

---

Faculty Open Access Publications

---

1-1-2020

## Review of The Mueller Report

Jooho Lee

Pepperdine University, [joocho.lee@pepperdine.edu](mailto:joocho.lee@pepperdine.edu)

Follow this and additional works at: [https://digitalcommons.pepperdine.edu/faculty\\_pubs](https://digitalcommons.pepperdine.edu/faculty_pubs)

---

### Recommended Citation

Lee, Jooho, "Review of The Mueller Report" (2020). Pepperdine University, *Faculty Open Access Publications*. Paper 148.

[https://digitalcommons.pepperdine.edu/faculty\\_pubs/148](https://digitalcommons.pepperdine.edu/faculty_pubs/148)

This Article is brought to you for free and open access by Pepperdine Digital Commons. It has been accepted for inclusion in Faculty Open Access Publications by an authorized administrator of Pepperdine Digital Commons. For more information, please contact [linhgavin.do@pepperdine.edu](mailto:linhgavin.do@pepperdine.edu).

## Review of *The Mueller Report*

The *Report on the Investigation into Russian Interference in the 2016 Presidential Election*, more commonly referred to as “The Mueller Report,” (“Report”) should be mandatory reading for those who are interested in the integrity of American democratic institutions and its leaders. But it is a worthwhile read even for those who may not share such an interest. A business ethics scholar, for instance, might find that the Report contains plenty of material that can inspire scholarly reflection on the moral relevance of non-market considerations to business.

The Report weighs in at almost 400 pages and consists of two volumes. Volume I provides a summary of an investigation into Russian interference with the 2016 U.S. Presidential Election (“Election”). A significant part of the investigation focuses on potential connections between Russia and individuals associated with the political campaign of the eventual winner of the Election, Donald Trump. Volume II focuses on Donald Trump’s response to the investigation as the President of the United States. The events described in Volume I are likely to provide a more fertile ground for business ethicists. Nevertheless, in recognition of the political import of the Report and the need to provide some context for its findings, this review will begin by providing relevant information on the circumstances that led to the Report and summarize the findings of Volume II before turning its focus to Volume I and the potential questions that it may inspire for business ethicists.

The Report is the result of an investigation conducted by Special Counsel Robert S. Mueller III, who had served as the director of the Federal Bureau of Investigation (FBI) for over a decade until 2013. A Special Counsel is someone appointed to assume the U.S. Attorney’s General’s responsibility for conducting a criminal investigation into a person or a matter when such an investigation would be in the public interest to be handled by someone outside the U.S. Department of Justice due to a conflict of interest or “other extraordinary circumstances.”<sup>1</sup>

The immediate chain of events that constitute such extraordinary circumstances can be traced back to 2014, which is when the Report determines that a Russian organization began to conduct social media operations targeting the U.S.<sup>2</sup> In 2015, the eventual nominees of the two major political parties in the U.S. – Donald Trump and Hilary Clinton – announced their intention to seek the nomination of their respective political parties. And in early 2016, the Report concludes that the Russian Federation’s Main Intelligence Directorate of the General Staff successfully hacked the computers and email accounts of various individuals associated with the Democratic National Committee (DNC) and the Clinton Campaign and released the hacked information during the summer and fall of 2016 through a variety of outlets.<sup>3</sup>

The circumstances surrounding the possibility of Russian interference with the U.S. political process quickly became a matter of national interest. In late July of 2016, the FBI began an investigation into the alleged hacking of Clinton and the DNC, and, several months later, two

---

<sup>1</sup> 28 C.F.R. § 600.1.

<sup>2</sup> *Report on the investigation into Russian interference in the 2016 presidential election, Volume I* (hereafter referred to as “Volume I”), 14.

