

THE BROOKINGS INSTITUTION
FALK AUDITORIUM

THE MUELLER REPORT AND THE BARR LETTER:
WHAT HAPPENS NOW?

Washington, D.C.
Thursday, March 28, 2019

PARTICIPANTS:

BENJAMIN WITTES, Moderator
Senior Fellow, Governance Studies, The Brookings Institution
Editor-in-Chief, Lawfare

SUSAN HENNESSEY
Senior Fellow, Governance Studies, The Brookings Institution
Executive Editor, Lawfare

MARY McCORD
Visiting Professor of Law, Georgetown University
Senior Litigator, Institute for Constitutional
Advocacy and Protection

MARGARET L. TAYLOR
Fellow, Governance Studies, The Brookings Institution
Senior Editor and Counsel, Lawfare

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P R O C E E D I N G S

MR. WITTES: So while my colleagues are getting mic'ed up, welcome to the Brookings Institution. My name is Benjamin Wittes. I'm a senior fellow here in Governance Studies. And it has been a long week and we're not done with it yet.

But it is a pleasure to welcome three very esteemed colleagues to join me for this conversation. Susan Hennessey, a senior fellow here at Brookings and the managing editor Lawfare. Mary McCord of Georgetown Law School, Mary was a long-time lawyer in the Justice Department's National Security Division, which she ran for a time as acting assistant attorney general, until 2017. Right?

MS. McCORD: May 12, 2017. (Laughter)

MR. WITTES: Not that we're counting the days since. And Margaret Taylor, our new colleague at Lawfare and in Governance Studies. Margaret was the minority chief counsel for the Senate Foreign Relations Committee. So we've got a great group to talk about a whole bunch of the issues that are before us.

So I want to start by -- and what we're going to do is we're going to talk among us and we're going to do this entirely as a conversation. Oh, and before I forget, I want to welcome those who are joining us electronically through the webcast. This is the magic of the web.

So what we're going to do is we're going to have a conversation and we're going to bring you guys into it. We're going to dispense with opening statements and just try to cover as much ground as we can.

And before we do that, I want to try to sweep off the table preemptively what I think is the least interesting issue that this set of events -- that is the finishing of the Mueller report, the release of the Barr letter, and the review that is now underway for the public release of whatever's going to be released -- the least interesting question which this raises, which is the one that the news channels are spending 100 percent of the time on, which is the question of how much vindication can or should the President be claiming at this point.

So I want to sweep this off the table by making the following brief comments and then seeing if any of you guys think there's more to be said on the subject than this.

Number one, it is clear that there is not going to be a prosecutable case on the conspiracy Russia collusion side of the equation. It is clear that there is substantial evidence of obstruction of justice, although not something that the special counsel was prepared to say the President obstructed justice. And it is not clear anything really beyond that.

So my first question to you, Susan, is there really more to be said on how much vindication should be being claimed at this point than that or do we just have to wait until we have chapter and verse from Mueller?

MS. HENNESSEY: No, I think the only answer is we just have to wait. We can read a little bit into kind of the range of possibilities. I do think that it's reasonable to presume good faith on the part of Attorney General Bill Barr and assume that his letter is an honest representation of the underlying report, so we can conclude a little bit from that.

That said, the idea that it does not establish a criminal conspiracy -- it does establish the criminal conspiracy on the Russia side, but it does not establish that any U.S. persons participated in this criminal conspiracy. You know, it could stand for the proposition that it is genuinely a full exoneration, but they've run down every thread. There was lots of sort of maybe suspicious, maybe even imprudent stuff, but they really, really couldn't find anything, so sort of a true exoneration, all the way to they found lots and lots of stuff and it just didn't hit the threshold, you know, just a hair below the threshold of an actual criminal indictment, or it could be anything in between.

So I think that as of right now, all we can really do is wait to see what the report -- where the report falls on that spectrum.

MR. WITTES: What do you think? Is there more to be said than that or is this just, like, you know, we know what Bill Barr said? We know there's 300+ pages behind that. And the judgment of history awaits the 300 pages and isn't resolved by the 4 pages.

MS. McCORD: Well, certainly, we await it, but I would focus on Susan talked, of course, about the first principal conclusion that Mr. Barr included in his four-page letter with respect to Mr. Mueller's conclusion that there was not evidence of criminal conspiracy involving Trump campaign officials.

The second conclusion, of course, looked very different because this is where Mr. Mueller declined to make a recommendation to the attorney general about whether the President had committed the crime of obstruction of justice and instead laid out the facts, and the letter is clear, evidence on both sides of the question. So we know there is a body of evidence there.

And we also know that what the attorney general did is he assessed the elements of the offense of obstruction of justice and under Department of Justice guidelines going back for as long as my tenure, and I don't even want to tell you how long ago that was, a prosecutor cannot bring criminal charges unless he believes he has evidence of every element of the charge beyond a reasonable doubt. And we know that the Supreme Court has been relatively restrictive in its interpretations of the elements of obstruction of justice, particularly the nexus element and the corrupt intent elements.

And I think it's interesting here also to know that A.G. Barr last summer, when he wrote his unsolicited letter to the deputy attorney general, he certainly set forth some of his opinions about the crime of obstruction of justice and the theories under which a crime of obstruction of justice could be proven. So we already had a little bit of insight into his own view of the criminal statute and the elements required and the theories that might support it. And then we have him consulting with others, as he says in his letter, at the Department of Justice to reach the conclusion that there is not evidence beyond a reasonable doubt of every element of obstruction.

On this point reasonable minds could differ. I don't know that they will because we haven't seen the evidence. But, you know, unlike the first point where Mueller reached a conclusion, Mueller declined to do so here. And so I think one thing that we have

that we'll be looking for, again, it's still awaiting the 300+ pages, Ben, so I guess I really haven't answered your question, but is that then I fully assume reasonable minds will differ and that there'll be a whole slew of debate at that point about whether that interpretation that A.G. Barr and Deputy Attorney General Rosenstein engaged in in applying sort of elements analysis, whether that holds up. And certainly, reasonable minds in Congress could also differ.

MR. WITTES: All right. I want to throw out two provocative theses, by the way, both of which I believe and so I'm not simply being argumentative here. And I'll just sound you guys out about it.

The first is that people, particularly people on the left, are being weirdly suspicious of Bill Barr right now and that there is no good reason not to take reasonably at face value the process that he has laid out here. So here is what he has said.

Number one, that he has described what he thinks are two topline findings. He's added to it, maybe appropriately, maybe inappropriately, a kind of op-ed about obstruction of justice, but leave that aside. He said here are the two major findings, the topline findings. I'm committed to maximum transparency on the underlying document, but I need to review it for grand jury material, for classification matters, and for matters that could affect a pending investigation, various pending investigations. It is a many-hundred-page, several-hundred-page document. No attorney general could simply dump it in the public domain without doing those things given the sensitivity of it. And that he's committed to a relatively expeditious process -- he says weeks, not months -- to get that done.

And that sounds to me, and I'm stating this provocatively, but I do believe it, it sounds to me totally reasonable. And the Twitterverse and the cable networks are full of anxiety that this is a cover-up. It seems to me like a totally reasonable thing for the attorney general to have done.

So, Margaret, do you buy it? Are people being needlessly and irrationally suspicious of Bill Barr right now?

MS. TAYLOR: I'm not going to answer that directly, but what I will say --

MR. WITTES: You're not going to render a traditional prosecutorial judgment?

MS. TAYLOR: I'm telling you up front I'm not going to answer it directly. I guess what I would say is, so I'm sort of a Congress person. I was on the Hill for five and a half years. For me, it goes back a little bit to, you know, Bill Barr's confirmation which was nearly on a party line vote, which is not a great way for any Cabinet official really to get the position and expect to have authority and legitimacy in the eyes of all the American people.

So I think there is an element of, you know, gee, it would have been -- this would have been better coming from someone who had been confirmed on a much more sort of wide type of basis. So I think that's part of it.

