about the applicability of the statute.

The bribery statute prohibits elected officials from accepting or receiving a thing of value in

exchange for the performance of an official act. “Thing of value” has been interpreted broadly in cases analyzing bribery and related statutes, and can include non-monetary and non-tangible things.<sup>125</sup> Courts focus on the value that the recipient subjectively attached to the items received, even if there is little or no objective commercial worth.<sup>126</sup> Here, the assistance provided by Russia to then-candidate Trump’s campaign in 2016 could constitute a thing of value.

In order for the statute to apply, however, an individual must have at least been “nominated or appointed to be a public official” or “officially informed that such person will be so nominated or appointed.”<sup>127</sup> A nominee for president may qualify, given the statute has a broad jurisdictional reach and the plain language of the statute suggests that a nomination is sufficient,<sup>128</sup> and Trump officially became the Republican nominee on July 21, 2016 (after the Trump Tower meeting).<sup>129</sup> But whether his status as Republican nominee satisfies this element of the statute is an unsettled question of law, and President Trump would no doubt argue that Section 201 does not apply to candidates for political office. In that case, the statute would only reach any corrupt actions he took to benefit Russia after being elected president, which would require development of significant additional evidence.

<sup>125</sup> See *supra* at n.116; *United States v. Nilsen*, 967 F.2d 539, 542-43 (11th Cir. 1992) (noting that courts have applied a “broad interpretation” and citing cases); *United States v. Girard*, 601 F.2d 69, 71 (2d Cir. 1979).

<sup>126</sup> *United States v. Williams*, 705 F.2d 603, 622-23 (2d Cir. 1983).

<sup>127</sup> 18 U.S.C. § 201(a)(2).

<sup>128</sup> *Dixson v. United States*, 465 U.S. 482, 491-492 (1984) (noting that anti-bribery statute was drafted with a “broad jurisdictional reach”). See also *United States v. Williams*, 7 F. Supp. 2d 40, 51 (D.D.C. 1998), *vacated in part sub nom. United States v. Schaffer*, 240 F.3d 35 (D.C. Cir. 2001) (holding that tickets to inaugural given on January 18, 1993, could be a gratuity for future Cabinet officer if someone acting in an official capacity informed him of his nomination before that date, and declining to dismiss count of indictment where Congress held hearings on the nomination as early as January 14, 1993).

<sup>129</sup> Stephen Collinson, *Donald Trump Accepts Presidential Nomination*, CNN, Jul. 22, 2016, <http://www.cnn.com/2016/07/21/politics/republican-convention-highlights-day-four/index.html>.

Another potential limitation on the application of the statute is the protection courts afford to campaign contributions in light of the First Amendment protections for political speech. Section 201(b)(2) requires an intent to give or receive something of value in exchange for an official act, in other words, an actual or intended quid pro quo. In the context of campaign contributions, courts typically require an explicit quid pro quo in order to shield routine interactions between elected officials and their constituents.<sup>130</sup> Whether that higher standard would apply here, where the campaign contributions at issue consist of unlawful activities by a foreign power, remains an open question.<sup>131</sup> If the higher standard does not apply, then any quid pro quo need only be implied and may be shown by circumstantial evidence.<sup>132</sup>

A bribery conviction can be based on a pattern of conduct: “The quid pro quo requirement is satisfied so long as the evidence shows a course of conduct of favors and gifts flowing to a public official in exchange for a pattern of official actions favorable to the donor.”<sup>133</sup> Thus, “it is sufficient if the public official understands that he or she is expected as a result of the payment to exercise particular kinds of influence—i.e., on behalf of the payor—as specific opportunities arise.”<sup>134</sup> Here for example, if the many actions taken by the Russian government to favor the Trump campaign were done in exchange for future official actions, with the requisite intent by Trump to take favorable official actions (such as on sanctions) when opportunities arose, that could satisfy the statutory requirements.

As with other violations, the underlying conduct that could create liability for bribery could also be charged under the offense clause of 18 U.S.C. § 371 where there is evidence of conspiracy and an overt act.<sup>135</sup>

The publicly known facts support further investigation. Even if no explicit quid pro quo has been proven, there is circumstantial evidence that suggesting that President Trump has changed policy to be more favorable to Russia in part because of Russia’s assistance to the Trump campaign. And even though the Trump Tower meeting predates Trump’s nomination, and therefore likely could not be used to support a charge of bribery, Russia’s other apparent efforts to assist candidate Trump and the contacts between Trump associates and the Russian government during the transition period warrant further inquiry.