<sup>3</sup> Volume I, 36.

federal agencies – the Department of Homeland Security and the Office of the Director of National Intelligence – made a joint announcement that the Russian government had directed these hacking efforts.<sup>4</sup> In early January of 2017, the FBI, along with two other major federal agencies, released a declassified report to the public that “concluded with high confidence that Russia had intervened in the election through a variety of means to assist Trump’s candidacy and harm Clinton’s.”<sup>5</sup> Shortly thereafter, Congress began its own inquiries into these events and, among other things, held a hearing in which then-FBI director James Comey confirmed that the FBI was investigating the Russian government’s efforts to interfere with the Election along with any possible links between such efforts and members of the Trump Campaign. As the Report notes, this investigation “continued under then-Director Comey for the next seven weeks until... President Trump fired Comey as FBI Director.”<sup>6</sup> Lastly, the news media also reported on a variety of potential connections between various individuals associated with the Trump campaign and Russia, including alleged meetings that took place between then-Senator Jeff Sessions and a Russian ambassador during the months leading up to the Election.<sup>7</sup> As the U.S. Attorney General, Sessions had responsibility over the U.S. Department of Justice (and thus also the FBI). After allegations of Sessions’ involvement with Russia became public, Sessions recused himself from ongoing investigations into the events surrounding Russian interference with the Election.<sup>8</sup>

Given the firing of then-FBI director Comey, recusal of U.S. Attorney General Sessions, and public scrutiny of the events surrounding the Election, the Acting U.S. Attorney General decided to appoint Mueller as a Special Counsel to continue the investigation that Comey acknowledged to Congress in early 2017. The Special Counsel is the most recent incarnation of a position that has long existed in U.S. history. During the Watergate scandal, for instance, someone appointed as a Special Prosecutor was tasked with investigating the events surrounding the Watergate burglary. Under the current law, the Special Counsel has the power to “exercise all investigative and prosecutorial functions of any United States Attorney.”<sup>9</sup> As the Report indicates, Mueller’s Office “issued more than 2,800 subpoenas under the auspices of a grand jury sitting in the District of Columbia; executed nearly 500 search-and-seizure warrants; obtained more than 230 orders for communications records...; obtained almost 50 orders authorizing use of pen registers; made 13 requests to foreign governments pursuant to Mutual Legal Assistance Treaties; and interviewed approximately 500 witnesses, including almost 80 before a grand jury.”<sup>10</sup> At the end of the investigation, the Special Counsel’s Office decided to prosecute dozens of individuals and to decline to prosecute many others. Figure 1 displays a timeline of relevant events leading up to and including the investigation.

---

<sup>4</sup> Volume I, 7.

<sup>5</sup> Volume I, 8.

<sup>6</sup> Volume I, 8.

<sup>7</sup> *Report on the investigation into Russian interference in the 2016 presidential election, Volume II* (hereafter referred to as “Volume II”), 48.

<sup>8</sup> Volume II, 48-51.

<sup>9</sup> 28 C.F.R. § 600.6

<sup>10</sup> Volume I, 13.

-----  
Insert FIGURE 1 about here  
-----

The Report is the final document produced by Mueller’s Office to comply with the legal requirement to “provide the Attorney General with a confidential report explaining the prosecution or declination decisions reached by the Special Counsel” at the end of the Special Counsel’s work.<sup>11</sup> In addition to explaining the Special Counsel’s prosecution and declination decisions, the Report also contains “information necessary to... describe the investigation’s main factual results.”<sup>12</sup> The Department of Justice released a redacted version of the Report to the public several weeks after it was submitted to the Attorney General.

Those who are particularly interested in an examination of President Trump’s conduct might wish to spend more time on Volume II of the Report. Volume II focuses on factual and legal issues that are relevant to determine whether or not the President’s reaction to the investigation constituted an obstruction of justice, which is a federal crime. Most of the section focuses on the application of the legal standard for obstruction of justice to the available evidence, with some legal discussion in the end about the appropriate interpretation of the obstruction of justice statute and the Constitutional implications of investigating an acting President.

Volume II begins with an explanation of the Special Counsel’s decision to avoid making a traditional prosecutorial judgment to either prosecute or decline to prosecute President Trump for obstruction of justice. In 2000, the Office of Legal Counsel, which is the legal advisory office of the Department of Justice, issued an opinion that affirmed the conclusion of its 1973 memorandum that “the indictment or criminal prosecution of a sitting President would be unconstitutional because it would impermissibly interfere with the President’s ability to carry out his constitutionally assigned functions and thus would be inconsistent with the constitutional structure.”<sup>13</sup> The Special Counsel chose to abide by this legal conclusion by presenting all available evidence in light of the legal standard for obstruction of justice without making any traditional prosecutorial judgment. As a result, the discussion of the evidence in light of the legal standard is carefully written to present available evidence without coming to any legal conclusion. When the evidence fails to establish a necessary element of the legal standard, the report makes it clear that the evidence fails to do so. However, the report is careful to avoid saying that the evidence establishes a necessary element to convict the President of a federal crime. Instead, it would frequently state that there is evidence that would be *relevant* to meeting the legal standard for obstruction of justice. Nevertheless, the Report makes it clear that “if [the Special Counsel’s Office] had confidence... that the President clearly did not commit obstruction

---

<sup>11</sup> 28 C.F.R. § 600.8(c)

<sup>12</sup> Volume I, 13.