But I will also say I think Nancy Pelosi said I think yesterday or something, it was reporting about her talking to her caucus in the House of Representatives and fielding a lot of the same sort of anxiety about what's going on. And she said something like, look, let's just get the goods. And I think that's the right message for her to send, which is to say --

MR. WITTES: When you say, just to be clear, when you say, "Get the goods," you don't mean get the dirt. You mean like --

MS. TAYLOR: The Mueller report, the actual report.

MR. WITTES: -- receive the material.

MS. TAYLOR: Right, right. Like let's just get the Mueller -- let's not do the anxiety thing. Let's just get the report and then go from there. So I think that was the right message for her to send.

You know, I do think there is also this anxiety around, and I have question marks about it, you know, will Congress actually get the whole thing? What will they get? Members of Congress can review classified information, that is not a problem. Will there be a fight about -- you know, will they send over something that's, like, heavily redacted?

And then, of course, Democrats, if it's heavily redacted, there's lots of questions unanswered, of course there's going to be like this back-and-forth of what are they holding back? Why is this all redacted? All of that has to -- it's going to have to be hashed out. And I don't think Democrats on Capitol Hill are going to rest until they are fully satisfied that they have seen everything they need to see. There may be things that they ultimately feel like they don't need to see if it's part of, for example, an active investigation, but they will be pursuing it. And as long as they don't have something they want, they will be saying what are you holding back?

MS. HENNESSEY: So I agree that it's reasonable to allow them to conduct a review. They're required to conduct it and there's some time period, like April 2nd, you know, some period of time. There's a window past which starts to become not particularly reasonable.

One question that is sort of a mystery to me is this was all incredibly predictable. Right? That after you wrote the letter that there was going to be this immense and intense pressure to release the actual report. The Special Counsel's Office knew that there was going to have to be a 6(e) review. They knew that they were in the best position to identify grand jury material. Classified information actually has to be portion marked, so it's already been reviewed for what pieces are classified or it should be relatively apparent.

So I'm not suggesting that this occurred and Barr is somehow covering it up. I am surprised, though, that the Special Counsel's Office sort of didn't take the first cut in order to avoid precisely this situation.

MR. WITTES: So I just want to say that if the Special Counsel's Office had read the article on Lawfare where I told them that they needed to write an Executive Summary with no grand jury information, no classified, I mean, I very specifically flagged this issue, it would have been helpful.

Mary, you're the person on the panel with the most intimacy of this type of investigation, not that there is a whole lot of precedent for this type, but to the extent that

there's precedent for it, you've been involved in them; also with Justice Department work product. So I want, you know, thinking about these three categories of information -- grand jury information, which, by the way, is a felony for the Justice Department simply to turn over to Congress without the permission of a court. It's not like something that's a discretionary act that you're allowed to do. It's barred by criminal law.

Number two, classified material, which, of course, there is a discretionary component to.

And three is prudential material with respect to pending matters and potentially I suppose privacy of certain individuals.

What should we reasonably expect when this review is done? Are we going to see 350 pages, 70 percent of which are blacked out entirely with isolated sentences to tantalize us, as some filings have been, or do you think we are likely to see a report that you can sit down and read as a sentient human being with occasional sentences or paragraphs or even a page or two here and there redacted?

MS. McCORD: Well, I wish I had the crystal ball to answer that. I think that there's actually already been quite a bit of information put out in the public sphere, so certainly that's not stuff that could be redacted. For example, Robert Mueller in his indictments, particularly the two Russian conspiracy indictments, the Internet research agency and its extensive efforts to use social media and other means to engage in an influence campaign and then, of course, the conspiracy that involved the actual computer hacking and then publication and distribution of the hacked emails from the DNC and the Clinton campaign, those indictments, if you have taken a look at them -- if not, I'll say they are very lengthy, they're very detailed -- they tell a real story with a lot of detail about the evidence in support of those indictments.

And evidence that -- you know, in other times in my career that level of detail would not be included in an indictment because of concerns about revealing sources and methods. So all of this, of course, had to get cleared through the IC before it was done

and because of just concerns that we don't have to put everything in an indictment. We can prove it up in court if we ever go to trial and we might not go to trial, so why put it all out there in an indictment and potentially reveal things the government would rather not reveal when we either may not get the person to prosecute or the person might plead guilty and we can preserve the secrecy?

So there's already a lot out there. That decision, I think, was a deliberate decision by Bob Mueller to educate the American people about the extent of the Russian interference in the 2016 campaign. So I think we're going to see that story told pretty fully.

And then there's, of course, been a lot of other public indictments of a lot of other people involved with the Trump campaign. All of that information you can't now be claiming grand jury secrecy 6(e) material about things you've already put out into the public, in a public indictment, which is, of course, permissible to do.

So if we see 300-and-something pages, 90 percent of which is redacted, I think that suggests that there's something a little bit wrong with the analysis. I don't think that the attorney general's going to do that. I think we have to give him some credit that he's a lawyer, he's been a lawyer a long time. He's got a history at the Department of Justice and I think he's going to, I hope, abide by the rules.

The other thing is with respect to 6(e) material, again, this only applies to information, testimony, evidence that was obtained through the grand jury process, so by subpoenaing witnesses, by subpoenaing documents. A lot of witnesses came and talked to the Mueller team voluntarily without a subpoena. Witnesses provided information voluntarily without a subpoena. So anything that a witness provided voluntarily without a subpoena is not 6(e) material. And we just know from people, you know, it's been in the public media some of the people who've gone and done their interviews without requiring subpoenas, so there's quite a bit there that should come out.

And then, of course, we do know there are spinoff investigations, so I do expect there will be redactions just like there were, for example, in the Flynn sentencing

memo and other public documents we've seen redacted in order to preserve the integrity of ongoing investigations.

So I'm sort of cautiously optimistic that there will be a fair bit included in this. And I think you'll be able to, you know, with our morning coffee read like chunks of it without a whole lot of redactions, but then I think you might see whole sections redacted where it's either still an ongoing investigation or whether it's summarizing -- when it's summarizing some evidence that was obtained solely through use of the grand jury.

MR. WITTES: Okay, so, Margaret, you sat up and said the Democrats will fight and have to fight to make sure they get what they need. Mary has just laid out what I think is a very plausible read in which they're going to get a lot, but they're not going to get no sections that are tantalizingly blacked out. So when that happens, what are the interbranch politics of this? Is this then that Nancy Pelosi and Adam Schiff and the Democratic -- and Jerry Nadler basically say we want to satisfy ourselves that these are redacted for legit reasons and that there really are -- or is this a situation where the instinct to go nuclear and fight over everything is such that whatever level, unless the redaction is like a comma here and there, we are going to have a fight over every single one of them? How do you game this out?

MS. TAYLOR: So my instinct on it, and I don't have any insider knowledge about what the approach is going to be or anything like that, my instinct on it is that if there is a substantial amount of redaction there is going to have to be some very serious conversations between high-level people at the Department of Justice and the relevant people on Capitol Hill to explain why, what it is with some specificity. Not revealing what the 6(e) material is or whatever, but explaining it some way that people are -- people feel satisfied.

I don't know how that will go. Maybe it depends on sort of how it's handled, whether it's sort of a conversation of mutual respect between the two branches in their respective roles or if it's more confrontational on either side. So I don't know exactly, but I

do know that they will have to feel themselves satisfied that they know why things are redacted. And they're going to have to get enough information to feel like they also know what it really is that Mueller sort of broadly, like, what he found.

So, you know, my second instinct on it is it's not utterly clear to me that -- you know, we're now in a phase where on the political side people are looking to the 2020 presidential election and the House. They get elected every two years. They're thinking about their -- already starting to think about their campaigns. They're going to have to decide how much political capital to expend on this when the reality is that in the context of elections, including the presidential elections and the House individual member elections, this is one issue of many that constituents will be concerned about. It's an important one, but it's certainly not the only one.

You know, the sort of what's been going on with the Affordable Care Act and the Department of Justice's change of position on that issue, that is huge. I mean, that is huge for the sort of political constituency of Democrats.

So they're going to have to calibrate how they respond on this and they will be keeping in mind what really is it that the Democratic constituency that we want to turn out in 2020 and we want to have reelect a majority in the House of Representatives, what are the things that they are really going to want us to be concentrating on?

