

July 6 & 13, 2020 Issue

Why the Mueller Investigation Failed

President Trump's obstructions of justice were broader than those of Richard Nixon or Bill Clinton, and the special counsel's investigation proved it. How come the report didn't say so?

By Jeffrey Toobin

June 29, 2020

Robert Mueller was celebrated for his careful approach, but his caution played straight into the hands of the White House. Illustration by Sergiy Maidukov

Robert Mueller submitted his final report as the special counsel more than a year ago. But even now—in the midst of the coronavirus pandemic and the Administration's tragically bungled response to it, and the mass demonstrations following the killings by police of George Floyd, Breonna Taylor, and many others—President Trump remains obsessed with what he recently called, on Twitter, the “Greatest Political Crime in the History of the U.S., the Russian Witch-Hunt.” In the past several months, the President has mobilized his Administration and its supporters to prove that, from its inception, the F.B.I.'s investigation into possible ties between his 2016 campaign and the Russian government was flawed, or worse. Attorney General William Barr has directed John Durham, the United States Attorney in Connecticut, to conduct a criminal investigation into whether F.B.I. officials, or anyone else, engaged in misconduct at the outset. Senator Lindsey Graham, of South Carolina, the chairman of the Senate Judiciary Committee, has also convened hearings on the investigation's origins.

The President has tweeted about Mueller more than three hundred times, and has repeatedly referred to the special counsel's investigation as a “scam” and a “hoax.” Barr and Graham agree that the Mueller investigation was illegitimate

in conception and excessive in execution—in Barr’s words, “a grave injustice” that was “unprecedented in American history.” According to the Administration, Mueller and his team displayed an unseemly eagerness to uncover crimes that never existed. In fact, the opposite is true. Mueller had an abundance of legitimate targets to investigate, and his failures emerged from an excess of caution, not of zeal. Especially when it came to Trump, Mueller avoided confrontations that he should have welcomed. He never issued a grand-jury subpoena for the President’s testimony, and even though his office built a compelling case for Trump’s having committed obstruction of justice, Mueller came up with reasons not to say so in his report. In light of this, Trump shouldn’t be denouncing Mueller—he should be thanking him.

The events that led to Mueller’s appointment began shortly after Trump took office, when he met several times with James Comey, the director of the F.B.I. Over dinner at the White House, on January 27, 2017, Trump said that he expected “loyalty” from Comey—specifically, as he would later make clear, he wanted an announcement from the F.B.I. that he was not under suspicion for misconduct with Russia during the campaign. At the time, Michael Flynn, Trump’s former national-security adviser, was being investigated for lying to the F.B.I. As Comey later testified, on February 14th, at a meeting in the Oval Office, the President told everyone else to leave, then asked Comey to drop the investigation of Flynn. “I hope you can see your way clear to letting this go, to letting Flynn go,” Trump said. “He is a good guy.”

Comey declined either to publicly clear Trump of wrongdoing or to close the investigation of Flynn, and the President resolved to fire him. On May 8, 2017, Trump told Rod Rosenstein, who had recently been confirmed as the Deputy Attorney General, to write a memo describing Comey’s performance as the F.B.I. director, in particular his handling of the investigation into Hillary Clinton’s use of private e-mail. The following day, Rosenstein submitted the memo and Trump fired Comey. Sean Spicer, the President’s press secretary, told reporters that the President had done so for the reasons stated in Rosenstein’s memo, but, as Trump soon confirmed in an interview with NBC’s

Lester Holt and in a conversation with visiting Russian officials, the real reason was related to the Russia investigation.

Rosenstein was distraught over how the White House had used his memo. Concerned about Trump's firing of Comey, he named an independent prosecutor, now known as a special counsel, to look into a possible connection between the Trump campaign and Russia. (Jeff Sessions, the Attorney General, had recused himself from matters relating to Russia.) Rosenstein didn't consider anyone except Mueller for the post. Mueller had both the skills and the bipartisan credibility that the job required. Having worked in the Justice Department during the Cold War, he hardly needed lessons on the malign intentions of the government in Moscow. Mueller had been a federal prosecutor in the nineteen-eighties, the head of the Justice Department's criminal division during the George H. W. Bush Administration, and then, starting in 2001, the F.B.I. director for twelve years. Until May 17th, when Rosenstein named him as the special counsel, Mueller knew very little about the state of the Russia investigation. Andrew McCabe, who, as Comey's former deputy, was the acting director of the F.B.I., invited Mueller to the J. Edgar Hoover Building for a briefing.

At the first Senate Judiciary Committee hearing on the Russia investigation, on June 3, 2020, Graham opened the proceedings by saying, "It's important to find out what the hell happened." He wanted to know whether, when Mueller was appointed, there was any evidence that Trump's campaign had been colluding with the Russians. McCabe's briefing of Mueller, along with a subsequent meeting between Mueller and Rosenstein—neither of which has been previously reported—begin to address Graham's question. These meetings demonstrate that, from the beginning, Mueller was instructed to conduct a narrow, fact-based criminal investigation.