<sup>13</sup> *A sitting president’s amenability to indictment and criminal prosecution*, 24 Op. O.L.C. 222, 223 (2000).

of justice, [it] would so state [but] [b]ased on the facts and the applicable legal standards, [it was] unable to reach that judgment.”<sup>14</sup>

On the other hand, those who are more interested in drawing scholarly inspiration for business ethics research might want to spend more time on Volume I of the Report. Volume I focuses on the factual findings of the investigation into the events surrounding Russian interference with the Election. It concludes that a Russian organization “conducted social media operations targeted at large U.S. audiences with the goal of sowing discord in the U.S. political system.”<sup>15</sup> It also concludes that the Russian government hacked into computers and email accounts of various individuals associated with Hillary Clinton’s Presidential Campaign and released sensitive information “designed and timed to interfere with the 2016 U.S. presidential election and undermine the Clinton Campaign.”<sup>16</sup> Lastly, it identifies multiple instances in which individuals associated with the Trump Campaign had significant contacts or links with individuals associated with the Russian government. Several – but not all – individuals associated with the Trump Campaign who were investigated were eventually charged with violating various federal laws.

The overall pattern of events described in Volume I highlight interesting questions for business ethicists. Take, for instance, the events concerning a real estate project in Moscow. According to the Report, the Trump organization began considering a real-estate project in Russia in 2013 that fizzled out by late 2014.<sup>17</sup> However, in late summer of 2015, the Report alleges that a Russian real-estate development corporation reached out to the Trump organization and eventually entered into a deal to build a Trump-branded project in Moscow in which the Trump organization would “earn substantial sums over the lifetime of the project, without assuming significant liabilities or financing commitments.”<sup>18</sup> How the Trump organization received such a favorable deal is not discussed, but the broader context is suggestive. As the Report notes, “Russian-government-connected individuals... began showing interest in Trump’s campaign in the months after he announced his candidacy in June 2015.”<sup>19</sup> And during the course of negotiations for the project, the Report alleges that an agent for the Russian real estate corporation informed Michael Cohen, a senior official within the Trump organization, that he could arrange for Vladimir Putin to increase Donald Trump’s chances for being elected by pledging support for Trump at the ribbon cutting ceremony for the project.<sup>20</sup> According to the Report, he also informed Cohen that a meeting between Trump and Russian officials will be ostensibly to discuss financing for the project because “[p]olitically neither Putins office nor Ministry of Foreign Affairs cannot issue invite, so they are inviting commercially/business.”<sup>21</sup>

---

<sup>14</sup> Volume II, 182.

<sup>15</sup> Volume I, 14.

<sup>16</sup> Volume I, 36.

<sup>17</sup> Volume I, 67-68.

<sup>18</sup> Volume I, 71.

<sup>19</sup> Volume I, 66.

<sup>20</sup> Volume I, 70-72. It is also worth noting that Michael Cohen eventually cooperated with the Special Counsel’s Office and has expressed disappointment that the Special Counsel was reluctant to comment further on his investigation on issues related to obstruction of justice and witness tampering. See, e.g., Paul LeBlanc, *Michael Cohen responds to Mueller testimony from prison: 'The American people deserve more!'*, CNN.com (July 24, 2019), <https://www.cnn.com/2019/07/24/politics/michael-cohen-mueller-testimony/index.html>.

<sup>21</sup> Volume I, 76.

