Testimony of Caroline Fredrickson, President, American Constitution Society
Before the House Committee on the Judiciary
July 12, 2019

Introduction

The final report issued by Special Counsel Robert Mueller on his investigation into Russian interference in the 2016 election delivered several chilling conclusions: (1) Russia conducted wide-ranging attacks on our nation's election system; (2) both before and after public reports of the Russian attacks, the Trump campaign had multiple contacts with Russian nationals and did not report these interactions to U.S. authorities; and (3) there is substantial evidence that President Donald Trump repeatedly attempted to thwart the Department of Justice's efforts to investigate the Russian attacks, including through his unheeded requests to the White House Counsel to fire the Special Counsel and create a false paper trail and make public misrepresentations regarding this incident.

These troubling findings and other public accounts of alleged presidential corruption demand and are rightfully receiving scrutiny by this Committee and other congressional committees. As this Committee knows well, the investigations the Committee is pursuing in this vein are well grounded in Congress's Article I powers and the jurisdictional directives of the House Rules. Unfortunately, instead of providing information to enable Congress to do its job, the President has said he will resist all congressional subpoenas, and his lawyers have requested that this Committee "discontinue" its investigation and have made the extraordinary and unfounded claim that the Committee lacks authority to investigate these matters.[1]

In light of the Administration's misguided public positions on this Committee's oversight responsibilities, I appreciate the opportunity to participate in the hearing the Committee is holding to set the record straight on congressional avenues for addressing presidential misconduct.

As President of the American Constitution Society (ACS), I speak and write on a range of legal and constitutional issues and oversee lawyer and law student chapters throughout the country. ACS has worked to promote informed public evaluation of the investigations into Russian interference in the 2016 election through the development and dissemination of legal analysis of key issues that emerge as the inquiries unfold. Most recently, on the subjects before the Committee today, ACS published ACS Board Member and Ohio State Professor of Law Peter Shane's analysis titled "The Fatal Flaw in the Argument for McGahn's Testimonial Immunity"[2], Georgetown University Professor of Law Victoria

[1] *See* Charlie Savage, *Trump Vows Stonewall of 'All' House Subpoenas, Setting up Fight over Powers*, N.Y. TIMES (Apr. 24, 2019), https://www.nytimes.com/2019/04/24/us/politics/donald-trump-subpoenas.html; Letter from Pat A. Cippolone, White House Counsel, to Jerrold Nadler, Chairman, House Comm. on the Judiciary (May 15, 2019), http://cdn.cnn.com/cnn/2019/images/05/15/pacletter05.15.2019.pdf.

[2] Peter Shane, *The Fatal Flaw in the Argument for McGahn's Testimonial Immunity*, ACS BLOGS (May 22, 2019), https://www.acslaw.org/expertforum/the-fatal-flaw-in-the-argument-for-mcgahns-testimonial-immunity/.

Nourse's piece titled "Oversight is a Necessity, Not A Luxury,"[3] and submitted testimony for the record of this Committee's May 15, 2019, hearing on "Executive Privilege and Congressional Oversight".

I offer a few points for your consideration today.

Congress's Oversight Powers

Congress has broad constitutional authority to examine the pressing questions that emerged over the course of Special Counsel Robert Mueller's inquiry and in his final report. The Supreme Court has long held that Congress's oversight authorities are inherent in Congress's Article I legislative powers.[4] These oversight authorities are "broad" and encompass matters including "the administration of existing laws," "proposed or possibly needed statutes," and "probes . . . to expose corruption, inefficiency, and waste."[5] Indeed, the Court has emphasized that oversight is "essential" to the conduct of government.[6] This Committee has additional constitutional authorities to conduct oversight under the provisions of Article I, section 2 stating that the House of Representatives has the "sole power of impeachment."[7]

Congressional investigations often lead to the development of new laws, but Congress may also address oversight findings through other courses of action. Some investigations have led Congress to conclude that enacting new laws is not necessary to address issues identified in the inquiry.[8] Some congressional oversight proceedings have led to executive branch reforms.[9] Some inquiries into alleged Administration corruption have

---

[3] Victoria Nourse, *Oversight Is a Constitutional Necessity, Not a Luxury*, ACS BLOGS (May 1, 2019), https://www.acslaw.org/expertforum/oversight-is-a-constitutional-necessity-not-a-luxury/.

[4] McGrain v. Daugherty, 273 U.S. 135, 174-75 (1927).