MS. HENNESSEY: I mean, it's worth noting that the fight over the report is only going to be sort of a first fight. So then there'll be the fight over how much of the information related to the report, then there'll be a secondary fight over the underlying investigative materials. And in some ways, this is actually the one that we need to be more cautious about in terms of setting long-term precedence.

So this is something that Adam Schiff warned Devin Nunes about when he was the chair and sort of going after the underlying investigative materials related to the obtaining of this FISA warrant and something that traditionally the Executive Branch does not turn over to Congress, saying, you know, look, if DOJ turns this over, that is going to

establish a precedent and we're going to use that precedent whenever we're in power. And now that's exactly what they're promising to do. So I would expect that they are going to be quite aggressive in asking DOJ to produce all of those underlying things that didn't actually come into the report, right, the evidence they collected to form the conclusions.

The problem is that the reason why we have a DOJ policy of not providing information like that to Congress is a really important one that preserves really important investigative equities. And so this is going to be a moment in which the Democrats -- you know, to the extent that you're fighting over a special counsel's report about the President, I do think you can fairly say you're creating a precedent for special counsels' reports about presidents.

To the extent you're fighting over that underlying stuff, we are risking really walking down this road, a road that I don't think it was a good idea whenever the Republicans went down it. It's a little bit difficult to now tell the Democrats to asymmetrically restrain themselves. But the more and more we do this, the more and more we're eroding that norm, and the more we're going to pay the consequences over the long term.

MR. WITTES: Yeah, I do think, I mean, Mary has done a lot of national security investigations, the idea that you would do them with the specter of congressional oversight over the conduct of line prosecutors and agents, I can't imagine how you would do an investigation. And I'm very sympathetic to Schiff's sense that, hey, the Rubicon was crossed a year and a half ago and some of us were, including me, were spending a lot of time warning about that. But I still think the right answer is go back across that Rubicon and build, as Trump would say, a big, beautiful wall along its bank. Don't live on the wrong side of that.

Is there any possibility that we could use this occasion to reestablish the idea that you do policy oversight, you do oversight of abuses by the Justice Department, but the work product of line attorneys and line agents is not fair game?

MS. McCORD: Well, you know, one thing that's been disappointing I think

for me watching sort of the turn of things after the last election is that some of these sort of bad precedents that were established either are now being used by the other side or there's a threat. I mean, this happened with the wall. Like if you do this emergency declaration, then some Democratic President the next time around is going to abuse his authority. I kind of hate that whole dialogue. It's like because you abused it, we'll now abuse it. How about we're not going to stoop to the level of abuse? We're going to take the high road. But that's the Pollyanna in me and I can't help myself.

But to be direct, I do think it -- you know, I think most prosecutors and investigators are going to keep doing their jobs. And I do think this is a unique case and not every case is going to demand that kind of level of attention. So I don't want to be too alarmist about stepping over the Rubicon.

But I was alarmed, of course, when the Carter Page FISA was provided and then, you know, redacted and provided to the public. And there are people who can say, well, transparency's good, people now have a better understanding. But that formed a precedent that I thought was dangerous and it's going to be dangerous in litigation where the Department of Justice normally does not reveal the FISAs to defendants or defense counsels.

When they're using the FISAs in their prosecution, they litigate in front of the court ex parte. So even in prosecutions this information is usually not shared because of its classification and sensitive nature.

So I am very concerned about going to that underlying data. But I think that part of it will depend on how satisfactory -- I hope that part of it will depend on how satisfactory the report is.

Robert Mueller, I mean, we worked together decades ago when he was prosecuting homicides in the D.C. U.S. Attorney's Office. I mean, this guy has been a prosecutor for a long time. He is very thorough. He's also, of course, been the director of the FBI for 12 years and through, you know, immediately after 9-11 and everything after that

until just a few years ago. So I suspect this is a very thorough report.

And so if enough is revealed in that report, I hope that will assuage the concerns of people that the Hill really need to see the underlying data. Again, maybe I'm being Pollyannaish, but I do think if that report is able to be provided in full or close to full to Congress, that will go a long way to preventing further erosion of these principles of not having Congress getting into second guessing every investigative step taken.

MR. WITTES: All right. So I don't want to, as I say, dwell on the imponderable question of how much vindication should who be claiming by a four-page, two data point summary of a 350-page report. But I do want to talk briefly about the kind of war over the narrative that is developing.

And on the one side of it, you do seem to have a lot of people who are rushing to insist that we know it doesn't mean X, it doesn't, you know -- because this could still be possible and this could still be possible and this could still be possible. And there seems like a lot of sort of active desire to not allow for the possibility that, you know, Bob Mueller may have concluded that the collusion side is relatively insubstantial.

And on the other hand, you have a whole lot of people -- and I was aware today that Devin Nunes inquired at an open hearing of Mike McFaul whether he knew me in a kind of conspiratorial kind of way. And there's been a lot of -- I mean, mostly not about me, but about Susan. You know, a lot of kind of really crazy stuff going around the web about the conspiracy to bring down Donald Trump by all these deep-staters. And I do think we have this developing sort of narrative war and war over the narrative.

And so, Susan, I'm interested for your thoughts on that. And also for your thoughts on, at this stage, what can we reasonably say about what we know about Russia and the results of and findings of the Russia investigation, both as summarized in the Barr memo, but also as summarized in, as detailed in the indictments that came before it?

MS. HENNESSEY: So I don't know what to say about sort of the narrative war. People should wait. They should wait for the report. They should wait for more

information. The letter simply doesn't say what people are sort of holding it up to say actually sort of on either side. So, you know, just sort of a note of caution that all we can do is wait.

And in sort of a void of information, both sides are always going to rush in to sort of try and claim victory.

MR. WITTES: Both sides is, Susan.

MS. HENNESSEY: Exactly. One thing I would say, though, to particularly people who feel like they might be disappointed by the ultimate Mueller report, that are hoping or had suspected that it was going to really have very, very damaging information about the President, how to think about it if it frustrates their expectations.

So the first is to recognize, and this is all assuming that we get to see the report or reasonably substantial portions of it, the Special Counsel's Office is essentially the best team of investigators I think really in modern department history. You could not have assembled a better team. They had all of sort of the tools and powers of the Executive Branch and the federal government. To the extent that they examined a question and looked into something and didn't find evidence, nobody is going to find that evidence. Right?

So to the extent that there's a little bit of a temptation to say, well, you know, the Special Counsel's Office didn't find this, but that doesn't mean it's not there, so Congress should go chase down that rabbit hole, I think people should expect that to the extent that they looked at something, the Special Counsel's Office probably found whatever there is to be found. And that's sort of the first important thing to kind of accept as a principle even if you're really disappointed with the outcome.

The second is that we should accept Robert Mueller's prosecutorial judgment. Right? So when specific information comes out, a lot of people are going to be opening up, you know, the conspiracy statutes and saying, well, look at this. Doesn't this evidence mean that it actually was a crime?

Sure. Robert Mueller is a very, very experienced prosecutor. He's rendering his judgment in good faith that this is not something on which we can believe we could reasonably prove all of the elements of a crime. And I do think you have to defer to that prosecutorial judgment.

That said, Robert Mueller only looked at the questions that he actually looked at. Right? So there's all kinds of things that this report will not address that it's perfectly appropriate and in some cases necessary for Congress to sort of examine for itself.

And second, prosecutorial judgments are one piece of the judgments to be rendered here. There are secondary judgments about whether or not conduct which is not criminal or not prosecutable is acceptable, how we should be thinking about it.

And so, to sort of go back to the original part of your question, there is one conspiracy that Robert Mueller did conclusively establish and that's the conspiracy on the Russian side. There was a criminal conspiracy. It was charged in court in these really pretty astonishing speaking indictments that we've seen. And so we can say the special counsel established that.

I do think that there's a little bit of a need now to go back and think about now that we are aware that this conspiracy existed, how do we want to think about the various conduct of individuals, even if it doesn't arise to the level of conspiracy in the legal sense? How do we want to think about the way individuals reacted to that behavior to the extent to which they were aware in a generalized sense of the existence of that kind of behavior? Did they warn the American public? Did they welcome or encourage it in some way?