The Report also indicates that a different set of conversations between other individuals involved with the project revealed an understanding that a publicized meeting between Trump and Putin “could have ‘phenomenal’ impact ‘in a business dimension’ and... have significant ramifications for the ‘level of projects and their capacity.’”<sup>22</sup>

It is embarrassingly obvious to state that one’s political connections can be good for business. After all, the government has tremendous power to influence business. Thus, businesses often engage in various forms of non-market strategy to influence the political environment. For instance, the Report found that a Russian national who heads Russia’s largest commercial bank tried to take steps to protect the bank from potential U.S. sanctions against him and the bank.<sup>23</sup> The Report also states that an American lobbyist made a business of consulting for a Russian aluminum and energy oligarch with close ties to Vladimir Putin to provide “political insurance” by “install[ing] friendly political officials in countries where [the oligarch] had business interests.”<sup>24</sup>

It is also obvious to point out that business connections can be good for politics. The Report states that Russian officials attempted to reach out to members of the Trump administration through a variety of individuals such as a fashion industry professional<sup>25</sup> and an investment banker<sup>26</sup> who had formed relationships with members of the Trump administration through their business dealings. According to the Report, President Trump’s political team also included numerous individuals who had significant business experience, including a political advisor whose expertise was in the energy sector,<sup>27</sup> a former Merrill Lynch executive,<sup>28</sup> and a publicist for a Russian real-estate developer.<sup>29</sup> The Report also states that one well-connected businessman who had no formal role within the Trump Administration was nevertheless considered to be a “trusted associate” of the Trump Administration<sup>30</sup> and thus allowed access to key political figures to discuss foreign policy issues and key national security positions.

What might not be as obvious is that the pattern of events in Volume I illustrate the difficulty of characterizing market participation as a distinct sphere of human activity. One significant set of questions for business ethicists concerns the nature of the market and the extent to which it can be thought to exist separately from its political and social context. Sociologists have long recognized that markets are embedded within other sets of important institutions.<sup>31</sup> Yet an influential approach to business ethics is premised on the idea that the market constitutes a specific domain of activity that is governed by a distinct set of norms that have evolved to be sufficient for governing actions undertaken within this domain, regardless of any potential

---

<sup>22</sup> Volume I, 73.

<sup>23</sup> Volume I, 146.

<sup>24</sup> Volume I, 131.

<sup>25</sup> Volume I, 78.

<sup>26</sup> Volume I, 79.

<sup>27</sup> Volume I, 86.

<sup>28</sup> Volume I, 96.

<sup>29</sup> Volume I, 111.

<sup>30</sup> Volume I, 149.

<sup>31</sup> See, e.g., Granovetter, M. (1985). *Economic action and social structure: The problem of embeddedness*. American Journal of Sociology 91(3), 481-510.

conflicts of such actions with norms in other domains of activity.<sup>32</sup> But what happens when a business action spans across the line that supposedly divides the market from other political and social institutions? Which sets of norms should govern? Might there be a possibility that multiple sets of norms apply within the business context even while recognizing some basic moral division of labor within society?<sup>33</sup>

Furthermore, the events in Volume I highlight the underexplored question of the role that special relationships should play in business. The reason for the blurring of the line between markets and other institutions is due, at least in part, to the very nature of relationships that constitute business activity. Take, for instance, the blurring of the line between family, friendship, business and politics in the person of Jared Kushner. Kushner is married to President Trump's daughter and plays a significant role in the Trump Administration. The Report alleges that, as part of his political role, Kushner leveraged his personal friendship with a hedge fund manager to arrange meetings between the Trump Administration and important political parties such as Tony Blair, who is the former U.K. prime minister, and a delegation from the U.A.E. led by Crown Prince Mohammed.<sup>34</sup> The Report also alleges that, in the midst of needing to arrange a loan to meet a debt obligation on a building that his company owned,<sup>35</sup> Kushner met with the head of a Russian-government-owned bank (VEB). Although Kushner insisted that the meeting was diplomatic and concerned issues related to U.S.-Russia relations, VEB characterized the meeting to the Special Counsel as pertaining to business and part of a series of "roadshow meetings" with representatives of major businesspersons in the U.S.<sup>36</sup>

Given the difficulty of separating out one's business interests from other interests in one's relationships, how should one navigate the various issues that arise from the interaction across the different spheres of interests? For instance, the concentration of wealth and power within such elite networks might present problems associated with ensuring inclusion and fairness for others who are not a part of such networks. If markets and business are supposed to contribute to the efficient allocation of resources for the benefit of all, shouldn't business decisions be made primarily on the basis of the signals transmitted by the price mechanism rather than personal relationships? Yet, on the other hand, it seems natural to turn to one's family, friends, and acquaintances to seek help in matters of both business and politics. Setting aside one's personal relationships for the sake of being impartial and serving the common good seems not only unrealistic but also potentially threatening to one's moral integrity by removing considerations that a moral agent ought to give to her personal connections and projects.<sup>37</sup> So how much weight, if any, should one give to the nature of one's relationships in making business decisions?