[5] Watkins v. United States, 354 U.S. 178, 187 (1957).

[6] *McGrain*, 273 U.S. at 174.

[7] U.S. CONST. art. I, § 2. The constitution sets forth the scope of the impeachment authority as follows: "The President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors." U.S. CONST. art. II, § 4.

[8] *See, e.g., Illegal Use of Steroids in Major League Baseball: Hearing on The Mitchell Report Before H. Comm. on Oversight and Gov't Reform*, 110th Cong. 18 (2008) (statement of Ranking Member Tom Davis), https://www.govinfo.gov/content/pkg/CHRG-110hhrg55749/pdf/CHRG-110hhrg55749.pdf (describing how, in light of changed circumstances following bipartisan hearings on steroid use by teens and major league athletes, Congress did not enact relevant legislation: "Nearly 3 years ago, our first foray into this subject proved extremely productive. After our hearings, then Ranking Member Henry Waxman and I introduced legislation that turned out to be unnecessary because baseball and other major sports acted quickly, on their own, to enhance drug testing and enforcement programs").

[9] *See, e.g.*, Claudia Lauer, *FEMA To Buy Back Trailers Due To Formaldehyde Worries*, L.A. TIMES (Aug. 11, 2011), https://www.latimes.com/archives/la-xpm-2007-aug-11-na-fema11-story.html (describing how, following a congressional hearing spotlighting health risks associated with formaldehyde levels in residential trailers the Federal Emergency Management Agency (FEMA) provided Hurricane Katrina victims, the FEMA director committed to testing the trailers and suspending their sales).

resulted in accountability steps such as resignations,[10] referrals,[11] House or Senate resolutions memorializing disapproval of presidential or other administration misconduct,[12] or the launch of impeachment proceedings.[13] Further, as we have seen in this Committee and others, sometimes investigation of one issue uncovers information that leads a Committee to investigate separate problems previously unknown at the outset of the initial inquiry,[14] or to request further review from an agency inspector general.[15]

Regardless of the course an investigation may take, Congress can employ powerful oversight tools that include the authority to subpoena witnesses[16] and hold them in contempt.[17] In addition, standing House committees including this Committee have authority to conduct depositions.[18]

With respect to this Committee's investigation into Russian interference in the 2016 election and allegations of misconduct by President Trump, this Committee may conduct

---

[10] *See, e.g.*, Coral Davenport, Lisa Friedman, & Maggie Haberman, *EPA Chief Scott Pruitt Resigns Under a Cloud of Ethics Scandals*, N.Y. TIMES (July 5, 2018), https://www.nytimes.com/2018/07/05/climate/scott-pruitt-epa-trump.html (describing multiple congressional and inspector general investigations that precipitated the 2018 resignation of EPA Administrator Scott Pruitt).

[11] *See, e.g.*, Jube Shiver Jr. & Abigail Goldman, *Criminal Probe of Stewart Sought*, L.A. TIMES (Sept. 11, 2002), https://www.latimes.com/archives/la-xpm-2002-sep-11-fi-martha11-story.html (describing bipartisan referral to the Department of Justice by the chairs and ranking members the House Committee on Energy and Commerce and its Subcommittee on Oversight and Investigations regarding statements made by Martha Stewart in the Committee's inquiry into biotech stock trading).

[12] For example, the Senate in 1834 approved a resolution criticizing President Andrew Jackson's conduct relating to firing his Treasury Secretary. *Censure*, U.S. SENATE, https://www.senate.gov/reference/reference_index_subjects/Censure_vrd.htm (last visited July 8, 2019).

[13] See for example H.R. Res. 803, 93rd Cong. (1974), which authorized and directed the House Committee on the Judiciary "to investigate fully and completely whether sufficient grounds exist for the House of Representatives to impeach President Richard M. Nixon."

[14] For example, information produced in the House and Senate Judiciary Committee investigations of alleged improprieties in the Bush Administration's firing of U.S. Attorneys, as well as information produced in the House Oversight and Government Reform Committee's investigation of lobbying contacts between Jack Abramoff and the White House, suggested that the Administration was using unofficial email accounts to conduct official business – a revelation that led to an Oversight Committee inquiry into potential records management violations. *See* Letter from Henry A. Waxman, Chairman, House Comm. on Oversight and Gov't Reform to Mike Duncan, Chairman, Republican Nat'l Comm. (Mar. 26, 2007), https://wayback.archive-it.org/4949/20141031193105/http://oversight-archive.waxman.house.gov/documents/20070326110802-38974.pdf.