And so that's a much larger, more difficult conversation. And it really doesn't rest on this narrow determination that the Special Counsel's Office has made about sort of prosecution decisions.

MR. WITTES: All right. So in this vein of the sort of war over the narrative, Margaret, we saw I think a shadow or maybe more than a shadow, maybe the ugly head of

that war arise today in the House Intelligence Committee hearing that I think should have been about something entirely different. So why don't you start by telling us what happened and then we can kind of go over what it means?

MS. TAYLOR: Sure. Really interesting hearing this morning. You know, you can watch it. I would recommend that you do. It'll give you a sense for what maybe lies ahead. The dynamics were very interesting.

So the title of the hearing was called "Putin's Playbook: The Kremlin's Use of Oligarchs, Money, and Intelligence in 2016 and Beyond." There were four witnesses, one is former Ambassador McFaul. There was like a Russia policy expert, a financial sort of crimes expert, and then also Steven Hall, who's a former Russia CIA analyst, very talented. So a very substantive committee.

So the way it started out was Chairman Schiff, basically he gave sort of a very I think kind of flat almost, just sort of a very normal sort of opener for a hearing. And it was sort of just about, you know, what he expected to hear at the hearing.

And then as is the normal way, he said, okay, and now I turn to the ranking member, Nunes, for his opening comment. And that was when Nunes and another one of the Republicans on the committee sort of also like attacked Schiff and said, you know, we have this letter, it's signed by all nine Republicans on the committee. We think that you've not done your job and you've done these terrible things in sort of insinuating that there was collusion over the last couple of years, and so now we have this letter and we're putting it in the record. And the letter says like we think you should, you know, resign from your chairmanship.

And so that was the moment when Schiff said -- he really pushed back very hard and said, look, you know, I've said all along that what Bob Mueller is doing is examining something to the level of -- a criminal level is different than what the Congress should be doing. And he sort of ticked through all of the things that we already know about the conduct of the various players.

So just to give you a sense for it, he said, you know, the Trump Tower meeting with Natalia Veselnitskaya. Donald Trump, Jr., was there, Kushner was there, Manafort was there. You know, they took the meeting. They didn't take it to the FBI. Manafort was offering campaign information in exchange for debt forgiveness of his own debt. He was giving polling data to someone linked to Russian intelligence. You know, Trump called for Russia to hack Hillary Clinton emails. Kushner tried to establish a back channel with Russia. Flynn secretly conferred with the Russian ambassador on sanctions and then lied about it to the FBI. You know, he talked about the Trump Tower project.

And he said, you know, you may think all of those things are okay. I don't. I think they're immoral, unethical, unpatriotic, and, yes, evidence of collusion.

And so the point he is making here is our job, the Congress, is different from Mueller's job. And he's still interested in these things for that reason.

So the other part of the hearing was the substantive part. And it was actually a very great substantive hearing, hearing from these four experts in a way that I think is very illuminating for Americans just in general to understand how Russia operates, how Putin operates, how Russia is just not -- they have this sort of sheen of institutions and democracy and stuff, but it's not. It's basically more or less sort of a Mafia state that is headed by Putin. And talked about the tactics and strategies and the point of interference in Western democracies, so very illuminating.

So those were like the sort of two pieces of this. And what it reminded me of was when I was still on the Hill, this was late 2016/early 2017, before Mueller had been appointed, there was this debate in the Democratic side about how to tackle the Russian interference issue. One proposal was the special counsel route. The other route was the sort of 9-11 Commission-style route and looking at the problem in a holistic way. How did it happen? Why did it happen? How can we prevent it in the future? And that is sort of really more of a congressional kind of a role.

And so what I see -- there's not going to be legislation to establish a 9-11

style commission. That's not going to happen. That's not what I'm saying. But I do see the Democrats' focus being sort of getting back to that other road not taken when the special counsel was appointed.

MR. WITTES: Sorry, were you --

MS. McCORD: Well, I was going to jump in a little, just for a minute, about I think another thing that's important, and it hits at the things you're just getting at, Margaret, is that it was the attorney general that decided to list these two principal conclusions in his four-page letter and have those conclusions be conclusions about whether crimes were committed. The appointment of Robert Mueller was not restricted to determining whether there was evidence of crimes. In fact, crimes are only mentioned in Part C of the appointment. It says, "If the special counsel believes it is necessary and appropriate, the special counsel is authorized to prosecute federal crimes arising from the investigation of these matters," referring back to the three matters he was told to investigate, including most particularly any links and/or coordination between the Russian government and individuals associated with the campaign of President Donald Trump.

So I don't know, it is unclear to me, whether A.G. Barr focused on these two conclusions about crimes because he thought those were the principal conclusions or whether Mueller actually calls those his principal conclusions. Now, Barr does the special counsel's report is divided into two parts and describes them. And he does at one point say, "The report explains that a primary consideration for the special counsel's investigation was whether there was a criminal conspiracy." But, you know, that's "a," a primary consideration.

So my point is if and when the substance of this report is made available to Congress, there could be a lot in there that goes to the very things that Congressman Schiff and many, many others on the Hill, and I think in America, are interested to know about that were part of the mandate. And, you know, particularly in the situation where the President is running for reelection for the ultimate position of trust for the American people, it's very different than an ordinary person who might be investigated by the grand jury as to whether

that person committed a crime.

And if the conclusion is he did not, there's all kinds of good reasons to keep that investigation secret. You don't want to unnecessarily and unfairly taint the person who's been investigated when the prosecutor decides there's no crime. You don't want to expose witnesses and evidence and put other people in compromised positions. That kind of reasoning certainly I think doesn't apply where you're talking about somebody who's running for reelection to the highest office in this country and needs to have the trust and faith of the American people in the course of that.

And they are entitled I think, as Congressman Schiff said, and I think really I know this is going to sound just foolhardy from me, it really should be bipartisan that people should know what kind of behavior is concerning when it comes to relations with one of this country's greatest adversaries, Russia. People are entitled to know those relationships even if they didn't rise to the level of a crime.

And I promise I'm going to shut up in one minute. So there's a big difference, for example, for purposes of charging a crime, between conspiring, saying, oh, the Russians I've been told now have got dirt on Hillary Clinton. You, campaign person, call them up, let's see what we can do to get that information out in public and, therefore, really -- you wouldn't have to say the "therefore" -- you know, have a fraud on the American people. You know, affect the election, deprive all of our normal procedures for elections from working. That looks like a conspiracy.

That's very different from, wow, they hacked in and they have all these emails? Cool, that's great. Can you see if you can find the 30,000 more? Like that's not going to get you to criminal conspiracy. But that might be very deeply concerning to the American people and there might be more information like that, and that is worth Congressman Schiff and really I think everyone on the Hill and everyone in the country to want to know about.

MS. TAYLOR: And I would just say because I didn't address this, like it is

very clear to me that President Trump and some of the Hill Republicans are seeking to take this opportunity, when there's this space between the Barr memo and the actual report, to sort of consolidate a narrative and almost like weaponize it and going on the offensive. And the evidence for that is Trump is sort of Tweeting about it, saying Schiff should be forced to resign because of his whatever, activity, his behavior over the last two years.

Today Trump was also saying that Schiff and others' security clearances should be revoked, which isn't a thing because members of Congress don't get security clearances, but they have access by virtue of their being elected by the people. But you see this sort of very intentional sort of weaponization of this time period where there's kind of a lack of detail about the Mueller report, but we have the Barr memo.

And so clearly what's going on is they're seeking to consolidate that narrative and that will be the narrative that they will repeat going forward regardless of what Mueller report ends up saying. And that is the look toward 2020 and how to make this not a liability for Trump's reelection.

MS. HENNESSEY: So I want to sort of touch one point that Mary made. And that's whenever we're having a discussion about sort of whether or not this is the criminalization of policy differences, right, that you have a President who had a different view about what our relationship with Russia should look like, and it's improper to essentially attempt to criminalize that, I think that this is a really great example of the role and need for congressional oversight.