McCabe was a generation younger than Mueller and still in awe of him. He had worked at the F.B.I. when Mueller was the director, and had attended countless meetings in what was then Mueller's conference room, on the seventh floor of the Hoover building. He knew that Mueller was a relentless

inquisitor, and that Mueller's face, which resembles an Easter Island moai, betrayed little besides impatience. Mueller could intimidate outsiders and insiders alike with his silence. He didn't praise subordinates; he needled them, and they came to see this goading as a sign that they were still in good standing. ("Are you done playing with your food?" he would ask those who took too long with a task.) Now, improbably, Mueller was coming to McCabe for information. As the F.B.I. director, Mueller had presided from a seat at the head of the rectangular table in the conference room. For that first meeting, after McCabe welcomed Mueller and his associates, Aaron Zebley and Jim Quarles, the acting F.B.I. director officiated from a seat at the middle of the table, a gesture of respect.

There was a long agenda, including a host of logistical matters. For one thing, Mueller's team had no place to work. The investigation would include a great deal of sensitive information, so any space would have to be secured as a Sensitive Compartmented Information Facility, or scif. Mueller had begun to hire a staff of prosecutors, but he also needed F.B.I. agents and analysts assigned to his team. Rosenstein had not given the Office of Special Counsel a specific budget, but Mueller needed at least rough guidelines, and also support staff, to begin organizing his inquiries. (Mueller's team was eventually installed in underutilized space in Patriots Plaza, a commercial building on the southwest waterfront, near Nationals Park, where the city's major-league baseball team plays.)

The purpose of the meeting was to describe the F.B.I.'s Russia investigation to date. "We will not get through the whole story in this one meeting," McCabe said, according to people who attended the briefing. "It's too long and complicated. We will tell you how we got here." McCabe told Mueller that Crossfire Hurricane—the code name for the Russia investigation—had begun shortly after the hack of the Democratic National Committee e-mails, which surfaced in July, 2016. The e-mails, which were released by WikiLeaks, showed that some Party officials had favored Clinton over Bernie Sanders, poisoning relations between the two candidates' supporters on the eve of the Party's convention. Around that time, the Australian government informed the

F.B.I. that, in the spring of 2016, George Papadopoulos, an official from the Trump campaign, had told Alexander Downer, an Australian diplomat, that the Russians were planning to release hacked e-mails related to Clinton's campaign. After the hacking took place, McCabe explained, the Australians told the F.B.I. about the conversation. "We've known for years that the Russians were probing our political systems," McCabe said. "But July is when we say, Fuck, this is actually happening."

McCabe told Mueller that, following the hacking and the Australian disclosures, the Bureau had started looking at Trump campaign officials who had ties to the Russians. These included Carter Page, who had become involved in pro-Russian activities and had drawn the interest of the F.B.I. almost a decade earlier, and Papadopoulos. Paul Manafort, who served for a time as Trump's campaign chairman, had long-standing financial and political ties to the pro-Russian political party in Ukraine. McCabe said that the F.B.I. didn't know whether Trump was aware of the connections: "Were these people just rogue morons?"

Flynn, the former national-security adviser, who had worked on the campaign, appeared to have relatively weak ties to the Russians. Between Trump's election and his Inauguration, Flynn had spoken several times with Sergey Kislyak, the Russian Ambassador to the United States. U.S.-government surveillance revealed that the two discussed the possible easing of sanctions that the Obama Administration had imposed on Russia as punishment for its interference in the 2016 election. On January 24, 2017, after Trump Administration officials, including Vice-President Mike Pence, denied that Flynn and Kislyak had discussed the sanctions, a pair of F.B.I. agents interviewed Flynn at the White House. McCabe told Mueller that Flynn had apparently lied to the agents about his conversations with Kislyak, and said that those statements should be on Mueller's agenda, too.

There was also the issue of possible obstruction of justice once Trump became President. The Comey-Trump encounters had led the F.B.I. to open a criminal investigation of the President for obstruction of justice shortly before Mueller

was appointed. Trump's pointed request for Comey's "loyalty" could almost have been mistaken as the behavior of a novice. But the later meeting with Comey, when Trump asked everyone else to leave the Oval Office, was more suspicious. "It looked like Trump knew he shouldn't do it," McCabe said.

"That's why he kicks everyone out."