[15] For example, following congressional testimony from the General Services Administration and FBI regarding the Administration's decision to halt long-standing plans to move the FBI headquarters, and a congressional call for an inspector general investigation of this issue, the FBI's office of inspector general announced in July 2019 that they had launched a review. Jonathan O'Connell, *Justice Department Watchdog to Investigate Decision to Cancel FBI Headquarters Plan*, WASH. POST (July 3, 2019), https://www.washingtonpost.com/politics/justice-department-watchdog-to-investigate-decision-to-cancel-fbi-headquarters-plan/2019/07/03/76971d76-9d85-11e9-9ed4-c9089972ad5a_story.html?utm_term=.77a5abc82390.

[16] Watkins v. United States, 354 U.S. 178, 187-88 (1957).

[17] For a detailed discussion of Congress's criminal, civil, and inherent contempt authorities, see CONG. RESEARCH SERV., CONGRESSIONAL SUBPOENAS: ENFORCING EXECUTIVE BRANCH COMPLIANCE R45653 (2019), https://fas.org/sgp/crs/misc/R45653.pdf.

[18] H.R. Res. 6, 116th Cong. § 103 (2019).

hearings to support relevant legislation, impeachment proceedings, or other steps that may be necessary, depending on the facts that emerge.

Precedent on Congressional Investigations

Congressional history is of course replete with investigations of alleged White House misconduct that have not involved impeachment. Many of these – across both Republican and Democratic Administrations – involved congressional deposition or hearing testimony from top White House aides.

For example, the Senate Judiciary Committee investigated business dealings of President Carter's brother and alleged related White House communications, taking testimony from the National Security Advisor and the Press Secretary to the President.[19] A joint House and Senate committee reviewed the role of the Reagan White House in the diversion of Iran arms sales funds to Nicaraguan contras, taking testimony from two National Security Advisors to the President and the National Security Advisor to the Vice President, among other White House aides.[20] Committees in both the House and Senate conducted inquiries into whether the Clinton White House engaged in campaign finance improprieties, taking testimony from a White House Chief of Staff, Deputy Chief of Staff, two White House Counsels, two Deputy White House Counsels, the Chief of Staff to the First Lady, and the National Security Advisor, among other White House aides.[21] Further, the House Oversight Committee investigated alleged inappropriate Bush White House use of nongovernment email for official business, taking deposition testimony from two White House Political Directors.[22]

Impeachment proceedings have begun without any formal vote of the House to initiate impeachment. In addition, for presidential impeachments, the Judiciary Committee has conducted hearings to determine whether or not to recommend articles to the full House. With respect to the impeachment of President Nixon, the House Judiciary Committee had

---

[19] *See*, INQUIRY INTO THE MATTER OF BILLY CARTER AND LIBYA, S. REP. NO. 99-1015 (1980), https://www.intelligence.senate.gov/sites/default/files/961015.pdf (noting deposition testimony of Press Secretary Jody Powell and deposition and hearing testimony of National Security Advisor Zbigniew Brzezinski).

[20] *See*, REPORT OF THE CONGRESSIONAL COMMITTEES INVESTIGATING THE IRAN-CONTRA AFFAIR, H.R. REP. NO. 100-433, S. REP. NO. 100-216, at Appendix B, Vol. 2 (1987), https://babel.hathitrust.org/cgi/pt?id=uc1.aa0008704835&view=1up&seq=1 (citing deposition testimony of National Security Advisors John Poindexter and Robert McFarlane, National Security Advisor to the Vice President Donald Gregg, and others).

[21] *See*, REPORT OF ILLEGAL OR IMPROPER ACTIVITIES IN CONNECTION WITH 1996 FEDERAL ELECTION CAMPAIGNS, S. REP. NO. 105-167 (1998); INVESTIGATION OF POLITICAL FUNDRAISING IMPROPRIETIES AND POSSIBLE VIOLATIONS OF LAW, H.R REP. NO. 105-829 (1998) (noting hearing and deposition testimony of White House Chief of Staff Thomas McLarty, Deputy Chief of Staff Harold Ickes, White House Counsels John Quinn and Charles F.C. Ruff, Chief of Staff to the First Lady Margaret Williams, and National Security Advisor Sandy Berger, among others).