So it's reasonable for a President to say I've been elected President of the United States and I don't believe that imposing sanctions on Russia or the sanctions of the prior administration are appropriate and are beneficial to this country. To go before the American people and say this is my decision and to allow that sort of political Executive Branch accountability, the area in which we think about separation of powers, we want the President not to be hindered by Congress and the other branches, but actually just that political process.

It's a really, really different thing for the President to do that in secret. It's a really, really different thing for the President to then lie about it. And that's the role that we expect the branches to come in; to come in and conduct oversight and essentially to produce that information for the public, so that the public can analyze the decisions, the foreign policy decisions at a high level that are being made on their behalf, so that that political accountability can function.

And so I do think it's important to think about sort of the conclusion of the Mueller -- the special counsel's investigation on sort of the criminal side as putting to rest one set of questions, but understanding that this is why we have congressional oversight.

MR. WITTES: All right. So this brings me to, I told you there were going to be two provocative theses, and I've only done one, and here is provocative thesis number two. Bill Barr characterized in this letter the decision to not render a traditional prosecutorial judgment on obstruction as one that left the question up to the attorney general. And my hypothesis is actually it may have been intended to leave the question for Congress.

And specifically, you know, I spent a fair bit of time this past year trying to get unsealed the Leon Jaworski Watergate "Road Map," which was an effort to lay out neutrally for Congress, in a non-argumentative fashion, the facts of the President's involvement the Watergate cover-up conspiracy. And the reason I was interested in this document is that it struck me as a kind of particularly interesting model for Bob Mueller. That, you know, here you have a set of facts, set of presidential behaviors, that you're clearly not going to indict because you can't indict the President anyway. There's not like a group of people around him, like a Bob Haldeman, who were doing the conspiracy from him. This is centrally and only about presidential behavior.

And by the way, there's a series of very substantial Article II questions about how you would apply the obstruction statutes to this conduct anyway. So what do you do if you're a poor prosecutor in this situation? Well, you investigate it and then you lay out in a non-argumentative fashion the facts for somebody else to render political judgment.

And so I was really interested to see that that is exactly what Barr characterized Mueller as having done here. And my first reaction when I read it was, wow, Mueller has written a road map and Bill Barr is claiming that it was for him. (Laughter) But I have this suspicion that it was actually for somebody else.

I was also very surprised to see then a lot of people, including Jim Comey yesterday, kind of implicitly criticizing Mueller for having punted this question. And so here's my provocative thesis with that as an embarrassingly long wind-up for which I apologize, which is, hey, punting this is the right thing to do. There's no need to pronounce one way or the other on whether it's criminal. The relevant question is whether it's acceptable.

And as Susan said earlier, and the relevant body to decide that is Congress, so the exact right thing to do is write it up in a very neutral, fact-based fashion, and let it go through whatever review process Bill Barr wants to put it in and get into the hands of Congress, so that Margaret's friends can figure out what to do with it.

So that's my thesis in defense of Bob Mueller for having punted. Mary, am I wrong?

MS. McCORD: Well, I think there's a lot to what you say. First of all, Bob Mueller is not an indecisive person. I haven't seen him -- he weights pros and cons, but I've never seen him like shirk from making a decision. And so it was surprising to me that he had not made a recommendation.

You know, what he was fulfilling with this report was at least, in part, what is required by the special counsel regulations, which is a prosecution memo that is supposed to make recommendations about whether -- you know, prosecutorial decisions, should there be charges brought. But at the same time, even though that's sort of the purpose of that special counsel regulation provision and what he's supposed to be providing, we also have at the same time, and certainly he was well aware of it, OLC opinion saying you can't indict a sitting President. So there was no real compelling need to make a recommendation.

And so I've been puzzling over this same thing. Is this really to leave this to

Congress to make a decision, to the American people to make a decision? Was it based on conversations he'd already had with Department of Justice that may have led him to believe that this was what the attorney general wanted him to do and leave it to the attorney general?

I will say that in sensitive investigations, and this certainly would qualify, the AG does have the last -- you know, is the last decision-maker on whether charges are brought. And so U.S. attorneys, special counsel, who normally bring charges in their districts all the time without running them up the flagpole would have to run up sensitive investigations, and, ultimately, the attorney general would make the decision. But I have rarely seen a U.S. attorney send that memo up without the U.S. attorney recommending what the U.S. attorney wanted to do, and sometimes being overruled.

So it's not surprising to me that Barr would make the decision. I'm still surprised that there was no recommendation. And I think one possibility, even though he knows what he's submitting is a confidential report, is that this man, who's dedicated his career to public service and to his country, but one way or another this is probably going to be provided to Congress, it's going to be made public. I've done a nearly two-year investigation. I'm going to put it out there and then other people will make other judgments on it.

MS. HENNESSEY: So I think we won't know until we see the report. I think it's more plausible based on the description that Robert Mueller likely intended to create a record for Congress to decide, in part because Bill Barr is not more capable of rendering the judgment. And second, he's not better positioned to render the judgment.

Sometimes we think that there are certain decisions that the attorney general should make and you can imagine Mueller sort of deferring to that. This is actually an example of a decision which the attorney general is in a worse position than the special counsel. The whole reason why we have special counsel regulations is in order to render these kinds of judgment free from the perception of political interference. So I find it really

implausible that Mueller intended for Barr to render this determination.

That said, I actually don't think there's anything wrong with Barr offering his judgment on this. He's the attorney general of the United States. These are really difficult constitutional questions. He's handing this over to Congress to say, hey, you know, here's these difficult Article II questions, difficult questions about the obstruction of justice theory, and here's my view on how this applies and you should take that into consideration. I don't necessarily think there's anything improper about it, but I do think, my gut is that ultimately that's Bill Barr kind of offering his opinion on the matter in a way that Congress is going to have to ultimately deter for itself.

MR. WITTES: So I actually want to focus on that point for a minute because I think it's a really interesting point. It comes up at least -- all we have, of course, is the text of Barr's letter. But according to Barr, Mueller had declined to apply a traditional prosecutorial analysis to this, which means that there was not going to be a charge filed. Right? Because to not decide to charge is effectively to decide not to charge.

So at least as I read it, absolutely nothing turned on Bill Barr's additional paragraph that says, oh, and by the way, I don't think this amounts to obstruction and neither does the deputy attorney general. We won't talk about the fact that the deputy attorney general was involved in the underlying events and nobody can quite understand why he's not recused.

So my question to any of you who wants to take this, should we interpret that last paragraph of Barr's just as an op-ed, like, and by the way, here's what I think about obstruction, or is there some significance to the attorney general weighing in here beyond that it allows the President to say I've been cleared? What do you think?

MS. TAYLOR: I mean, so again, I'm like a congressional person here, and to me it's sort of like if I'm up on Capitol Hill, I'm kind of not caring too much about any of that stuff. I want to see what Mueller has put on paper and I'm going to decide for myself what importance I'm going to put on all that information in my role. And my role is not to indict or

not indict. My role is to look at the conduct and see what I think about that and see what I want to do about it.

So, you know, I do think that this is not a run of the mill case. If I'm Mueller, I would be kind of like maybe thinking outside the box a little bit about this, given the crazy political context that this is occurring in. So I think if I'm on Capitol Hill, I'm looking at it more like an op-ed than something substantive.

MS. McCORD: I think it is more of an op-ed, but I think it's fully of a piece with what he wrote last summer.

MR. WITTES: Yeah, it's presumably his honest opinion, right?

MS. McCORD: That's right. And so I think this was his chance to then apply that now that he is privy to the facts and say this is how I come out. And, you know, that is a final answer for prosecution. There won't be one, at least not under this Justice Department.

And so I agree people on the Hill don't really care what he said, but I think he wanted to say loud and clear this is what I think about obstruction. This is a President who's done most of this obstructive conduct in public, which makes it look not so obstructive, at least to Attorney General Barr. And I could go through his other theories, but I won't. So I think he wanted to just cement that in the context of the actual Mueller report.