After McCabe's briefing, Mueller, Zebley, and Quarles went to the Justice Department for an introductory meeting with Rosenstein. Rosenstein wasn't as familiar with the evidence as McCabe and his team were, but he had a broader piece of advice for Mueller. Now that he was Mueller's boss, it could be interpreted as a command. "I love Ken Starr," Rosenstein said, according to people present. (Starr was the independent counsel who oversaw the Clinton Whitewater investigation; Rosenstein had been a prosecutor on the Arkansas portion of that inquiry.) "But his investigation was a fishing expedition. Don't do that. This is a criminal investigation. Do your job, and then shut it down." In other words, far from authorizing a wide-ranging investigation of the President and his allies, the Justice Department directed Mueller to limit his probe to individuals who were reasonably suspected of committing crimes. Temperamentally as well as professionally, Mueller was inclined to follow this advice. The very notion of a criminal investigation lasting more than eight years, as the Whitewater case had, was repellent to him, as was Starr's seemingly desperate search to find something to pin on his target. Persistent news leaks from Starr's office and Starr's frequent sessions with reporters in the driveway of his home, in suburban Virginia, were also anathema to Mueller, who began his inquiry by imposing a comprehensive press blackout. According to McCabe, there appeared to be possible prosecutable cases against Papadopoulos and Flynn, for false statements, and against Manafort, for financial improprieties. (In the first several months of the investigation, Mueller won guilty pleas from Papadopoulos and Flynn and secured a pair of wide-ranging indictments against Manafort, who was later convicted in one case and pleaded guilty in the other. In 2020, the Trump Administration sought to drop the case against Flynn, even though he had pleaded guilty.) Mueller decided to take on the range of issues he discussed with McCabe but little else.

He also brought indictments against more than a score of Russians for attempts to interfere in the 2016 election, but they certainly would not agree to appear in an American courtroom.

Trump's political adversaries, unaware of Mueller's determination to run a brisk, narrow investigation, became invested in the expectation that he would uncover such sweeping and devastating proof of criminal misdeeds that a misbegotten Presidency would be forced to come to an end. There were "Mueller Time" T-shirts and Robert Mueller action figures—G.I. Joes for the MSNBC set. It was all the better that Mueller was a Republican and no one's idea of a political partisan. But Trump's fiercest defenders and Mueller's most devoted fans misjudged the special counsel from the beginning.

Mueller did not use the F.B.I. information as a catalyst for a deeper examination of Trump's history and personal finances. Nor did he demand to see Trump's taxes, or examine the roots of his special affinity for Putin's Russia. Most important, Mueller declined to issue a grand-jury subpoena for Trump's testimony, and excluded from his report a conclusion that Trump had committed crimes. These two decisions are the most revealing, and defining, failures of Mueller's tenure as special counsel.

The President initially vowed to cooperate with the investigation, and he hired the Washington lawyer Ty Cobb to expedite the release of documents and the appearance of witnesses. Relations between Mueller's office and the Trump White House got off to a smooth start. As a condition for representing Trump, Cobb made the President promise not to attack Mueller, whom Cobb knew and respected. Throughout 2017, Trump mostly honored that pledge.

Cobb started sending documents to Mueller that summer, and interviews began in the fall. But Trump gave mixed signals about whether he would agree to testify. At a press conference in June, he was asked, "Would you be willing to speak under oath to give your version of events?" Trump answered, "One hundred per cent." On another occasion, he said, of prospective questioning by Mueller, "I'm looking forward to it, actually" and "I would do it under oath."

At other times, he said he thought the weakness of the evidence against him would obviate the need for testimony: “When they have no collusion—and nobody’s found any collusion at any level—it seems unlikely that you’d even have an interview.” No one around Trump knew whether he wanted to testify, and he was just as evasive with his lawyers as he was in public.

By late 2017, Mueller had made it clear that he wanted to interview Trump. The President’s lawyers, led at that point by John Dowd, a veteran Washington defense attorney, and Jay Sekulow, a constitutional-law expert and a conservative activist, knew that Mueller’s leverage, in political if not legal terms, would only dwindle with time. Defense attorneys always try to delay, especially in politically sensitive investigations, where the attention of the news media, and of other politicians, generally moves on to other matters. Trump’s lawyers stalled, demanding a list of the topics that Mueller wanted to address. Several weeks later, Mueller supplied the list. Trump’s lawyers were encouraged—Mueller clearly had not discovered a trove of damning new evidence. On the list were such subjects as Trump’s knowledge of Flynn’s contacts with Russians and his decision to fire Comey. The campaign was another topic: what Trump knew of a meeting, in Trump Tower in June, 2016, at which several of his campaign advisers spoke with someone they were told was a representative of the Russian government; Trump’s awareness of WikiLeaks’ efforts to obtain documents stolen from the Democratic National Committee; his communications with his lawyer Michael Cohen and their plans to build a Trump Tower in Moscow. Dowd was optimistic that Trump, if well prepared, could handle these issues. They even made a tentative deal with Mueller for Trump to testify, on January 27, 2018, at Camp David. But the most important issue, the scope of the questioning, was not resolved.

Trump’s lawyers and Mueller’s team met frequently at Mueller’s headquarters, in Patriots Plaza, and, as the date of the Camp David interview approached, the negotiations grew increasingly tense. Dowd has a blustering style, and he berated Mueller about the basis for the investigation. Trump had hired Dowd in large part because the lawyer and Mueller had known each other for years. Dowd played on this familiarity.