[22] *See* STAFF OF H.R. COMM. ON OVERSIGHT AND GOV'T REFORM, 110TH CONG., DEP. OF MATTHEW AARON SCHLAPP, (2007), https://wayback.archive-it.org/4949/20141031185147/http://oversight-archive.waxman.house.gov/documents/20081015115613.pdf; STAFF OF H.R. COMM. ON OVERSIGHT AND GOV'T REFORM, 110TH CONG., DEP. OF SARA M. TAYLOR (2007), https://wayback.archive-it.org/4949/20141031185215/http://oversight-archive.waxman.house.gov/documents/20081015115720.pdf.

been considering articles of impeachment for close to a year before there was a full House vote in February 1974.[23]

With respect to the impeachment of President Clinton, the Independent Counsel inquiry that resulted in an impeachment referral to the House of Representatives in September 1998[24] originated in 1994 as an inquiry into alleged improprieties relating to investments by President Bill Clinton and First Lady Hillary Clinton in a real estate company in Arkansas, the Whitewater Development Corporation.[25] The Independent Counsel investigation ultimately expanded to other issues that formed the basis of the impeachment referral,[26] and the referral did not ultimately involve Whitewater.[27] In the interim, however, and long before the October 1998 House resolution initiating impeachment proceedings,[28] Congress conducted extensive investigations into Whitewater.[29]

In fact, in contrast to the Trump Administration's resistance to this Committee's request for testimony and documents from former Trump White House Counsel Don McGahn,[30] the Senate Special Committee to Investigate the Whitewater Land Development Corporation and Related Matters took testimony from two Clinton White House Counsels, Bernard Nussbaum and Lloyd Cutler.[31] Other senior White House aides who provided testimony for congressional inquiries into Whitewater matters included two

---

[23] H.R. Res. 803, 93rd Cong. (1974).

[24] KENNETH W. STARR, REFERRAL FROM INDEPENDENT COUNSEL KENNETH W. STARR IN CONFORMITY WITH THE REQUIREMENTS OF TITLE 28, UNITED STATES CODE SECTION 595(C), H.R. DOC. NO. 105-310 (1998), https://www.govinfo.gov/content/pkg/GPO-CDOC-106sdoc3/pdf/GPO-CDOC-106sdoc3-2.pdf.

[25] By an August 5, 1994, order by the special division of the District of Columbia Circuit Court, Kenneth Starr was appointed independent counsel to take over the investigation commenced in January 1994 by independent counsel Robert Fiske into allegations relating to the Whitewater Development Corporation. *See Kenneth Starr's Mandate*, WALL STREET J. (Sept. 25, 1996), https://www.wsj.com/articles/SB843603671806139000 (excerpting the court order).

[26] *In re* Madison Guar. Sav. & Loan Ass'n, No. 94-1, 1998 WL 472444, at *1 (D.D.C. Jan. 16, 1998).

[27] KENNETH W. STARR, REFERRAL FROM INDEPENDENT COUNSEL KENNETH W. STARR IN CONFORMITY WITH THE REQUIREMENTS OF TITLE 28, UNITED STATES CODE SECTION 595(C), H.R. DOC. NO. 105-310 (1998), https://www.govinfo.gov/content/pkg/GPO-CDOC-106sdoc3/pdf/GPO-CDOC-106sdoc3-2.pdf.

[28] H.R. Res. 581, 105th Cong. (1998), https://www.congress.gov/bill/105th-congress/house-resolution/581.

[29] The House Committee on Banking held its first hearing on Whitewater matters on July 26, 1994. *See Whitewater Investigation, Part 4*, C-SPAN, https://www.c-span.org/video/?59036-1/whitewater-investigation-part-4 (last visited July 8, 2019). *See also* INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS: FINAL REPORT, S. REP. NO. 104-280, at 1 (1996), https://www.congress.gov/104/crpt/srpt280/CRPT-104srpt280.pdf.

[30] Letter from Pat A. Cipollone, White House Counsel, to Jerrold Nadler, Chairman, House Comm. on the Judiciary (May 20, 2019), https://assets.bwbx.io/documents/users/iqjWHBFdfxIU/rSS0nmVzVL0M/v0.

[31] *See* PROGRESS OF THE INVESTIGATION INTO WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS AND RECOMMENDATION FOR FUTURE FUNDING, S. REP. NO. 104-204, at 24-30 (1996), https://www.congress.gov/104/crpt/srpt204/CRPT-104srpt204.pdf (detailing deposition and hearing testimony received by the Committee).

