

THE REPUBLICANS COMPLAINING ABOUT MUELLER'S NON- EXONERATION OF TRUMP DON'T CARE THAT HE EXONERATED JEFF SESSIONS

One of the new attacks Republicans launched on the Mueller Report yesterday is that Mueller explicitly did not exonerate Trump, complaining that prosecutorial discretion doesn't include the power to exonerate. Here's how John Ratcliffe put it yesterday.

The special counsel's job – nowhere does it say that you were to conclusively determine Donald Trump's innocence, or that the special counsel report should determine whether or not to exonerate him. It not in any of the documents. It's not in your appointment order. It's not in the special counsel regulations. It's not in the OLC opinions. It's not in the Justice Manual. And it's not in the Principles of Federal Prosecution.

Nowhere do those words appear together because, respectfully – respectfully, Director, it was not the special counsel's job to conclusively determine Donald Trump's innocence or to exonerate him. Because the bedrock principle of our justice system is a presumption of innocence. It exists for everyone. Everyone is entitled to it, including sitting presidents. And because there is a presumption of innocence, prosecutors never, ever need to conclusively determine it.

Except that Ratcliffe and other Republicans didn't complain and aren't complaining about the point in his report, as released, where he *did* exonerate someone, with Bill Barr's approval: Jeff Sessions.

As set forth in Volume I, Section IV.A.6, supra, the investigation established that, while a U.S. Senator and a Trump Campaign advisor, former Attorney General Jeff Sessions interacted with Russian Ambassador Kislyak during the week of the Republican National Convention in July 2016 and again at a meeting in Sessions' s Senate office in September 2016. The investigation also established that Sessions and Kislyak both attended a reception held before candidate Trump's foreign policy speech at the Mayflower Hotel in Washington, D.C., in April 2016, and that it is possible that they met briefly at that reception.

The Office considered whether, in light of these interactions, Sessions committed perjury before, or made false statements to, Congress in connection with his confirmation as Attorney General. In January 2017 testimony during his confirmation hearing, Sessions stated in response to a question about Trump Campaign communications with the Russian government that he had "been called a surrogate at a time or two in that campaign and I didn't have – did not have communications with the Russians." In written responses submitted on January 17, 2017, Sessions answered "[n]o" to a question asking whether he had "been in contact with anyone connected to any part of the Russian government about the 2016 election, either before or after election day." And, in a March 2017 supplement to his testimony, Sessions identified two of

the campaign-period contacts with Ambassador Kislyak noted above, which had been reported in the media following the January 2017 confirmation hearing. Sessions stated in the supplemental response that he did “not recall any discussions with the Russian Ambassador, or any other representatives of the Russian government, regarding the political campaign on these occasions or any other occasion.”

Although the investigation established that Sessions interacted with Kislyak on the occasions described above and that Kislyak mentioned the presidential campaign on at least one occasion, the evidence is not sufficient to prove that Sessions gave knowingly false answers to Russia-related questions in light of the wording and context of those questions. With respect to Sessions’s statements that he did “not recall any discussions with the Russian Ambassador . . . regarding the political campaign” and he had not been in contact with any Russian official “about the 2016 election,” the evidence concerning the nature of Sessions’s interactions with Kislyak makes it plausible that Sessions did not recall discussing the campaign with Kislyak at the time of his statements. Similarly, while Sessions stated in his January 2017 oral testimony that he “did not have communications with Russians,” he did so in response to a question that had linked such not have communications with Russians,” he did so in response to a question that had linked such communications to an alleged “continuing exchange of information” between the Trump Campaign and Russian government intermediaries. Sessions later explained to the Senate and to the Office that he understood the question as narrowly calling for disclosure of interactions with Russians that involved the exchange

of campaign information, as distinguished from more routine contacts with Russian nationals. Given the context in which the question was asked, that understanding is plausible.

Accordingly, the Office concluded that the evidence was insufficient to prove that Sessions was willfully untruthful in his answers and thus insufficient to obtain or sustain a conviction for perjury or false statements. Consistent with the Principles of Federal Prosecution, the Office therefore determined not to pursue charges against Sessions and informed his counsel of that decision in March 2018.

In fact, Mueller must have provided similar explanations in at least four more instances, where he explained why other Trump people didn't get charged, most often for lying.

But all of those other discussions were redacted under a personal privacy exemption (or, in the FOIA version, a b(5), b(6)/b(7)(C) exemption). Presumably, those other instances were less clearcut, or perhaps they simply weren't someone as senior as Sessions. But redactions consistently applied would have redacted this passage too, denying Sessions (who would be running for his old Senate seat this year if Trump weren't still angry that Sessions didn't act more like Bill Barr while serving as Attorney General) of the public explanation why he wasn't charged.

Nothing Mueller said yesterday indicated he had any complaints about the redactions in the report (though he was more willing to talk about why Trump Sr. didn't testify – the discussion of which is partly redacted in the report – than Don Jr, which is redacted under the same grand jury justification).

But in the case of Jeff Sessions, the redaction process was not treated in the way applied with

everyone else, especially including mentions of Don Jr. And Republican silence about that inconsistency suggests they don't really have a principled stance about public decisions of exoneration.