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<sup>130</sup> See *United States v. Allen*, 10 F.3d 405, 411 (7th Cir. 1993) (“absent some fairly explicit language otherwise, accepting a campaign contribution does not equal taking a bribe unless the payment is made in exchange for an explicit promise to perform or not perform an official act.”) (citing *McCormick v. United States*, 500 U.S. 257 (1991)).

<sup>131</sup> See also *United States v. Blagojevich*, 794 F.3d 729, 738 (7th Cir. 2015) (quid pro quo did not have to be explicit to support conviction of former governor of Illinois for, among other things, soliciting supposed “campaign contributions” in exchange for an official act when governor had said that he would not run for another term).

<sup>132</sup> *United States v. Jennings*, 160 F.3d 1006, 1014 (4th Cir. 1998).

<sup>133</sup> *Id.* (internal quotation and citation omitted).

<sup>134</sup> *United States v. Menendez*, 291 F. Supp. 3d 606, 614 (D.N.J. 2018) (quotation and citation omitted) (holding that the stream of benefits theory was not in conflict with the Supreme Court’s definition of “official act” for the purpose of the quid pro quo statute in *McDonnell v. United States*, 136 S. Ct. 2355, 195 L. Ed. 2d 639 (2016)).

<sup>135</sup> See *supra* at page 15.

## Misprision of Felony, 18 U.S.C. § 4

### Elements:

- a felony was committed;
- the defendant knew that the felony had been committed;
- the defendant failed to notify the authorities; and,
- the defendant took an affirmative step to conceal the crime.

*United States v. Wilkes*, 972 F.2d 344, 1992 WL 188133, at \*2 (4th Cir. 1992); see also *Lancey v. United States*, 356 F.2d 407, 409 (9th Cir. 1966) (citing *Neal v. United States*, 102 F.2d 643, 646 (8th Cir. 1939)).

Taking steps to conceal the felonious conduct of another can be a basis for a separate crime even where the defendant was not a participant in the underlying felony.

There is a question as to whether members of the Trump campaign and those close to then-candidate Trump might have been aware that the Russians were in possession of stolen emails as early as April 2016 when George Papadopoulos learned that the Russians had “dirt” on then-candidate Clinton, roughly two months before the hacked emails were revealed publicly.

Assuming those who had become aware that the Russians possessed “dirt” on Clinton, including Papadopoulos and Donald Trump Jr., knew that the

Russians had obtained the information illegally, the probative question would be whether they then engaged in any act of concealment. While mere silence is insufficient,<sup>136</sup> “a defendant may . . . be held liable for verbal acts of concealment.”<sup>137</sup> Because there is evidence to suggest that the Trump campaign may have had advance knowledge of the stolen emails, any information not yet public about how individuals may have reacted to that information would be relevant to an analysis of a misprision of felony charge.

Separate and apart from Russian hacking, if the evidence shows that Trump Jr. solicited a thing of value from the Russians during the June 9, 2016 meeting<sup>138</sup> and President Trump or others were aware that Trump Jr. had committed a crime by doing so, any actions taken by the president or others to conceal the true nature of the meeting from law enforcement could potentially constitute criminal concealment.

In sum, regardless of whether Trump or any of his associates directly violated the CFAA, Federal Wiretap Act, Bribery statute, Contributions and Donations by Foreign Nationals statute, or any other felony provision, to the extent they were aware of felony conduct and took steps to conceal the crime, it is possible they could be separately liable.

<sup>136</sup> *Lancey v. United States*, 356 F.2d 407, 410 (9th Cir. 1966).

<sup>137</sup> See *United States v. Baumgartner*, 581 F. App'x 522, 526-527 (6th Cir. 2014).

<sup>138</sup> See *supra* at page 25.

## Questions remain

In light of what we currently know about the investigation into Russian election interference and the potential criminal violations that may have occurred, the following questions remain:

- What was the nature and extent of communications between Russian nationals and the Trump campaign or its affiliates about the 2016 election?
- Were there any direct financial contributions by the Russian government that were known or solicited or accepted by members of the Trump campaign?
- Was there any direct financial assistance from the Russian government or Russian nationals to Trump personally?
- What and when did the president or any of his surrogates know about the Russian hacking, including whether there is evidence that George Papadopoulos informed others in the campaign about his interactions with apparent agents for the Russian government?
- Did any members of the Trump campaign receive any of the stolen emails in advance of public distribution and if so, did they do anything with those emails or that information?
- What exactly transpired at the Trump Tower meeting, including whether members of the Trump campaign knowingly solicited or accepted information in the form of documents or other things of value at the meeting?
- What did President Trump know about the Trump Tower meeting when he announced hours after the meeting was scheduled that he would be giving a speech during which he would disclose information about Clinton, and when he dictated a statement about the meeting in July of 2017?
- Was there any explicit quid pro quo agreement made when Trump was a nominee for president (*after* the Trump Tower meeting)?