Deputy Counsels to the President,[32] the Special Counsel to the President,[33] the Chief of Staff to the Vice President,[34] the Chief of Staff to the First Lady,[35] the Assistant to the President and Communications Director,[36] the former Press Secretary to the President,[37] the Press Secretary to the First Lady,[38] the Staff Secretary to the President,[39] and a Senior Policy Advisor to the President.[40]

Issues Relating to the Mueller Report that Demand Congressional Oversight

Whether or not the House ever moves forward on impeachment against President Trump, several key unanswered questions relating to the Mueller Report demand rigorous congressional review. These include:

(1) How can Congress best protect American voters from future attacks on the election system by Russia or other hostile nations?

The Mueller Report concluded that Russia engaged in "sweeping and systemic" interference in the 2016 election[41] through a social media "information warfare" campaign that "favored" candidate Trump and "disparaged" candidate Clinton,[42] and by hacking into databases of entities and individuals working for the Clinton campaign and releasing stolen materials through fictitious online entities the Russians created and through the organization Wikileaks.[43] The Report further stated that Russia targeted databases of individuals and entities associated with administering elections,[44] and top U.S. intelligence and law enforcement authorities have stated that Russia in 2018 again

[32] *See id.* at 25-26 (noting deposition and hearing testimony of Bruce Lindsey); CONG. RESEARCH SERV., PRESIDENTIAL ADVISERS' TESTIMONY BEFORE CONGRESSIONAL COMMITTEES: AN OVERVIEW 13 (2007), https://fas.org/irp/crs/RL31351.pdf (noting that Joel I. Klein testified at a hearing before the Senate Committee on Banking, Housing, and Urban Affairs, regarding Whitewater-related matters on August 3, 1994) [hereafter PRESIDENTIAL ADVISERS' TESTIMONY BEFORE CONGRESSIONAL COMMITTEES].
[33] *See* S. REP. NO. 104-204, at 27-28 (noting deposition and hearing testimony of Jane Sherburne).
[34] *See id.* at 25-26 (noting deposition and hearing testimony of John Quinn).
[35] *See id.* at 25 (noting deposition and hearing testimony of Margaret Williams).
[36] *See id.* at 24-25 (noting deposition and hearing testimony of Mark Gearan).
[37] *See id.* at 24 (noting deposition testimony of Dee Dee Myers).
[38] *See id.* at 25 (noting deposition testimony of Lisa Caputo).
[39] *See* PRESIDENTIAL ADVISERS' TESTIMONY BEFORE CONGRESSIONAL COMMITTEES, *supra* note 34, at 12-14 (noting that John D. Podesta testified at a hearing before the House Banking Committee on July 28, 1994, and at a hearing before the Senate Banking Committee on August 4, 1994, on Whitewater-related matters).
[40] *See* S. REP. NO. 104-204, at 24 (noting deposition testimony of George Stephanopoulos).
[41] SPECIAL COUNSEL ROBERT S. MUELLER, III, U.S. DEP'T OF JUSTICE, REPORT ON THE INVESTIGATION INTO RUSSIAN INTERFERENCE IN THE 2016 ELECTION Vol. I, 1-5 (2019), https://www.documentcloud.org/documents/5955118-The-Mueller-Report.html [hereafter MUELLER REPORT].
[42] *Id.* at Vol. I, 1-4, 14-35.
[43] *Id.* at Vol. I, 1-5, 36-50.
[44] *Id.* at Vol. I, 50-51.

attempted to disrupt U.S. elections[45] and have warned of anticipated foreign interference attempts in the 2020 election as well.[46]

Close examination of how Russia executed these interference strategies is necessary to inform this Committee and other Committees of jurisdiction regarding how best to tailor legislative initiatives involving electronic data protections, the provision of additional funding or resources for the U.S. agencies responsible for monitoring and investigating foreign interference, and other measures to protect the integrity of our election laws and systems.

(2) Why did Trump campaign officials, Trump associates, and then-candidate Trump continue to have contact during the campaign with Russian nationals after becoming aware of Russian hacking, why did Trump associates lie to investigators about these contacts, and why did Trump and his associates and suggest publicly that Trump had "nothing to do with Russia"?