“Cut the bullshit, Bob,” Dowd said, at one meeting, according to people present. “You know you have nothing on him.” Dowd was aware that, if any accusations were made, the most crucial would be obstruction of justice: “What’s your theory, Bob? What law did the President violate? You’re seriously going to claim that firing the F.B.I. director is a criminal act? You know he can fire the director for any damn reasons he wants.” Mueller absorbed most of these sallies in silence.

Sekulow, who had often argued before the Supreme Court, was originally hired to deal only with constitutional issues for the defense team. But he gradually assumed an expanded role on Trump’s behalf, usually playing the scholar to Dowd’s pugilist. Sekulow opposed any direct questioning of the President, but, to avoid undercutting Dowd, he tried simply to narrow the scope of the planned interview. He told Mueller that he thought Trump might be able to answer questions about his actions during the campaign, but that anything after he was elected should be off limits, owing to executive privilege—a highly debatable assertion. Mueller greeted this, too, with silence.

Sekulow asked Mueller why he needed to interview the President at all. Mueller’s prosecutors had the documents and the testimonies of others. They knew the facts—that Trump had fired Comey, that he’d tweeted insults at Jeff Sessions. What more did they need? Mueller finally replied, and his words, in a way, defined his investigation: “We need to know his state of mind.” It was a narrowly legalistic response. In order to obtain a conviction for most crimes, including obstruction of justice, prosecutors must prove that the defendant had bad or corrupt intent. As Sekulow pointed out, Mueller already knew that Trump had fired Comey. But Mueller said that he needed to know why Trump had done so.

Sekulow asked Mueller whether, in his position, he would allow Trump to testify. Sekulow was not posing a rhetorical question. He really wanted to know: What was in it for Trump to answer Mueller’s questions?

Mueller was aware that few lawyers would choose to allow a client like Trump, with his propensity to lie constantly and egregiously, to answer questions in a grand-jury setting. Mueller said something about “the best

interests of the country,” but Sekulow had made his point, and the meeting ended soon afterward. A few days later, about two weeks before the scheduled Camp David session, Dowd called Mueller to tell him that Trump would not be sitting for an interview.

This presented Mueller with the question of whether he should issue a grand-jury subpoena for Trump to testify, and thus invite a battle in court. There were two key precedents in the Supreme Court rulings. In *United States v. Nixon*, in 1974, the Court unanimously ordered President Nixon to turn over White House tapes for use in the Watergate-conspiracy trial against his former aides. In *Clinton v. Jones*, from 1997, the Court ordered Bill Clinton to give a deposition in Paula Jones’s sexual-harassment civil case against him.

Mueller’s team later argued to Trump’s lawyers that the Nixon case showed that Presidents had to cooperate with criminal investigations of the White House. Sekulow responded that a grand-jury subpoena for Trump was different. The Watergate tapes already existed; Nixon did not have to disrupt his duties to prepare his testimony. As for the Jones case, Mueller asserted that the courts regarded criminal investigations as a higher priority than civil matters. The Court had directed Clinton to give a deposition in a civil case; this was powerful evidence that the Justices would uphold a grand-jury subpoena, where the public interest was greater. Sekulow replied that the Jones case concerned only Clinton’s behavior before he took office, so the questioning did not risk disclosure of matters relevant to his Presidency. Thus the Jones case had little bearing on how a court would address a grand-jury subpoena for Trump to talk about his actions as President.

Which side was right? In truth, no one knew. But if Mueller had issued the subpoena in January, 2018, there was a chance that the Supreme Court would have carried out an expedited review and issued its decision by the end of June, when the investigation would have been just a year old. Mueller may have been concerned about dragging things out, but no one could have fairly accused him of doing so had he subpoenaed Trump at that time. And Trump’s testimony would certainly have been the most important piece of evidence in this investigation.

Instead, Mueller kept negotiating for an interview. Later, he wrote in his report, “We thus weighed the costs of potentially lengthy constitutional litigation, with resulting delay in finishing our investigation, against the anticipated benefits for our investigation and report.” But Mueller himself was responsible for much of the delay. In this critical moment, he showed weakness, and Trump pounced. After his lawyers refused the Camp David interview, he began to attack Mueller. “The Mueller probe should never have been started in that there was no collusion and there was no crime,” he tweeted in March, 2018, in one of his first direct attacks on the special counsel. “WITCH HUNT!”

Trump was dissatisfied with Dowd, who he felt had misled him about how quickly he could wrap up the Mueller investigation. Seeking a lawyer who would take a harder line on his behalf, Trump hired Rudolph Giuliani, who came on in April, 2018. During the transition from Dowd to Giuliani, Sekulow asked Mueller for a pause in negotiations about Trump’s possible testimony. At last, on May 5th, Trump’s team requested a briefing session for Giuliani. At the meeting, Giuliani wanted to nail down a commitment from Mueller to follow a Justice Department policy, established by its Office of Legal Counsel (O.L.C.) in 1973 and reaffirmed in 2000, barring the indictment of a sitting President. Aaron Zebley, from Mueller’s staff, confirmed that Mueller would honor the policy.

