

# HOW “COLLUSION” APPEARS IN THE MUELLER REPORT

Because it has been my hobby for the last 2 years, let me remind you that what law enforcement authorities have been investigating – with regards to the efforts of Donald Trump and his associates to optimize Russia’s efforts to help Trump get elected – has been conspiracy, not collusion. To show that Mueller’s report does not comment on whether Trump “colluded” with Russia, I’m going to show how the word “collusion” appears in it.

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Mueller was so determined to make this point clear he dedicated an entire section to saying he did not investigate “collusion.”

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## Not “collusion”

On page 2 – page 2!! – of the report, Mueller explains they didn’t investigate “collusion,” but instead investigated “conspiracy” and “coordination,” a point I’ve been making for years.

In evaluating whether evidence about collective action of multiple individuals constituted a crime, we applied the framework of conspiracy law, not the concept of “collusion.” In so doing, the Office recognized that the word “collud[e]” was used in communications with the Acting Attorney General confirming certain aspects of the investigation’s scope and that the term has frequently been invoked in public reporting about the investigation. But collusion is not a specific offense or theory of liability found in the United States Code, nor is it a term of art in federal criminal law. For those reasons, the Office’s focus in analyzing questions of joint criminal liability was on conspiracy as defined in federal law. In connection with that analysis, we addressed the factual question whether members of the Trump Campaign “coordinat[ed]”—a term that appears in the appointment order—with Russian election interference activities. Like collusion, “coordination” does not have a settled definition in federal criminal law. We understood coordination to require an agreement—tacit or express—between the Trump Campaign and the Russian government on election interference. That requires more than the two parties taking actions that were informed by or responsive to the other’s actions or interests. We applied the term coordination in that sense when stating in the report that the investigation did not establish that the Trump Campaign coordinated with the Russian government in its election interference activities.

# Not “collusion,” but conspiracy

Then there’s the dedicated section where Mueller explains their prosecutorial decisions were not about “collusion,” but about conspiracy.

## 1. Potential Coordination: Conspiracy and Collusion

As an initial matter, this Office evaluated potentially criminal conduct that involved the collective action of multiple individuals not under the rubric of “collusion,” but through the lens of conspiracy law. In so doing, the Office recognized that the word “collud[e]” appears in the Acting Attorney General’s August 2, 2017 memorandum; it has frequently been invoked in public reporting; and it is sometimes referenced in antitrust law, *see, e.g., Brooke Group v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 227 (1993). But collusion is not a specific offense or theory of liability found in the U.S. Code; nor is it a term of art in federal criminal law. To the contrary, even as defined in legal dictionaries, collusion is largely synonymous with conspiracy as that crime is set forth in the general federal conspiracy statute, 18 U.S.C. § 371. *See Black’s Law Dictionary* 321 (10th ed. 2014) (collusion is “[a]n agreement to defraud another or to do or obtain something forbidden by law”); 1 Alexander Burrill, *A Law Dictionary and Glossary* 311 (1871) (“An agreement between two or more persons to defraud another by the forms of law, or to employ such forms as means of accomplishing some unlawful object.”); 1 *Bouvier’s Law Dictionary* 352

(1897) (“An agreement between two or more persons to defraud a person of his rights by the forms of law, or to obtain an object forbidden by law.”).

For that reason, this Office’s focus in resolving the question of joint criminal liability was on conspiracy as defined in federal law, not the commonly discussed term “collusion.” The Office considered in particular whether contacts between Trump Campaign officials and Russia-linked individuals could trigger liability for the crime of conspiracy—either under statutes that have their own conspiracy language (*e.g.*, 18 U.S.C. §§ 1349, 1951(a)), or under the general conspiracy statute (18 U.S.C. § 371). The investigation did not establish that the contacts described in Volume I, Section IV, *supra*, amounted to an agreement to commit any substantive violation of federal criminal law—including foreign-influence and campaign-finance laws, both of which are discussed further below. The Office therefore did not charge any individual associated with the Trump Campaign with conspiracy to commit a federal offense arising from Russia contacts, either under a specific statute or under Section 371’s offenses clause.

# Trump’s gaslighting about the word “collusion”

Aside from those legal comments, the vast majority of the references to “collusion” in the report catalogue Trump’s usage of the term, such as this description of Trump telling his PDB briefers there was no “collusion.”

In addition to the specific comments made to Coats, Pompeo, and Rogers, the President spoke on other occasions in the presence of intelligence community officials about the Russia investigation and stated that it interfered with his ability to conduct foreign relations.<sup>355</sup> On at least two occasions, the President began Presidential Daily Briefings by stating that there was no **collusion** with Russia and he hoped a press statement to that effect could be issued.<sup>356</sup> Pompeo recalled that the President vented about the investigation on multiple occasions, complaining that there was no evidence against him and that nobody would publicly defend him.<sup>357</sup> Rogers recalled a private conversation with the President in which he “vent[ed]” about the investigation, said he had done nothing wrong, and said something like the “Russia thing has got to go away.”<sup>358</sup> Coats recalled the President bringing up the Russia investigation several times, and Coats said he finally told the President that Coats’s job was to provide intelligence and not get involved in investigations.<sup>359</sup>

There’s the description of how Trump claimed there was no “collusion” in some of the 8

conversations he had with Steve Bannon in advance of firing Jim Comey.

