

# The Mueller Investigation and Beyond



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*To Cheryl*  
Ellen S. Podgor

*To Lincoln A. Copeland*  
Katrice Bridges Copeland

*To Jennifer (Dimino)*  
Michael R. Dimino

*For all the Stormys, Summers, and Jane Does*  
Ruthann Robson

*To Meg, Gavin, and Ella*  
Louis J. Virelli, III

*To Caprice Roberts and Garrett Robert Wright*  
Andrew M. Wright

*To Eric Poulos for his unwavering support*  
Ellen C. Yaroshefsky



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# Preface

It is impossible to provide in a single legal casebook a comprehensive review and analysis of the Mueller Report and the legal issues arising during the investigation. There are also ongoing matters that make this discussion tentative in many areas. Thus, this book provides discussion of select areas that can assist students with a capstone understanding of different aspects of law. Looking at this investigation allows law students the opportunity to place into a single context many of the concepts they have previously learned in undergraduate or law school.

Chapter One provides a general overview of the appointment and purpose of having a special counsel in this instance. It also covers Special Counsel Robert Mueller's submission of his Report and the statements made by Attorney General Barr upon release of the unredacted portions of the Report. This chapter provides the contextual setting for the later chapters in the book.

Chapter Two looks at the appointment of Special Counsel Robert Mueller and the controversies raised following his appointment. It examines cases where a special counsel appointment has been reviewed in courts. Both administrative law and constitutional law are the focus of this chapter.

Chapter Three recognizes that Special Counsel's investigation operates parallel to congressional, criminal, and counterintelligence investigations. The role of attorney-client privilege, immunity and compelled testimony are examined here. This chapter includes historical context for examination of these legislative, evidence, criminal law, and administrative issues.

Chapter Four focuses on ethics issues that arose during the Mueller Investigation. It provides a historical setting looking at the Nixon recordings and Watergate, while also examining the law regarding tape recording and the ethical constraints on lawyer secret recordings. It considers public commentary by lawyers who serve as media pundits, and also those who are counsel on a case. This chapter provides examination of professional responsibility issues.

Chapter Five looks at an issue that arose during this investigation, namely, the role of the attorney-client privilege with respect to Michael Cohen, former Trump Organization Executive Vice President and Special Counsel to Donald J. Trump. Considered here is whether Michael Cohen was acting as an attorney providing legal advice or whether his role was one to provide business advice. In conjunction with this review is whether the crime-fraud exception applied to these circumstances. The chapter concludes with a discussion of how to protect the attorney-client privilege

when an attorney receives a search warrant. This chapter provides examination of evidence issues.

Chapter Six considers two issues of election law related to the Trump Campaign's behavior surrounding the 2016 election. First, it asks whether, if Trump Campaign officials agreed to receive damaging information about Secretary Hillary Clinton from foreign persons, the Campaign officials violated the federal ban on "accept[ing] or receiv[ing]" a "thing of value" from a foreign national. Second, the chapter addresses whether the payment of hush money to two of Trump's alleged mistresses (and the Campaign's failure to report the payments to the FEC) would constitute illegal contributions to the campaign if the payments were an attempt to prevent the public from learning damaging information about the candidate. This chapter offers an examination of election law issues.

Chapter Seven looks at Obstruction of Justice, the focus of Volume Two of the Mueller Report. It dissects the applicable federal obstruction statutes and considers this with the Mueller Report's legal framework. It then looks at the executive summaries that match the law with the alleged conduct. It concludes by examining statutory and constitutional defenses that were considered during the Mueller Investigation. This chapter offers an examination of criminal law, federal criminal law, and white-collar crime issues.

Chapter Eight, the final chapter in the book, looks beyond the Mueller Report to issues referenced in the report but not a focus of the investigation into Russian interference with the election. It looks at civil lawsuits regarding alleged sexual misconduct by the President. It considers the variety of civil lawsuits, the statute of limitations of these actions, the role of Presidential Immunity, and the doctrine of defamation. This chapter offers an examination of constitutional law, presidential power, civil procedure, and the First Amendment.

Throughout the book there are instances in both cases and other materials where the authors of the chapter edited the material. When there are materials that are edited, the authors typically will use \* \* \* to show that material from the original has been removed. It should also be noted that the authors may have removed footnotes and case citations throughout the materials. The citations or urls are often provided so that students interested in seeing the full cases or other items can go to view this material.

We acknowledge Professor Bradley A. Smith, the Josiah H. Blackmore II/Shirley M. Nault Professor of Law at Capital University Law School for allowing us to reprint a part of his article, *Michael Cohen Pled Guilty to Something That Is Not a Crime*, from the NAT'L REV., Dec. 12, 2018, in Chapter Six of the book.

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