The redacted Mueller Report documents dozens of Trump associate contacts with Russian nationals and Russian-associated individuals during the campaign and presidential transition.[47] However, it contains no evidence that Trump campaign officials reported these contacts to U.S. law enforcement agencies during the campaign or presidential transition, despite public reports starting in June 2016[48] regarding Russian hacking of Democratic emails and candidate Trump's August 2016 briefing on this matter by intelligence officials.[49] In fact, President Trump recently indicated that if approached in the future by a foreign government promising "dirt" on a campaign opponent, he might not report such contacts to U.S. authorities.[50]

---

[45] *See, e.g.* David Smith, *U.S. Still Under Attack from 'Pervasive Campaign' by Russia, U.S. Officials Warn*, GUARDIAN (Aug. 3, 2018), https://www.theguardian.com/us-news/2018/aug/03/us-russia-election-meddling-latest-dan-coats.

[46] *E.g.*, Alyza Sebenius, *Russia Internet Trolls Are Apparently Shifting Strategies for 2020 Elections*, TIME (Mar. 9, 2019), https://time.com/5548544/russian-internet-trolls-strategies-2020-elections/.

[47] MUELLER REPORT, *supra* note 43, at Vol. I, 66-173; *see also* Grace Panetta, *The Mueller Report Is Here; Here Are All the Known Contacts between the Campaign and Russian-Government Linked People or Entities*, BUS. INSIDER (Apr. 19, 2019), https://www.businessinsider.com/trump-campaign-russia-government-contact-timeline-2018-7 (summarizing the Mueller Report and tallying 101 contacts); *The Moscow Project*, CTR. FOR AM. PROGRESS, https://themoscowproject.org/explainers/trumps-russia-cover-up-by-the-numbers-70-contacts-with-russia-linked-operatives/ (last updated June 3, 2019) (tallying total contacts in the redacted Mueller Report and other public accounts at 272).

[48] Ellen Nakashima, *Russian Government Hackers Penetrated DNC, Stole Opposition Research on Trump*, WASH. POST (June 14, 2016), https://www.washingtonpost.com/world/national-security/russian-government-hackers-penetrated-dnc-stole-opposition-research-on-trump/2016/06/14/cf006cb4-316e-11e6-8ff7-7b6c1998b7a0_story.html?utm_term=.de1c7ecf8bfb.

[49] Robert Windrem & William M. Arkin, *Trump Told Russia to Blame for Hacks Long Before 2016 Debate*, NBC NEWS (Oct. 10, 2016), https://www.nbcnews.com/news/us-news/trump-was-told-russia-was-blame-hacks-long-debate-n663686 (describing August 2016 intelligence briefing of Trump regarding the hacks).

[50] Lucien Bruggeman, *'I Think I'd Take It': In Exclusive Interview, Trump Says He Would Listen if Foreigners Offered Dirt on Opponents*, ABS NEWS (June 19, 2019), https://abcnews.go.com/Politics/id-exclusive-interview-trump-listen-foreigners-offered-dirt/story?id=63669304.

Campaign and presidential transition interactions between Trump associates and Russian nationals include, among others:

- Contacts in 2015 and 2016 between Trump attorney Michael Cohen, Trump associate Felix Slater, and Russian nationals regarding a potential Trump project in Moscow involving 250 condominiums and a 15-floor hotel, on which Trump signed a letter of intent;[51]
- An April 2016 communication from a Russian operative to campaign advisor George Papadopoulos that Russians have "dirt" on Clinton in the form of emails and a plan to distribute them;[52]
- A meeting on June 9, 2016, at Trump Tower, New York, between Russian nationals and top campaign officials and Trump associates including campaign head Paul Manafort, Donald Trump, Jr., and Jared Kushner, after outreach from an intermediary informing Trump, Jr., that the Russians had derogatory information on Clinton that was "part of Russia and its government's support for Mr. Trump;"[53]
- A meeting on August 2, 2016, between Trump campaign head Paul Manafort, deputy campaign head Rick Gates, and Konstantin Kilimnik, an individual "the FBI assesses to have ties to Russian Intelligence,"[54] in which the Trump campaign officials shared internal campaign battleground polling data and discussed a Ukrainian "peace plan" that Gates acknowledged was in essence a means of providing Russia control of eastern Ukraine;[55]
- Periodic other instances where Gates, reportedly at Manafort's instruction, provided Kilimnik with campaign updates including polling data;[56]
- A November 30, 2016, meeting between Kushner and Russian Ambassador Sergey Kislyak at which Kushner asked about the option, which Kislayak rejected, of the two communicating "using secure facilities at the Russian embassy;"[57]
- Discussions in December 2016 between Trump campaign foreign policy advisor and subsequent National Security Advisor Michael Flynn and the Russian Ambassador regarding Russia's reaction to sanctions then-President Obama issued and regarding a U.N. Security Council vote on Israeli settlements;[58] and
- Meetings on January 11-12, 2017, in the Seychelles between Trump associate Erik Prince and Russian financier Kirill Dmitriev in which they addressed U.S.-Russia relations.[59]

