

BOTH ROD ROSENSTEIN AND RICHARD BURR CHOSE NOT TO INVESTIGATE TRUMP'S BIGGEST COUNTERINTELLIGENCE VULNERABILITY

Mike Schmidt has a story describing that Rod Rosenstein led Andrew McCabe to believe that the Deputy Attorney General had tasked Robert Mueller to investigate the counterintelligence risk posed by Trump's financial vulnerabilities, even though Rosenstein told Mueller to limit his own investigation to criminal matters.

The Justice Department secretly took steps in 2017 to narrow the investigation into Russian election interference and any links to the Trump campaign, according to former law enforcement officials, keeping investigators from completing an examination of President Trump's decades-long personal and business ties to Russia.

[snip]

Mr. Rosenstein concluded the F.B.I. lacked sufficient reason to conduct an investigation into the president's links to a foreign adversary. Mr. Rosenstein determined that the investigators were acting too hastily in response to the firing days earlier of James B. Comey as F.B.I. director, and he suspected that the acting bureau director who approved the opening of the inquiry, Andrew G. McCabe, had conflicts of interest.

Mr. Rosenstein never told Mr. McCabe

about his decision, leaving the F.B.I. with the impression that the special counsel would take on the investigation into the president as part of his broader duties. Mr. McCabe said in an interview that had he known Mr. Mueller would not continue the inquiry, he would have had the F.B.I. perform it.

“We opened this case in May 2017 because we had information that indicated a national security threat might exist, specifically a counterintelligence threat involving the president and Russia,” Mr. McCabe said. “I expected that issue and issues related to it would be fully examined by the special counsel team. If a decision was made not to investigate those issues, I am surprised and disappointed. I was not aware of that.”

The story is infuriating – except it also raises a number of questions it doesn’t answer, especially coming from a journalist who himself set Trump’s red line of a financial investigation just weeks after these decisions apparently took place.

Schmidt – who has obviously been fed stories by Andrew McCabe in the past – describes Rosenstein telling Mueller not to do a counterintelligence investigation.

But privately, Mr. Rosenstein instructed Mr. Mueller to conduct only a criminal investigation into whether anyone broke the law in connection with Russia’s 2016 election interference, former law enforcement officials said.

Except he doesn’t explain how that – or continued ignorance on the part of the FBI that Rosenstein had bracketed off such an investigation – is consistent with this passage from the Mueller Report:

From its inception, the Office recognized that its investigation could identify foreign intelligence and counterintelligence information relevant to the FBI's broader national security mission. FBI personnel who assisted the Office established procedures to identify and convey such information to the FBI. The FBI's Counterintelligence Division met with the Office regularly for that purpose for most of the Office's tenure. For more than the past year, the FBI also embedded personnel at the Office who did not work on the Special Counsel's investigation, but whose purpose was to review the results of the investigation and to send-in writing-summaries of foreign intelligence and counterintelligence information to FBIHQ and FBI Field Offices. Those communications and other correspondence between the Office and the FBI contain information derived from the investigation, not all of which is contained in this Volume.

Sometime before March 2018, a period that may entirely post-date McCabe's resignation on January 29, 2018, Mueller embedded FBI Agents into his team who knew what he was and wasn't doing on counterintelligence. It seems impossible that FBI had no idea about the scope of Mueller's counterintelligence investigation after that point. I'm not suggesting that Schmidt is wrong (he must be right, because Adam Schiff has been saying the same thing). I'm suggesting this narrative (at least as presented in the NYT version of the story), has some gaps.

One gap appears in this passage, suggesting SSCI was simply helpless in the face of legal obstacles in obtaining information on Trump's finances.

A bipartisan report by the Republican-led Senate Intelligence Committee released this month came the closest to

an examination of the president's links to Russia. Senators depicted extensive ties between Trump associates and Russia, identified a close associate of a former Trump campaign chairman as a Russian intelligence officer and outlined how allegations about Mr. Trump's encounters with women during trips to Moscow could be used to compromise him. But the senators acknowledged they lacked access to the full picture, particularly any insight into Mr. Trump's finances.

The single thing in the known scope of the SSCI Report that wasn't also included in the Mueller Report – with the possible exception of an investigation into several other allegations that Trump had been sexually compromised by Russia – is Aleksandr Torshin's efforts to reach out to Trump via the NRA (but SSCI itself limited its investigation into NRA, and in a few cases wouldn't have obtained material had Ron Wyden not obtained it on the Finance Committee). One weakness of the SSCI Report is an almost juvenile suggestion that sexual kompromat would be the only kind of compromising information Russia had on Trump.

But to some degree, SSCI *chose* not to include Trump's financial ties to Russia in their report – that was the most persistent complaint from most Democrats on the committee.

[T]he Committee did not cover all areas of concern. For example, the Committee's investigation, for a variety of reasons, did not seek, and was not able to review, records regarding Donald Trump's finances and the numerous areas where those financial interests appear to have overlapped with Russia. In turn, the reader should not interpret the Report's absence of information on this topic to indicate that nothing of interest was found. Rather, it should be acknowledged that this was a potentially meaningful

area that the Committee did not probe.
[my emphasis]

BuzzFeed reported in 2018 that Richard Burr didn't think Trump's financial ties to be relevant.

Burr has dismissed Wyden's complaints. "Whether every member has chosen to come and actually spend the time to go through [the documents] is a whole other question. I'm tired of hearing the fact that we don't follow [the money]," Burr said. "We are investigating every avenue that gives us clarity into what the mission is of this investigation, but that's not to fall outside the mission of the investigation. I could care less how they financed a deal 20 years ago somewhere because I don't think it's relevant."

An earlier report described that Treasury was providing SARs to SSCI's investigators; it just hadn't been asked for those pertaining to Trump and his family.

Rod Rosenstein's decision not to investigate Trump's vulnerability to Russian compromise is one thing. Richard Burr's decision to similarly constrain his investigation is another. Indeed, Burr's decision is in many ways less defensible; as a co-equal branch, it is Congress' job to ensure that the President doesn't betray the country.

The fact that both men – who stayed on good terms with Trump while seeming to oversee an aggressive investigation into him – chose not to look into the most obvious source of compromise suggests that someone knows what they would find.

Update: Fixed timing of Mueller Report completion and McCabe resignation as Deputy Director.

Update: On Twitter, Andrew Weissmann says key parts of the NYT story – the ones I raised questions about – are wrong.

NYT story today is wrong re alleged secret DOJ order prohibiting a counterintelligence investigation by Mueller, “without telling the bureau.” Dozens of FBI agents/analysts were embedded in Special Counsel’s Office and we were never told to keep anything from them.

Also erroneous is NYT claim “Rosenstein concluded the F.B.I. lacked sufficient reason to conduct an investigation into the president’s links to a foreign adversary.” See DOJ Special Counsel Appointment Order, para. (b)(i).