MS. TAYLOR: And I do wonder, the fact that a lot of the conduct was out in the open, you know, I do wonder if that had an impact on how Mueller -- how he treated it. Because, Ben as you said, in the Watergate situation it was all a secret. They were keeping everything secret and there was this sort of revelatory aspect to it. Where on the obstruction piece, we may read this thing and be like we knew all this stuff. He just did all of this stuff.

And so in that context, if you got everyone the Hill already seeing all the information, you know, and it's not revelatory, it's just a different kind of situation.

MR. WITTES: Okay, Susan has a final comment before we go to your questions. But while she's giving it, I'm going to start pointing at people who have questions.

And here are your instructions about your questions, which is please make them questions. (Laughter) Tell us who you are. Frame your question in the form of a question. Keep it relatively brief. And if you could, direct it to the person on the podium who you want most to answer it. Otherwise, I will assign that person for you.

Susan.

MS. HENNESSEY: Yes, just one final thought that is sort of coming to mind as I'm sitting here. And there is one thing that we can read into Barr rendering this judgment in the letter, and that's that Barr actually did set out in his confirmation hearings a series of actions by the President that he thought would constitute obstruction of justice. I believe he said that he thought offering a pardon in exchange for someone not incriminating, he sort of went through a list. And so presumably, the fact that he is making the point of saying I do not believe any of this conduct rises to obstruction of justice means that to the extent that he set out what he thought would, that that is not found within the underlying information.

So potentially, he's sort of foot-stopping that point. You know, I think Congress should receive the opinion of the attorney general in this case with interest, but not with much deference.

MR. WITTES: Sir?

QUESTIONER: Thank you very much. My name is Iskander. I have a question to you.

Okay, looking at this situation I see justice is impossible. So I'm asking you, Panel, do you think any like technology or method to reform this crazy injustice, I mean, like artificial intelligence so we can really get justice, or even reform the whole political democratic system? Thank you.

MR. WITTES: Any thoughts on technological strategies to avoid similar situations in the future?

MS. HENNESSEY: So I think that one of the hallmarks is our institution is sort of not defining justice as liking the particular outcome. And so we have two things here.

We have the Department of Justice that's investigated and determined whether or not there should be prosecutions. We should accept those not as an injustice because we don't like them, but say, okay, that process functioned.

Then we have a separate process, which is the process of political accountability through which Congress is going to decide. Now, if the American people are not happy with the decision that Congress makes they can either hold their individual representatives accountable by voting them out of office or they can vote for somebody else for President.

So I actually think that our system has a pretty elegant corrective mechanism to all of this. The question is just whether or not the American people actually want to exercise that or not.

MS. TAYLOR: I would just, as an addendum, say there is a question on technology on like interference in elections and the integrity of elections. And that is super, super important and that needs to be addressed. It hasn't been addressed. It needs to be looked at over the next two years and it needs to be perfect for 2020. Because if Americans do not have full faith that their vote counts and full faith that the election is sovereign and has integrity, that is when we have real, real big problems.

MS. McCORD: And that's exactly what I was thinking as I was listening to your question, as well. And that goes not only to is there actually capability of interfering in actual vote tallying, which, of course, we did not see any substantial evidence of last time, but also this whole influence campaign that was very -- well, I can't say whether it was successful or not, but it was very widespread. The Russians didn't stop just because we are on to them. They didn't stop because Mueller indicted a bunch of those folks. There's been, as Margaret just said, very little done to stop it. And I do think our Internet service providers, our social media companies are certainly much wider awake to it this time than they were last time, but we haven't yet heard anything very concrete about how they're going to prevent it.

MR. WITTES: Sir?

MR. LAPERRUQUE: Hi, Jake Laperruque from POGO. Before the letter there as plenty of guesses and speculations about whether there would be any future indictments on a range of people. Then I think all were kind of, you know, just -- not much faith on potentially knowing what might occur except for Jerome Corsi, who I think most people, including Jerome Corsi himself, thought was going to be indicted. And I think he actually said that on TV that he planned to be indicted.

So I'm just curious for the panel's thoughts on, you know, why you think that might not have occurred and potentially do you think it's important to the outcome as we're going to be seeing it?

MS. HENNESSEY: So I'll give the background, but I'd actually be really interested on Mary's thoughts on this. So Jerome Corsi, there was a draft, a plea agreement in which the special counsel actually sort of set out all the things that they thought he'd done and their evidence. Corsi then leaked that plea agreement, which usually is not a great idea. And so --

MS. McCORD: It's an interesting strategy.

MS. HENNESSEY: One that appears to have paid off.

MR. WITTES: It seems to have been very effective for him.

MS. HENNESSEY: So the mystery is if the Special Counsel's Office felt that that they had that degree of evidence, and then a potential target sort of took that very unusual step of sort of throwing it back in their face, why they would think that it was -- why they decided not to sort of move forward with it.

MS. McCORD: So I can't really answer it, although -- you know, because there are some unanswered questions. If you look at the Stone indictment, you know, there's some threads there that have never been tied up and still kind of hanging, wondering who some of these people are and what their involvement was.

We do know that there's been investigations that have spun off to the U.S.

Attorney's Office. So one of the things I found perplexing about this letter is that it both says that Mueller does not recommend further indictments, but also says he has distributing ongoing investigations to U.S. Attorney's Offices. So the only way I can reconcile it is that he's saying before he closes up shop, he's not planning to return any in his own name, but not that there might not be others.

Now, whether it's going to be Corsi, you know, I don't know, or whether it's all going to be financial stuff and stuff related to the Inaugural Committee and those kind of things, I don't know. Certainly we know of ongoing investigations in that area. But I don't think it's over in many, many ways, but I don't think it's over even in terms of indictments.

MR. WITTES: But can I just follow up on that? Because I've been very puzzled by the Corsi thing, too. It seems to me, and I don't mean to cast ethical aspersions at the Mueller people at all, I'm just framing the puzzle here, but it seems to me ethically very problematic to threaten an indictment that you're not actually prepared to issue. So I think we have to assume that, you know, good ethical lawyers, the Mueller people did not threaten to indict Jerome Corsi just to see if they could, you know, kind of bluff him into a plea agreement. Right?

MS. McCORD: Right.

MR. WITTES: So then they actually get far enough along to have a draft plea agreement and statement of offense, which they send him to sign. He then not only does not sign it, but leaks it and goes on every news outlet that will have him, and some of the more amusing interviews of this whole episode. And since then we have had radio silence from the Mueller people. And so I can think of three possible explanations for this other than explanation number four, which would be they behaved unethically in the first place and should not have issued in the -- engaged in that negotiation to begin with.

One is that they, in fact -- this is among the cases that they're referred. It's not important enough for them to deal with themselves, so they've kicked it to somebody else. And stay tuned, there may still be an indictment coming in that area.

Number two is new information came to light and they actually now don't think the facts will support an indictment of Jerome Corsi. In which case you might think they would have communicated that to him, having previously offered him a plea agreement.

And number three is that perhaps they, for some other reason, thought better of it. And so my question is, is there any data that you can see in the public domain that gives you any insight into whether this is something that got kicked back to Justice or whether this is just kind of orphaned somehow?

MS. McCORD: You know, I have not followed every twist and turn of what's happened since that initial story broke, so I can't read those tea leaves. But I, like you, I really don't think for a minute that this was a bluff. First of all, it's just not done, but it certainly wouldn't be done by this team.

And so I've kind of come out with the same options you've already listed as the various possibilities. I suppose there's also a possibility that he's now become more cooperative, which would see crazy. Right?

MR. WITTES: Out of character.

MS. McCORD: Totally crazy. But it's not impossible and I've seen crazy things before and certainly in this. But I don't have any special insight based on other things that have happened since then.

MS. HENNESSEY: That said, to the extent any of you are offered a draft plea agreement by prosecutors, I would not recommend following this strategy on the off chance it'll work.

MR. WITTES: Although, you know, it's going to be the highest profile case ever of somebody doing this and getting away with it. It's going to be a bad lesson to potential defendants out here.

Yes, sir?