[51] MUELLER REPORT, *supra* note 43, at Vol. I, 67-80.
[52] *Id.* at Vol. I, 86-89.
[53] *Id.* at Vol. I, 110-20.
[54] *Id.* at Vol. I, 14.
[55] *Id.* at Vol. I, 130, 139-40.
[56] *Id.* at Vol. I, 129, 136-37.
[57] *Id.* at Vol. I, 159-61.
[58] *Id.* at Vol. I, 167-73.
[59] *Id.* at Vol. I, 151-56.

According to the Mueller Report, multiple Trump associates lied to investigators about Trump associate contacts with Russia. For example, Papadopoulos and Flynn pleaded guilty to lying to federal investigators about their contacts with Russians, Cohen pleaded guilty to making false statements to Congress about the Trump Moscow project, and a federal judge found that Manafort lied about providing a Russian-linked operative with polling data.[60] In addition, given the voluminous contacts that the Trump campaign and associates had with Russia, the Report raised questions about why the Trump campaign, including then-candidate Trump, repeatedly represented to the public that Trump had no connections to Russia.[61]

Congressional review of these and other Trump associate contacts with Russia is imperative for informing Congress of the potential effectiveness of additional federal laws requiring campaign disclosures of certain contacts with foreign nationals or other limits to avert inappropriate foreign attempts to interfere with U.S. elections. Such inquiry is also necessary to evaluate any continuing risks that Russians who were in contact with the Trump campaign have any inappropriate sway over the Trump Administration or individual officials.

(3) Does the substantial evidence the Mueller Report presents of obstruction of justice and other misconduct on the part of President Trump and other Trump officials merit further congressional actions including legislation, censure, impeachment, or referrals?

The Mueller Report in Volume II details multiple incidents that raise questions about whether President Trump committed obstruction of justice and witness tampering. In fact, over 1000 former prosecutors who served under both Republican and Democratic administrations have stated that "the conduct of President Trump described in Special Counsel Robert Mueller's report would, in the case of any other person not covered by the Office of Legal Counsel policy against indicting a sitting President, result in multiple felony charges for obstruction of justice."[62]

One key example is President Trump's actions directing the White House Counsel to order the firing of Special Counsel Mueller. According to the Report, shortly after June 14, 2017, press reports that Mueller was investigating the President for obstruction of justice, the President called White House Counsel Don McGahn at home twice, directing him to call Acting Attorney General Rod Rosenstein "to say that the Special Counsel had conflicts of interest and must be removed." McGahn refused and stayed on as White House Counsel, though he threatened to resign and told the White House chief of staff the President had asked him to "do crazy shit."[63]

---

[60] *E.g., id.* at Vol. I, 9-10.
[61] *Id.* at Vol. II, 18-23.
[62] *Statement by Former Federal Prosecutors*, MEDIUM (May 6, 2019), https://medium.com/@dojalumni/statement-by-former-federal-prosecutors-8ab7691c2aa1.
[63] Mueller Report, *supra* note 43, at Vol. II, 77-90.

Months later when media accounts disclosed the President's request to McGahn, the President, through his counsel and aides, asked McGahn to refute this story and "create a record to make clear that the President had never directed McGahn to fire the Special Counsel," which McGahn refused to do. The President himself also pressed McGahn personally – and unsuccessfully -- in the Oval Office to deny the press accounts.[64]

Other potentially obstructive conduct documented in the Mueller Report concerns the President's actions following the February 2017 firing of National Security Advisor Michael Flynn. According to the Report, after learning that Flynn had made statements to the FBI regarding his contacts with Russian Ambassador Kislyak that could constitute lying to investigators, Trump cleared his office for a one-on-one meeting with then-FBI Director James Comey and asked Comey to "let [Flynn] go." He also asked then-Deputy National Security Advisor K.T. McFarland to draft an internal memo saying Trump did not direct Flynn to call Kislyak, which McFarland did not do because she did not know whether he had so directed Flynn.[65]