Giuliani said that he might agree to allow the President to answer written questions, but only about his actions during the campaign. Everything he did as President was covered by executive privilege.

Not so, Mueller said. They went back and forth over this familiar ground.

Finally, Giuliani said, “What are you going to do? Are you going to subpoena the President?”

Mueller said, “We’ll get back to you.” More weeks passed.

Mueller eventually capitulated on a grand-jury subpoena and on an oral interview. Then he gave up on questions about Trump’s actions as President.

Finally, Trump's lawyers presented Mueller with a take-it-or-leave-it proposal: Trump would answer only written questions, and only about matters that took place before he became President. Mueller took it.

Even this process was protracted. Mueller didn't submit the written questions until September 17, 2018. Sekulow, with Jane and Martin Raskin, husband-and-wife Florida defense lawyers who had joined Trump's team, took charge of preparing the responses. This turned out to be a maddening endeavor.

Before drafting answers, they had to talk to Trump to get a sense of what he knew. Trump had trouble focussing, and his anger about the Mueller investigation led him to avoid meeting with the Raskins. In fact, it was hard for any of Trump's lawyers to get on his calendar. As Philip Rucker and Carol Leonnig reported in the Washington Post, one session came to an end when news broke that pipe bombs had been mailed to prominent Democrats and media outlets; another was interrupted by phone calls from the Turkish President, Recep Tayyip Erdoğan, and the Chinese President, Xi Jinping.

The Raskins fastidiously checked Trump's verbal responses against the documentary record—videos of his campaign appearances, his personal schedule, e-mails among his campaign subordinates—and the answers, nominally provided and signed by Trump, were submitted to Mueller on November 20th. Mueller and his staff had low expectations for Trump's answers; the President didn't meet them. He said twenty-two times that he failed to "recall," and twelve times that he had no "recollection."

Mueller's prosecutors did what they could at that late date: they wrote a letter. Opposing lawyers write one another a lot of letters, to "make a record" in case a dispute winds up in court. But most disputes do not end up in court, and the letters are often displays of aggression that serve only to give the lawyers, or their clients, a rush of satisfaction. From May, 2017, to December, 2018, Mueller's prosecutors and Trump's lawyers exchanged letters about document production, about witness interviews, and about the special counsel's desire to interview the President. On December 3, 2018, Quarles, who handled much of the negotiating over the interview, addressed the inadequacy of Trump's

answers. “The questions are easy to understand, call for straightforward responses and are sufficiently detailed to make clear what is being asked,” he wrote. He complained that the written format gave investigators “no opportunity to ask follow-up questions that would ensure complete answers and potentially refresh your client’s recollection or clarify the extent or nature of his lack of recollection.”

Quarles proposed that the President grant Mueller an interview on ten areas relevant to his investigation. “They also involve matters of your client’s knowledge and intent that can only be effectively explored through the opportunity for contemporaneous follow up and clarification,” he wrote. The letter was either a masterpiece of passive aggression or a study in self-delusion. After all, Trump’s lawyers had spent a year and a half avoiding an interview. With the intent of sounding tough, Quarles only underlined the weakness of the special counsel.

Trump’s lawyers took nine days to answer, and, when they did, all four lead lawyers—Giuliani, Sekulow, and the Raskins—signed the response. The letter, three single-spaced pages long, dated December 12th, was an aria of triumphant disdain. “This White House has provided unprecedented and virtually limitless cooperation with your investigation,” they wrote, adding that the President “has supplied written answers to your questions on the central subject of your mandate.” They went on, “The President answered the questions despite the additional hardship caused by the confusing and substantial deficiencies of form we articulated to you in our transmittal letter. And he did so in spite of the fact that, as of eighteen months into the SCO’s investigation, you had failed to specify any potential offense under investigation, let alone any theory of liability, as to which the President’s provision of direct information regarding his various ‘Russia-related matters’ was sufficiently important and necessary to justify the immense burden the process imposed on the President and his Office. You still have not done so.” They concluded, “When we embarked on the written question and answer procedure, we agreed to engage in a good faith assessment of any asserted need for additional questioning after you had an opportunity to consider the

President's answers. Your letters have provided us no basis upon which to recommend that our client provide additional information on the Russia-related topics as to which he has already provided written answers."

Mueller's office started pulling together the report in mid-2018. It was an enormous undertaking. Each of Mueller's investigative teams had been creating informal chronologies of events, and the lawyers began integrating and cross-referencing their efforts, drawing on hundreds of F.B.I. interviews and grand-jury examinations, thousands of pages of transcripts, and millions of documents from the executive branch and from private parties. They split the report into two parts, the first about the Russia investigation, and the second about obstruction of justice in the White House.