MR. SCHMIDT: Hi. Good afternoon. My name is Daniel Schmidt. I've got a question. For the people who don't trust the judgment of the AG, we haven't really heard

talk about Rod Rosenstein an awful lot. He was there from day one and he's not exactly in the course of this investigation to be known as someone who got along very well with the President. Could you say something about his role in this whole thing, please?

MR. WITTES: I think I can take that one. Look, there is no more fascinating character in this whole episode in terms of Talleyrand-like longevity and under quite difficult circumstances and complex motivations and complex behavior than Rod Rosenstein. And there is an amazing mystery about him that has been from the beginning, which is having played the role that he played in the Comey firing, having been almost immediately humiliated by the President, and having been revealed as a set piece in that rather tawdry episode, having then appointed Bob Mueller in an apparent and quite laudable, by the way, effort to set the situation right and make sure there was integrity to the resolution of some of these questions, how does he then supervise the Mueller investigation for 20 of the last 22 months?

And not merely that, but navigate this incredible dance of humiliation by the President, threats from the President, including during periods in which his role as having offered to wear a wire in the White House is revealed and his role in having proposed or canvassed officials about the possibility of invocation of the 25th Amendment is revealed. And the last I saw Rod Rosenstein, Bill Barr had asked him to stay on. And so the Rod Rosenstein era continues.

And I think there is no explanation for it that I can discern that is simple. And the complicated explanation is that this is somebody who has done a very complicated mix of things, some of them very attractive and laudable and honorable and at some risk to himself, and some of them very upsetting and unattractive. And he has navigated the waters in a kind of I guess you could call it masterful kind of way. The question is whether it was lucky and kind of random or whether he was, you know, steering ably between the rocks.

MS. HENNESSEY: Just one point on sort of the Rosenstein recusal

mystery. So it is a mystery, but we do know or it's been reporting that career DOJ lawyers reviewed it and determined there wasn't a conflict. So the mystery is not was Rod Rosenstein behaving unethically in overseeing an investigation. It's what were the underlying facts that those Justice Department attorneys concluded there wasn't a conflict? Just because it's pretty strange from the outside.

MS. TAYLOR: I would just also add there is a possibility we may learn more about Rod Rosenstein's actions on Tuesday in the House Judiciary Committee. There was a markup of a resolution, H.Res. 243, which was actually authored by the ranking member, Doug Collins, who's from Georgia, very combative, like very much defending the Trump administration. And it's basically saying, you know, the President and the attorney general should transmit documents to the House related to interactions between former acting FBI Director Andy McCabe and Rod Rosenstein, all around this 25th Amendment sort of thing.

What happened, interestingly, is that the Democrats on -- I think it may have been the case that Collins thought this would be sort of a good thing to do and it was, you know, whatever. The Democrats decided to join him and fully support this sort of request for information and documents. Because as Nadler, the chairman of the House Judiciary Committee, said, we want to know what made people talk about the 25th Amendment. So they have their own interests.

So everybody, it was like a big, happy moment on the House Judiciary Committee on Tuesday and everybody was in full agreement that we should be -- you know, Congress should get more information about this. So anyway, that's something to watch going forward.

MR. WITTES: Let me register a note of dissent that there should be space for the deputy attorney general of the United States in his role as acting attorney general in a crisis to have a confidential conversation about the mental health of the President with the acting director of the FBI. And I think if the idea of a deliberative process, Executive Branch confidentiality means anything, surely it means that that material should not be turned over

to Congress no matter how many Democrats or Republicans really, really want it.

In the back, ma'am.

MS. LORR: My name's Nicole Lorr and I'm a government attorney, but I'm not here in that capacity at all. And I guess this question, first, is for Mary and maybe a follow-up from Margaret.

Mary, you discussed Mueller's prosecutorial judgment and I wondered what you thought about two things or what your opinion is, I guess, with respect to two of Mueller's decisions. First, not to lay out, as you guys already sort of discussed, his exact road map and to whom he was speaking when he created this -- or I guess I would say why didn't he just explicitly say I want the House to make this decision?

And then, B, why in his investigation of a crime that possibly included intent, I guess, either obstruction or collusion, he didn't speak to Individual 1, who they were trying to determine whether or not that person had intent with respect to the elements of those crimes? What kind of prosecutorial judgment would he have made to decide either of those two things?

And then I guess for Margaret, what you think Congress is going to do with those two questions? Do you think that they're going to call into question either for Mueller or anybody else involved, and how do you think they're going to take those judgments?

MR. WITTES: Okay.

MS. McCORD: So let me take your second question first because there's been a lot of sort of kerfuffle out there about how could Mueller ever reach a conclusion about, or Barr for that matter, ever reach a conclusion about obstruction without interviewing the President? And let me just say, in most investigations almost every single crime requires specific intent. There are a small handful of crimes that are called general intent crimes where we don't have to prove specific mens rea. Almost every other crime requires specific intent.

And in the vast majority of cases, prosecutors charge crimes without

interviewing the defendant because the defendant has Fifth Amendment rights not to incriminate himself under compulsion. And so the prosecutor has to use other evidence to prove intent. And this happens every day in every prosecutor's office in the country, and that includes on obstruction of justice charges.

So the notion that you have to be able to interview the target of your investigation to being an obstruction charge, that's just wrong. I know lots of people are saying. I just completely disagree.

Would it be nice? Sure, it'd be nice and it'd be, you know -- but I understand fully why the President's lawyers did not want him to go anywhere near Mueller or any of his people. (Laughter) If I were advising him, I'd have said the same thing.

MR. WITTES: And Mary, can I just poke you on that?

MS. McCORD: Yeah.

MR. WITTES: The President's lawyers having said the things they said, you know, over my dead body, and Mueller knowing that you have -- the attorney general might not let you pursue it, if the attorney general does let you pursue it, you have months of litigation over the vitality of the subpoena. And at the end of that litigation, the President can still say I take the Fifth, right?

MS. McCORD: Yeah.

MR. WITTES: So it strikes me as that may be a completely reasonable prudential judgment on Mueller's case to say, all right, let's just wrap it. We'll just -- you know, we'll do what lots of people have to do, which is resolve this without hearing from him.

MS. McCORD: Yeah, I agree entirely. Like he could foresee, Mueller could foresee, the various steps. And, you know, you can't just ask somebody to come in without saying -- giving them specific warnings when they are a target or they are a subject. Not that the President needed to know that because, of course, he knew that. But, you know, it gives those people rights instantly.

And so, you know, Mueller's been down similar roads in other investigations

before and I think I'm exactly with you, Ben. I think at some point he just thought I'm going to cut my losses. We're not going to stay open another year while we litigate this and, at the end of the day, we still are not likely to get the interview.

MS. TAYLOR: And I would just say, you know, I don't know if Mueller said explicitly in the report that he thinks Congress should look at the obstruction rather than him or not. I mean --

MS. McCORD: We don't know that.

MS. TAYLOR: -- we don't know that yet. I guess what I would say is that there is reporting that the Judiciary Committee wants to have Barr come up and testify once the report is out. Have Barr come testify and have Mueller come testify. So if Mueller wants to come before and say whatever he wants to say, hey, I think Congress should have decided this, then he's going to have that opportunity.

MR. WITTES: Sir? So we're running out of time and I want to get to as many people's questions as I can, so please keep questions brief.

MR. KERRY: Thank you. Andrew Kerry, George Mason, not the law school. I was wondering if you all could comment on the prospects for restoring the norms. Susan, you've talked a lot about norms being broken and the Rubicons that we've crossed. What's the prospect for something after all this, maybe in three or four years?

MS. HENNESSEY: So I'm not hugely optimistic. (Laughter) Ordinarily, the way that we reestablish norms that have been broken is whenever it's the other side's turn, they have to self-restrain and decide to adhere to the norm in the situation in which it's not beneficial to them. It's a really difficult decision for Congress to make right now, especially on the Democrat side because if the American people do not feel as though this has been sufficiently resolved, this cloud is going to hang over the country.

Congress really does sort of have an obligation to their constituents to help move the country forward. And so to the extent that they decide, you know, look, we're not going to go after that information if there's lots and lots of questions in people's minds, that's

going to be a difficult one.