Bannon recalled that the President brought Comey up with him at least eight times on May 3 and May 4, 2017.<sup>399</sup> According to Bannon, the President said the same thing each time: “He told me three times I’m not under investigation. He’s a showboater. He’s a grandstander. I don’t know any Russians. There was no **collusion**.”<sup>400</sup> Bannon told the President that he could not fire Comey because “that ship had sailed.”<sup>401</sup> Bannon also told the President that firing Comey was not going to stop the investigation, cautioning him that he could fire the FBI director but could not fire the FBI.<sup>402</sup>

There are the mad tweets claiming there was no “collusion.”

after being sworn in.<sup>495</sup> Late in the morning of May 12, 2017, the President tweeted, “Again, the story that there was **collusion** between the Russians & Trump campaign was fabricated by Dems as an excuse for losing the election.”<sup>496</sup> The President also tweeted, “James Comey better hope that there are no ‘tapes’ of our conversations before he starts leaking to the press!” and “When James Clapper himself, and virtually everyone else with knowledge of the witch hunt, says there is no collusion, when does it end?”<sup>497</sup>

Yet more mad tweets claiming no “collusion.”

Beginning early the next day, June 15, 2017, the President issued a series of tweets acknowledging the existence of the obstruction investigation and criticizing it. He wrote: “They made up a phony **collusion** with the Russians story, found zero proof, so now they go for obstruction of justice on the phony story. Nice!”<sup>566</sup> “You are witnessing the single greatest WITCH HUNT in American political history—led by some very bad and conflicted people!”<sup>567</sup> and “Crooked H destroyed phones w/ hammer, ‘bleached’ emails, & had husband meet w/AG days

And still more mad tweets claiming no “collusion.”

before she was cleared—and they talk about obstruction?”<sup>568</sup> The next day, June 16, 2017, the President wrote additional tweets criticizing the investigation: “After 7 months of investigations & committee hearings about my ‘**collusion** with the Russians,’ nobody has been able to show any proof. Sad!”<sup>569</sup> and “I am being investigated for firing the FBI Director by the man who told me to fire the FBI Director! Witch Hunt.”<sup>570</sup>

And more tweets about “collusion.”

tweeted, “The Russian Witch Hunt Hoax continues, all because Jeff Sessions didn’t tell me he was going to recuse himself. . . . I would have quickly picked someone else. So much time and money wasted, so many lives ruined . . . and Sessions knew better than most that there was No **Collusion**!”<sup>769</sup> On August 1, 2018, the President tweeted that “Attorney General Jeff Sessions

Still more batshit tweets about “collusion.”

of the Department of Justice will not be improperly influenced by political considerations.”<sup>773</sup> The next day, the President tweeted a response: “‘Department of Justice will not be improperly influenced by political considerations.’ Jeff, this is GREAT, what everyone wants, so look into all of the corruption on the ‘other side’ including deleted Emails, Comey lies & leaks, Mueller conflicts, McCabe, Strzok, Page, Ohr, FISA abuse, Christopher Steele & his phony and corrupt Dossier, the Clinton Foundation, illegal surveillance of Trump campaign, Russian **collusion** by Dems – and so much more. Open up the papers & documents without redaction? Come on Jeff, you can do it, the country is waiting!”<sup>774</sup>

And still more batshit tweets about “collusion.”

Democrats that are doing his dirty work are a disgrace to USA!”<sup>863</sup> Minutes later, the President tweeted, “Paul Manafort worked for Ronald Reagan, Bob Dole and many other highly prominent and respected political leaders. He worked for me for a very short time. Why didn’t government tell me that he was under investigation. These old charges have nothing to do with **Collusion**—a Hoax!”<sup>864</sup> Later in the day, the President tweeted, “Looking back on history, who was treated

The “collusion” tweets suffer from no limits of market scarcity.

Hoax!”<sup>864</sup> Later in the day, the President tweeted, “Looking back on history, who was treated worse, Alphonse Capone, legendary mob boss, killer and ‘Public Enemy Number One,’ or Paul Manafort, political operative & Reagan/Dole darling, now serving solitary confinement—although convicted of nothing? Where is the Russian **Collusion**?”<sup>865</sup> The President’s tweets about the

## Trump’s lawyers repeat the “collusion” frame

Then there’s the one citation of Trump’s lawyers addressing “collusion” as opposed to something illegal.

<sup>830</sup> 1/29/18 Letter, President’s Personal Counsel to Special Counsel’s Office, at 1-2 (“In our conversation of January 8, your office identified the following topics as areas you desired to address with the President in order to complete your investigation on the subjects of alleged **collusion** and obstruction of justice”; listing 16 topics).

## Why would you report on Trump claiming no “collusion”?

Then there’s this reference to a journalist reporting on Trump claiming no “collusion.”

<sup>866</sup> See, e.g., Carol D. Leonnig et al., *Trump calls Manafort prosecution “a hoax,” says Sessions should stop Mueller investigation “right now”*, Washington Post (Aug. 1, 2018); Louis Nelson, *Trump claims Manafort case has “nothing to do with collusion”*, Politico (Aug. 1, 2018).

## Shitty reporting using the term “collusion”

Finally, there is a single reference to reporting using the term “collusion” on the day Comey said they were not investigating that.  
[shakes head at the headline writers]

<sup>321</sup> E.g., Matt Apuzzo et al., *F.B.I. Is Investigating Trump’s Russia Ties, Comey Confirms*, New York Times (Mar. 20, 2017); Andy Greenberg, *The FBI Has Been Investigating Trump’s Russia Ties Since July*, Wired (Mar. 20, 2017); Julie Borger & Spencer Ackerman, *Trump-Russia collusion is being investigated by FBI, Comey confirms*, Guardian (Mar. 20, 2017); see Comey 1/6/17 Memorandum, at 2.

In other words, the references to “collusion” in the Mueller Report fall, generally, into two categories. A legal discussion explaining why Mueller was not investigating “collusion.” And a catalogue of the instances where Trump and his surrogates denied that he was guilty of that non-crime.

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