The conclusion of Part 1 was straightforward. As the executive summary states, "Although the investigation established that the Russian government perceived it would benefit from a Trump presidency and worked to secure that outcome, and that the Campaign expected it would benefit electorally from information stolen and released through Russian efforts, the investigation did not establish that members of the Trump Campaign conspired or coordinated with the Russian government in its election interference activities." This was taken, especially by Trump, as a total exoneration. "No collusion," he said countless times, which was more true than not. Trump himself had not colluded with the Russians. But Mueller's verdict was more nuanced. The report goes on to say that, "while the investigation identified numerous links between individuals with ties to the Russian government and individuals associated with the Trump Campaign, the evidence was not sufficient to support criminal charges." Certainly, Mueller found abundant evidence that Trump and his campaign had wanted to collude and conspire with Russia, but hadn't been able to prove that they had done so. The report's verdict pointed more to insufficient evidence than to innocence.

In March, 2019, Zebley, who functioned as Mueller's deputy, called Ed O'Callaghan, who was Rod Rosenstein's deputy, to alert him to Part 2 of the

report, on obstruction of justice. Rosenstein had designated O’Callaghan as his liaison with the Mueller office, and O’Callaghan had met regularly with Zebley during the investigation. The two dealt with bureaucratic issues like budgets, and Zebley gave O’Callaghan advance notice of major developments, such as when the special counsel was going to obtain indictments or guilty pleas.

“I just wanted to let you know that we are not going to reach a prosecutorial decision on obstruction,” Zebley said. “We’re not going to decide crime or no crime.”

“Are you saying that you would have indicted Trump except for the O.L.C. opinion?” O’Callaghan asked, referring to the Justice Department policy that prohibits the indictment of a sitting President. No, Zebley said. “We’re just not deciding one way or the other.”

Mueller had uncovered extensive evidence that Trump had repeatedly committed the crime of obstruction of justice. To take just the most prominent examples: Trump told Comey to stop the investigation of Flynn (“Let this go”). When Comey didn’t stop the Russia investigation, Trump fired him. Trump instructed his former aide Corey Lewandowski to tell Attorney General Sessions to limit the special-counsel investigation. Most important, Trump told Don McGahn, the White House counsel, to arrange for Mueller to be fired and then, months later, told McGahn to lie about the earlier order. (Both Lewandowski and McGahn declined to help engineer Comey’s firing.)

The impeachment proceedings against Nixon and Clinton were rooted in charges of obstruction of justice, and Trump’s offenses were even broader and more enduring. Moreover, Mueller’s staff had analyzed in detail whether each of Trump’s actions met the criteria for obstruction of justice, and in the report the special counsel asserted that, in at least these four instances, it did. But Mueller still stopped short of saying that Trump had committed the crime. Mueller’s team faced a dilemma. If Mueller had brought criminal charges against Trump, the President would have had the chance to defend himself in court, but, in light of the O.L.C’s opinion, Mueller could not charge Trump. So Mueller decided not to say whether Trump committed a crime, because he was

never going to face an actual trial. The report stated, “A prosecutor’s judgment that crimes were committed, but that no charges will be brought, affords no such adversarial opportunity for public name-clearing before an impartial adjudicator.” In other words, in a gesture of fairness to the President, Mueller withheld a final verdict.

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That still left the issue of what Mueller should say about Trump’s conduct. His judgment was announced in what became the most famous paragraph of the report:

Because we determined not to make a traditional prosecutorial judgment, we did not draw ultimate conclusions about the President’s conduct. The evidence we obtained about the President’s actions and intent presents difficult issues that would need to be resolved if we were making a traditional prosecutorial judgment. At the same time, if we had confidence after a thorough investigation of the facts that the President clearly did not commit obstruction of justice, we would so state. Based on the facts and the applicable legal standards, we are unable to reach that judgment. Accordingly, while this report does not conclude that the President committed a crime, it also does not exonerate him.

Nothing in Mueller’s mandate required him to reach such a confusing and inconclusive final judgment on the most important issue before him. As a prosecutor, his job was to determine whether the evidence was sufficient to bring cases. The O.L.C.’s opinion prohibited Mueller from bringing a case, but Mueller gave Trump an unnecessary gift: he did not even say whether the evidence supported a prosecution. Mueller’s compromising language had another ill effect. Because it was so difficult to parse, it opened the door for the report to be misrepresented by countless partisans acting in bad faith, including the Attorney General of the United States.

When Trump took office, William Barr was sixty-six years old, and basically retired. He had served as Attorney General in 1991 and 1992, the final years of George H. W. Bush’s Presidency. In this role, he supervised Mueller’s work as the head of the criminal division. Barr went on to a prosperous tenure as

general counsel to GTE, the telephone company that became Verizon; he left in 2008, with about twenty-eight million dollars in deferred income and separation payments. Barr then served on corporate boards, supported Catholic charities, worked part time at Kirkland & Ellis, an elite stronghold for conservative lawyers, and joined the rightward shift of the Republican Party. He and Mueller went to the same Christmas parties, and their wives attended the same Bible-study class. While Mueller was leading the F.B.I., and then the special counsel's office, Barr was mostly at home, stewing about the immoral, disorderly drift of American government and society.

