

On Obstruction, the Mueller Report is Clintonesque

On April 18, US Attorney William Barr released Special Counsel Robert Mueller's report on the probe into "Russian meddling" in the 2016 presidential election. The report cleared President Donald Trump and his campaign team of allegations that they conspired with the Russian government in that meddling. But on the question of "obstruction of justice," Mueller punted in an eerily familiar way.

Return with me briefly to those thrilling days of yesteryear. Specifically, July 5, 2016. As I wrote then:

"FBI director James Comey spoke 2,341 words explaining his decision not to recommend criminal charges over Hillary Clinton's use of a private email server to transmit, receive and store classified information during her tenure as US Secretary of State. He could have named that tune in four words: 'Because she's Hillary Clinton.' Comey left no doubt whatsoever that Clinton and her staff broke the law ..."

Mueller's report likewise cites evidence of multiple attempts by the president to obstruct his investigation. "[T]he President sought to use his official power outside of usual channels," he writes. "These actions ranged from efforts to remove the Special Counsel and to reverse the effect of the Attorney General's recusal; to the attempted use of official power to limit the scope of the investigation; to direct and indirect contacts with witnesses with the potential to influence their testimony."

But before the evidence, the punt: "[W]e determined not to make a traditional prosecutorial judgment. The Office of Legal Counsel (OLC) has issued an opinion finding that 'the indictment or criminal prosecution of a sitting President would impermissibly undermine the capacity of the executive branch to perform its constitutionally assigned functions' in violation of 'the constitutional separation of powers.'"

Translation: Anyone else who did what Donald Trump did would find himself buried under obstruction of justice charges. But Donald Trump is the President of the United States.

The difference between Comey's treatment of Clinton and Mueller's treatment of Trump is that Clinton's immunity to laws meant for mere mortals was unofficial — based on her prominence as a ranking member of the political class — while Trump's similar immunity is a formal function of his holding a particular office.

Did Trump "obstruct justice?" I'm no lawyer, but Mueller's report indicates that Trump abused his power to attempt to impede the investigation. That sounds like obstruction to me.

Does it matter that the investigators found no underlying crime after overcoming the obstructions? Some people think so. I don't.

If you were accused of a "missing body" murder you didn't commit, and asked someone to give you a false alibi (because you were actually in bed with someone other than your spouse and didn't want THAT known), or gave a false tip to the police, you'd face charges independent of the underlying crime even if the supposed victim turned up alive.

Why? Because (in theory at least) a criminal investigation pursues the truth of the matter, not just a particular suspect or verdict.

Trump's conduct was aimed at frustrating that pursuit of truth. Immune or not, that's wrong.