We note that Congressional investigations should be able to address many of these open issues and help to determine whether crimes or other acts were committed that could constitute “high crimes or misdemeanors.”

Several committees in the House and Senate have conducted limited investigation of possible Russian intervention in the 2016 election and possible coordination with the Trump campaign, but there has not been a fulsome Congressional investigation. Such an investigation is needed and could inform one or more potential actions within Congress’s legislative function, which could include public reports, referrals to the Department of Justice or other executive branch agencies, legislation, as well as impeachment.<sup>139</sup>

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<sup>139</sup> For broader discussions of Congress’s investigatory powers, see Morton Rosenberg, *When Congress Comes Calling: A Study on the Principles, Practices, and Pragmatics of Legislative Inquiry*, 2017, *The Constitution Project*, <http://constitutionproject.org/wp-content/uploads/2017/05/WhenCongressComesCalling.pdf>, and Project on Government Oversight,

## The broader scope

We note that the crimes enumerated above encompass a narrow set and were selected with a view to the possibility that the Trump campaign, those close to Trump, and the president himself, may have acted in concert with Russian operatives in their efforts to influence the 2016 U.S. presidential election in violation of U.S. criminal laws.

These statutes however are not the entire body of potential crimes that public news accounts suggest may be implicated. Furthermore, there are additional theories of liability that may attach, such as for aiding and abetting a crime, where an individual can be liable if, in knowing of the larger scheme, he “takes an affirmative act in furtherance of that offense, . . . with the intent of facilitating the offense’s commission.” *Rosemond v. United States*, 572 U.S. 65, 71 (2014).<sup>140</sup>

A host of additional crimes potentially apply to what may have been a coordinated effort to conceal Russian-Trump “collusion.” General Flynn and George Papadopoulos have already pleaded guilty to making false statements to the FBI in connection with their dealings with Russia, and questions have been raised about the possibility that campaign officials provided perjured testimony during congressional investigations. Title 18 of the United States Code, Section 1001 criminalizes false statements provided to federal law enforcement, while Sections 1621-1623 criminalize perjury, including suborning perjury under Section 1622.

There is also a separate slate of corruption crimes potentially implicated by connections between Russian operatives and Trump surrogates tangential to Russian efforts to undermine the U.S. presidential election. Examples of such offenses include money laundering, bank fraud, and payments made in violation of campaign finance laws. The recent developments of Michael Cohen’s guilty plea and Paul Manafort’s conviction and subsequent decision to cooperate with federal prosecutors also raise more questions about what additional potential criminal exposure may exist for the president and those close to him.

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Necessary and Proper: Best Practices for Congressional Investigations, Jun. 7, 2017, [http://www.pogoarchives.org/m/co/2017\\_pogo\\_necessary\\_and\\_proper\\_report.pdf](http://www.pogoarchives.org/m/co/2017_pogo_necessary_and_proper_report.pdf).

<sup>140</sup> Unlike with conspiracy, no agreement is necessary. See *United States v. Frazier*, 880 F.2d 878, 886 (6th Cir. 1989).



## Conclusion

Since our nation's founding, lawmakers have sought to guard against foreign interference in and corruption of our democratic processes. But those safeguards are by no means foolproof, as demonstrated by the 191 charges brought by the special counsel against 35 individuals and companies for their attempts to influence the 2016 presidential election. While none of the charges implicate the president or those close to him directly, the publicly reported facts raise substantial questions as to whether the president or his associates worked with or alongside the Russians who unlawfully sought to interfere with the election. Heeding the warning of our nation's first president that "free people" must be "constantly awake" against "the insidious wiles of foreign influence," the American public deserves a full and fair investigation to determine whether the President of the United States or those close to him worked with Russia to undermine our democracy. While "collusion" is technically not a crime, if the president or his associates coordinated with the Russian effort to influence the election, they may in fact be guilty of multiple criminal offenses.

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