That said, I do think that the Democrats in Congress, you know, they need to have principles here and they need to lead. And that means that, you know, look, there is going to be redactions in the Mueller report. There has to be. If it includes classified information, if it includes 6(e), not playing the game of, well, this report is largely -- it largely clears the President, but that one footnote, that's where the really incriminating stuff is. And that is a game that it's going to be very, very tempting for people to play. They really, really shouldn't do it.

And so I think it's okay to sort of treat this episode as a discrete thing related to the President. That said, at some point somebody's going to have to stand up and sort of be a grownup about moving the American people forward. And congressional Democrats are going to have a unique role to play here.

Now, that doesn't mean that they have some obligation to blind themselves or pretend as though there aren't concerns or pretend -- or not conduct really robust oversight. But they're going to have to decide sort of not to play those games, especially when it comes to information that they know cannot be produced in public.

MR. WITTES: All right. So we've got six more minutes. We've got a bunch of questions. So what I want to do is get all the questions on the table and then give everybody a chance to wrap up, addressing whichever question they want.

Sir and then the woman right in back of you, just pass the mic to her when you're done.

MR. RAPANSKI: Okay. I'll try to make it quick. My name is Jack Rapanski. I'm unaffiliated and I'm not a lawyer. I guess this question would be for Margaret.

You got the part of it, can Congress legally compel Mueller to appear and is he obligated to appear? And then if he does, what kinds of questions can they actually ask him and require him to answer that would tell us anything other than what the report is going to say? Or is he just going to essentially rehash what he already says?

MR. WITTES: Was that the same question you were going to ask?

QUESTIONER: Exactly my question.

MR. WITTES: Beautiful, kill two birds with one stone. Sir?

MR. COTTON: Hi, I'm Shea Cotton with the Center for Nonproliferation Studies. So my question is given that one of the things Barr said was clearly established by Mueller's report was that Russia really did try to interfere in our election and there was a concerted effort to do that. So my question is, how do we go about having a relationship with Russia and what does that look like given that this has been very clearly established?

MR. WITTES: And the gentleman immediately to -- sorry, one row in front of you.

MR. BLOCKER: Thank you. I'm Buzz Blocker for NRC Media. And I would like to ask in legal circles how widely held is Attorney General Barr's opinion of obstruction? To summarize it, there can be no case for obstruction of justice if the underlying crime is not committed. Is that an offbeat opinion?

MR. WITTES: All right. Do we have any other questions we want to get on the table? One more in the back and then we're going to consider the questions closed.

QUESTIONER: Thank you. It's very interesting. I want to ask particularly about the report. This may sound stupid, but how do we know it's the real report? (Laughter) How do we know that there is no Mueller report, it has not been altered in some large or minor way to shade it to a particular conclusion? Thank you.

MR. WITTES: All right. Margaret, do you want to -- let's just go down the row and --

MS. TAYLOR: Sure. Yeah, so can Congress compel Mueller to appear? So they can -- a subpoena can be issued for Mueller to appear before the committee. How Mueller responds to that is like the next question. I suppose there is precedent for -- even if Mueller is sort of like a private citizen, having been in government service, there is precedent for a President claiming executive privilege with respect to a person's testimony, so I

suppose that's one thing that could happen.

He, in theory, could come and say I'm not going to answer any questions. You know, so there's a whole raft of things that could come after a subpoena is issued or he could just appear. Right?

So, yeah, you know, we'll just have to see how it turns out. But yeah, I think the answer -- the bottom line is yes, they can compel him to appear.

I just will also address briefly the Russian interference. How do we go forward with Russia? I think it's a really good question and I certainly don't have the answer. I mean, there is evidence that the Russian intelligence services and others, you know, they're actively starting their interference campaign for the 2020 election. And so, you know, it's very hard from a diplomatic perspective to know how you build a productive relationship when that is going on. I don't have a lot of hope for it actually in the near future.

MR. WITTES: Mary?

MS. McCORD: So let me go first to the question about is it widely accepted in legal circles that you can't have obstruction if there's no underlying crime. Not only is that not accepted, it's not the law. And it's also not exactly what A.G. Barr said. He said it was a factor that he essentially considered.

But you can absolutely -- I mean, you know, this is where the whole saying, you know, the cover up is worse than the crime kind of comes from. You can actually believe that you haven't committed an underlying crime, but be very nervous about the fact that you're being investigated and do all kinds of things that obstruct the administration of justice and be found guilty for it. But I don't think he went as far as your question suggested and I think most are discrete.

I would also say how will we know it's not altered? If it's altered, I think Mueller will not decline to appear in front of Congress. (Laughter) And he will say it's altered.

And then just lastly, very quickly, on how do we go forward with Russia, you

know, I mean, this is not new for Russia to interfere in elections. It does this all over the world and in many different ways. I think we were mortified here because we think that we're too good to be manipulated the way that we were. And so, yet, Russia just continues.

Russia has this amazing ability, and Putin in particular, I think, to compartmentalize things. Here's where we do counterintelligence on the U.S. Here's where we attempt to interfere with their elections and interfere with all kinds of other things. Here's where we get up on stage and we make nice with the President. And then, of course, the President says very nice things, like I choose you over the intelligence community, but that's a different story. (Laughter) And then you have business transactions.

So I think, you know, they just put things in different buckets and plow ahead. And we, because we're a different culture and we have different expectations of our leadership, we wring our hands over it and say how can this be and how do we fix this? And that's still where we are, wringing our hands, I think.

MS. HENNESSEY: Yeah, so I'll just sort of comment on how widely accepted is A.G. Barr's view. Sort of separate from can the underlying crime, you know, obstruction (inaudible), which Mary just answered. You know, sort of going to that 19-page memo that he submitted, I didn't find it hugely compelling sort of his arguments as to the deficiency of the legal theory related to obstruction.

But I think what's important to note is on the very difficult questions related to Article II, related to whether or not obstruction can be a course of conduct as opposed to an individual event, whether or not the President can obstruct justice in exercising particular constitutional authorities, reasonable minds actually can differ. And because we have a situation in which reasonable minds can and do differ, even not reasonable minds will differ, right? (Laughter) So we now have two plausible legal arguments: one that's quite favorable to the President, right, this is not a crime; and another plausible argument of it's definitely a crime.

So guess what. The Republicans in Congress are going to say no crime

was committed and Democrats are going to say no crime was committed.

MR. WITTES: A crime.

MS. HENNESSEY: Right, that a crime was committed. And so what we're going to see is sort of the wrangling over whether or not the law was broken or not is really about a proxy for acceptability. And so to the extent that that's sort of dressed up in terms about whether or not a statute was violated, important because there are members of Congress that believe that there needs to be a statutory violation or probably needs to be a statutory violation to merit impeachment, it's going to be dressed up in sort of these legal terms and getting into the statute. Really it's just a proxy for sort of the core question of is this acceptable conduct or not?

MR. WITTES: Yeah, I will just add to that to finish up that we are all more comfortable when impeachable conduct happens to also be criminal. Because our most comfortable vocabulary of horrendous wrongdoing is violating the criminal law. But that is actually not what the impeachment clauses are about. They're really about -- and what they're about is itself a subject of debate, but they're certainly broader than the criminal law; broader in some areas and probably narrower in other areas. And so we have this way of saying, well, this sort of hallmark of whether something is impeachable, does it technically violate a provision of Title 18, which, of course, long postdates the impeachment clauses? And that's actually the wrong way to think about.

The right way to think about it is we have many ways of evaluating whether something is morally abhorrent behavior that we can't accept. One of those ways is by criminalizing it and prosecuting people. Another one of those ways is by impeaching people and removing them from office for it. And so I think there is a bit of a cart before the horse aspect to that analysis.

And I totally agree with Susan that we have an enormous incentive to map onto it anyway. And with that, thank you all for coming and sticking with us.

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I, Carleton J. Anderson, III do hereby certify that the forgoing electronic file when originally transmitted was reduced to text at my direction; that said transcript is a true record of the proceedings therein referenced; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken; and, furthermore, that I am neither a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

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