For those who knew Barr, especially in recent years, a letter he wrote on June 8, 2018, did not come as a great surprise. (The letter became public six months later, soon after Barr's nomination.) It was a memorandum of more than ten thousand words, addressed to Rosenstein and Steven Engel, who led the O.L.C. Even the subject line—"Mueller's 'Obstruction' Theory"—dripped with contempt. "I am writing as a former official deeply concerned with the institutions of the Presidency and the Department of Justice," it began. "I realize that I am in the dark about many facts, but I hope my views may be useful." The gist was that much of Mueller's investigation was illegitimate. Barr said that Trump's decision to fire Comey was within his power as President. Mueller's approach to the inquiry, Barr wrote, "would have grave consequences far beyond the immediate confines of this case and would do lasting damage to the Presidency and to the administration of law within the Executive branch." Six months after Barr wrote his letter, Trump nominated him for a return engagement as Attorney General.

Once Barr was confirmed, in February, 2019, he took over formal control of the Mueller investigation from Rosenstein. But Barr let Rosenstein continue to supervise it. The Zebley-O'Callaghan phone calls took place, in part, to set up a meeting between Barr and his staff and Mueller and his team, on March 5, 2019. The meeting was Barr's first chance to assess the Mueller investigation before the report was released. It was a fairly relaxed session. Mueller gave a brief introduction. (Later, Barr's team noted that Mueller looked tired and old. Because Mueller had been the focus of so much public attention for nearly two

years and said so little in public, he had taken on an almost mythic status, even among people who once knew him well, like Barr. To see him after this exhausting enterprise was startling. He was an old seventy-four.)

Zebley summarized Part 1 of the report, explaining that the special counsel had found insufficient evidence to charge anyone affiliated with the Trump campaign with a substantive crime relating to Russia. Quarles handled Part 2. There would be no conclusion about whether Trump had committed a crime. Barr was puzzled. No recommendation? That's right, Quarles said. It wasn't that Mueller was unable to reach a conclusion about whether Trump had committed a crime but that, under the circumstances, he had chosen not to do so.

As the meeting was breaking up, Barr asked about the public release of the report. During his confirmation hearings, Barr had promised to release it. The question was how, and when. The lengthy report would have to be reviewed for grand-jury material and other matters that should not be made public. What should Barr release immediately after receiving the report? The Mueller team had prepared a one-page introduction and a roughly ten-page summary of each part, and Mueller told Barr that it would be appropriate to release those sections immediately. Barr said he would think it over. Based on exchanges during the next two weeks, the Mueller team expected Barr to release the summaries as soon as he received the report.

Around noon on Friday, March 22nd, a courier delivered a single copy of the four-hundred-and-forty-eight-page report to O'Callaghan, at the Department of Justice. Rosenstein and O'Callaghan alerted Barr to its arrival, and Barr advised Congress that the report had been delivered. He also informed Pat Cipollone, the White House counsel. Trump's lawyers, scattered around the country, rushed to Washington so that they could prepare their response. Rosenstein's staff spent all Friday reading and digesting the report. On Saturday, they prepared a draft of a letter that Barr would release the next day.

On Sunday, March 24th, around noon, O'Callaghan called Zebley to say that Barr was going to release a letter about the report that afternoon, and he asked

whether Mueller's team wanted to review it first. Zebley had thought Barr would release Mueller's summaries, not a gloss by Barr on the report. After conferring with Mueller and others on the team, Zebley told O'Callaghan that Mueller didn't want to see Barr's letter—he wasn't going to vouch for it. This decision may have made sense at the time, but in retrospect it was a strategic error, depriving Mueller of the opportunity to dissociate himself in advance if the letter turned out to be misleading.

Barr released his letter at about three-thirty that afternoon. In it, he said that he was addressing the “principal conclusions” of Mueller's report. But the letter, though not technically inaccurate, spun the special counsel's findings about Russia in a way that was favorable to Trump. As for obstruction of justice, Barr explained that Mueller had “determined not to make a traditional prosecutorial judgment. Instead, for each of the relevant actions investigated, the report sets out evidence on both sides of the question and leaves unresolved what the Special Counsel views as ‘difficult issues’ of law and fact concerning whether the President's actions and intent could be viewed as obstruction. The Special Counsel states that, ‘while this report does not conclude that the President committed a crime, it also does not exonerate him.’ ”

This, too, was accurate. Barr went on, “Deputy Attorney General Rod Rosenstein and I have concluded that the evidence developed during the Special Counsel's investigation is not sufficient to establish that the President committed an obstruction-of-justice offense.” In other words, Mueller hadn't reached a conclusion on whether Trump committed a crime, but Barr had. In just two days, without speaking to the authors of the report about their evidence or their conclusions, Barr and Rosenstein asserted that they had digested hundreds of pages of dense findings and decided that the President had not committed a crime. The letter was an obvious act of sabotage against Mueller and an extraordinary gift to the President. By leaving the disclosure of the report and its conclusions entirely up to Barr, Mueller had brought this disaster on himself and his staff.