---

<sup>32</sup> See, e.g., Heath, J. (2014). *Morality, competition, and the firm: The market failures approach to business ethics*. Oxford University Press, New York, pp 145-172.

<sup>33</sup> See, e.g., Smith, J. (2019). *Navigating our way between market and state*. *Business Ethics Quarterly* 29(1), 127-141.

<sup>34</sup> Volume I, 157.

<sup>35</sup> Volume I, 162.

<sup>36</sup> Volume I, 162.

<sup>37</sup> See, e.g., Williams, B. (1973). *Integrity*. In J.J.C. Smart & B. Williams (eds.), *Utilitarianism: For and against*, (pp. 108-117). Cambridge University Press, New York.

Lastly, the difficulty of disentangling business interests from other types of interests raises questions about the tensions that social media companies face with respect to their interests in profits, truth, loyalty, democracy, and stakeholder autonomy. For instance, Part I of the Report concludes that Russian interference with the Election involved an organization called the Internet Research Agency, LLC (IRA). In the years leading up to the Election, the IRA successfully reached tens of millions of U.S. persons through operators on a variety of internet platforms, including Facebook, Instagram, Twitter, Youtube, and Tumblr.<sup>38</sup> And in addition to benefiting from the data generated by these operatives, social media companies also profited from IRA activities by selling thousands of advertisements to accounts operated by the IRA.<sup>39</sup>

Business ethicists might find it fruitful to examine the backlash that social media companies have faced in the U.S. for their failure to protect their platforms against Russian interference with the Election. The reasons for the backlash are likely to be complex and would benefit from empirical research. Furthermore, these reasons could be subject to further normative analysis. Do social media companies have an obligation to support democratic values and institutions by promoting truthful discourse among citizens, even if it interferes with profits? And, if such an obligation exists, how might they fulfill such obligations while appropriately respecting the autonomy of their users to freely express their viewpoints? There is a growing literature among media ethicists who are incorporating insights from business ethics to analyze the ethics of both traditional<sup>40</sup> and digital<sup>41</sup> media companies. Some business ethics scholars have already begun to engage with such literature,<sup>42</sup> but others might find it fruitful to further the dialogue as well.

Of course, the questions raised above are not exclusive to the events described in the Report. Nevertheless, due to the Special Counsel's rare authority to investigate the workings of the global political and economic elite in connection with the Russian interference with the Election, the Report provides factual insights that can motivate and influence the wide variety of questions that business ethicists should ask and answer. It is well worth a read.

---

<sup>38</sup> Volume I, 22.

<sup>39</sup> Volume I, 25.

<sup>40</sup> See, e.g., Richards, I. (2004). *Stakeholders versus shareholders: Journalism, business, and ethics*. *Journal of Mass Media Ethics* 19(2), 119-129; Adams-Bloom, T. and Cleary, J. (2009). *Staking a claim for social responsibility: An argument for the dual responsibility model*. *The International Journal on Media Management* 11(1), 1-8.; and Sandoval, M. (2014). *From corporate to social media: Critical perspectives on corporate social responsibility in media and communication industries*. Routledge, New York.

<sup>41</sup> See, e.g., Johnson, B. G. (2017). *Speech, harm, and the duties of digital intermediaries: Conceptualizing platform ethics*. *Journal of Media Ethics* 32(1), 16-27.

<sup>42</sup> See, e.g., Painter-Morland, M., & Deslandes, G. (2017). *Reconceptualizing CSR in the media industry as relational accountability*. *Journal of Business Ethics* 143(4), 665-679.; and Nielsen, R. P. (2018). *Ethical and legal First Amendment implications of FBI v. Apple: A commentary on Etzioni's 'Apple: good business, poor citizen?'*. *Journal of Business Ethics* 151(1), 17-28.

**Figure 1:**

*A Brief Timeline of Events Leading Up To The Mueller Report*