The report also raises questions about whether the President had improper motives in pressing for Attorney General Jeff Sessions to "un-recuse" himself, firing Comey, discouraging cooperation with the Mueller inquiry, and suggesting future pardons to witnesses under investigation.[66]

The Mueller Report pointedly notes that it "does not exonerate" the President. [67] Instead, the Report explains that the Office of Special Counsel "accepted" the Office of Legal Counsel policy that a sitting President cannot be indicted, while asserting that "the separation-of-powers doctrine authorizes Congress to protect official proceedings, including those of courts and grand juries, from corrupt, obstructive acts regardless of their source," and underscoring that "no person is above the law."[68]

The American public deserves thorough congressional review of the potentially obstructive conduct indicated by the redacted Mueller Report. This oversight is an important foundation for evaluating the effectiveness of current laws including provisions of the obstruction of justice statutes on intimidating witnesses, suborning perjury, and falsifying evidence, and determining whether any additional congressional actions are merited to ensure full accountability for presidential misconduct and safeguard the Department of Justice from political interference.

(4) To what extent does the content behind the Mueller report redactions, gaps in evidence gathering that the Special Counsel identified, and cases referred to other prosecutors by the Special Counsel, suggest any additional wrongdoing by the President or his associates?

---

[64] *Id.* at Vol. II, 113-18.
[65] *Id.* at Vol. II, 40-44.
[66] *Id.* at Vol. II, 109-11.
[67] *Id.* at Vol. II, 8.
[68] *Id.*

It is worth noting that one of the more heavily redacted sections of the Mueller report concerns contacts between Russian entities with access to hacked Clinton campaign emails and Trump associates. For example, the Report suggests that both Cohen and Manafort had conversations with Trump in July 2016 shortly after Wikileaks released hacked emails, but redacts the content of those discussions.[69] The Report further notes that "Trump told Gates that more releases of damaging information would be coming," but redacts the contextual information around that statement.[70]

Redactions also obscure the Report's discussion of 12 of the 14 matters the Special Counsel referred to other law enforcement authorities on the grounds that they fall outside the Special Counsel's jurisdiction.[71] The two matters that were not redacted include a case regarding evidence of wire fraud and campaign finance violations, which, as the Mueller Report stated, "ultimately led to the conviction of Cohen in the Southern District of New York for campaign-finance offenses related to payments he said he made at the direction of the President."[72]

Beyond the redactions, the Mueller Report noted numerous obstacles to obtaining a complete record in the first place, such as:

- The President refused the request by the Special Counsel for an interview, providing only written responses to questions, which the Mueller Report said denied the Special Counsel the "opportunity to ask follow-up questions that would ensure complete answers and potentially refresh [the President's] recollection or clarify the extent or nature of his lack of recollection;"
- The Office of the Special Counsel considered the President's written responses to be "incomplete" and "imprecise," and noted that the President stated on "more than 30 occasions that he 'does not recall' or 'remember' or 'have an independent recollection;'"[73]
- Some of the witnesses used communications applications that did not allow for long-term data retention, or "deleted relevant communications;"[74] and
- Some individuals invoked the 5th Amendment right against compelled self-incrimination.[75]

Review of the un-redacted Mueller report and underlying evidence along with any relevant follow-up interviews and document requests is necessary to ensure full public accountability for these gaps and informed congressional evaluation of the laws implicated by Mueller's findings and whether further legislation or investigation is necessary.

[69] *Id.* at Vol. I, 53.
[70] *Id.* at Vol. I, 54.
[71] *Id.* at Vol. II, Appendix D.
[72] *Id.* at Vol. II, 77, fn. 500.
[73] *Id.* at Vol. II, Appendix C.
[74] *Id.* at Vol. I, 10.
[75] *Id.*

Conclusion

In sum, given the gravity of the Mueller Report's conclusions and the related information that has emerged publicly to date, a failure by Congress to examine these issues would constitute an abdication of Congress's fundamental constitutional oversight responsibilities. As former Senate Judiciary Committee Chairman and current Senate Finance Committee Chairman Charles Grassley has eloquently stated, congressional oversight is all about "[k]eeping faith with 'We the People.' It means working as hard as you can to give the people confidence that their government either plays by the rules or is held accountable."[76]

[76] Senator Chuck Grassley, Chairman, Senate Judiciary Comm., Remarks at the Heritage Foundation (June 25, 2018), https://www.judiciary.senate.gov/grassley-on-the-importance-and-responsibility-of-congressional-oversight.