Trump was at Mar-a-Lago for the weekend, and he spoke to reporters on the tarmac on Sunday afternoon, before returning to Washington. Trump declared that the Mueller report was a “complete and total exoneration.” He said, “It’s a shame that our country had to go through this. To be honest, it’s a shame that your President has had to go through this.” Back in Washington, Trump’s lawyers gathered in the Yellow Oval Room to toast their success. They had planned for months to release a “prebuttal” of the report, but Barr had done it for them. Trump arrived in the early evening and thanked everyone. He had been saying it for months—no collusion, no obstruction—and the Attorney General confirmed it.

The following morning, O’Callaghan called Zebley to check in. Zebley explained that Barr’s letter had said that the Mueller report had related facts “without reaching any legal conclusions”—a claim that wasn’t true. The report had, in fact, concluded that the special counsel couldn’t rule out that Trump had committed a crime. Zebley asked whether O’Callaghan was still planning on releasing Mueller’s executive summaries. O’Callaghan said that he’d look into it. Later that day, Zebley sent O’Callaghan the executive summaries with all grand-jury material redacted, so that they could be released immediately. O’Callaghan did not respond.

Many people on Mueller’s staff were furious with Barr, who had undermined two years of work by mischaracterizing it for Trump’s benefit. And, with the report still secret, no response could be made. Mueller was aggrieved in his customarily reticent, rule-following fashion. On Wednesday, March 27th, he wrote a private letter of modest protest to Barr:

The introductions and executive summaries of our two-volume report accurately summarize this Office’s work and conclusions. The summary letter the Department sent to Congress and released to the public late in the afternoon of March 24 did not fully capture the context, nature, and substance of this Office’s work and conclusions. We communicated that concern to the Department on the morning of March 25. There is now public confusion about critical aspects of the results of our investigation. This threatens to undermine a central purpose for which the Department appointed the Special Counsel: to assure full public confidence in the outcome of the investigations.

Even with its restrained language, the letter would have caused a sensation if Mueller had leaked it, but it did not become public for more than a month. Barr called Mueller on Thursday, March 28th, acting like the injured party. “What was up with that letter, Bob?” he said. “Why didn’t you just pick up the phone?” Mueller said that his staff had worked hard on the summaries, and expected that they were going to be released. Mueller suggested that Barr issue the summaries right away. “We don’t want to do it piecemeal,” Barr replied. “We just want to get the whole report out.” The ability to release some or all of the report was in the hands of the Department of Justice, not the special counsel.

At the end of the week, Barr revealed that he would conduct a review of the full report for information that was related to a grand jury or otherwise sensitive, and then release it with those bits redacted. There would be no release of the summaries. The review of the report proceeded at a stately pace. As days, then weeks, passed, the conventional wisdom hardened: Mueller had found nothing.

On April 18th, Barr announced at a news conference that he was releasing the Mueller report. What the Attorney General said next received little attention, because journalists immediately began diving into the report and revealing its contents. (Rosenstein’s frozen stare, while he was standing behind Barr, drew more notice.) “It is important to bear in mind the context,” Barr said. “President Trump faced an unprecedented situation. As he entered into office, and sought to perform his responsibilities as President, federal agents and prosecutors were scrutinizing his conduct before and after taking office, and the conduct of some of his associates. At the same time, there was relentless speculation in the news media about the President’s personal culpability.” Barr went on, “There is substantial evidence to show that the President was frustrated and angered by his sincere belief that the investigation was undermining his Presidency, propelled by his political opponents, and fueled by illegal leaks.” Finally, Barr said, “The President took no act that in fact deprived the special counsel of the documents and witnesses necessary to complete his investigation. Apart from whether the acts were obstructive, this

evidence of non-corrupt motives weighs heavily against any allegation that the President had a corrupt intent to obstruct the investigation.”

Barr neglected to mention, in these fawning remarks, that the Mueller investigation had taken place because the Russian government had engaged in a systematic attempt to help Trump win the election—an attempt that the candidate and his staff encouraged. It was true that Trump believed the investigation was undermining him, but self-pity does not represent a defense of his efforts to interfere with the investigation. And the only reason that Trump took “no act” to interfere with the investigation was that his subordinates, including Don McGahn and Corey Lewandowski, refused to follow his directives to do so.

Barr continued to diminish Mueller’s report and to dilute its impact. Trump finally had an Attorney General who put the President’s personal and political well-being ahead of the national interest, the traditions of the Justice Department, and the rule of law. But Barr was able to dismantle the Mueller report only because the special counsel and his staff had made it easy for him to do so. Robert Mueller forfeited the opportunity to speak clearly and directly about Trump’s crimes, and Barr filled the silence with his high-volume exoneration. Mueller’s investigation was no witch hunt; his report was, ultimately, a surrender. ♦

Published in the print edition of the July 6 & 13, 2020, issue, with the headline “The Surrender.”

Jeffrey Toobin has been a staff writer at The New Yorker since 1993 and the senior legal analyst for CNN since 2002. His latest book, “True Crimes and Misdemeanors: The Investigation of Donald Trump,” will be published in August.