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Donald Trump and Criminal Conspiracy Law

A RICO Explainer

By John Norris and Carolyn Kenney December 2017

Center for American Progress



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Introduction and summary

The scope of investigations by Special Counsel Robert Mueller and others into the activities of President Donald Trump, his campaign, and businesses is sweeping. Mueller is tasked with investigating Russian interference in the 2016 presidential election and any potential collusion between the Trump campaign and the Russians. This mandate gives the special counsel ample imperative to study an array of links between Trump, Trump associates, and Russia, in a list of concerns that seems to grow by the day.

The pace and intensity of this investigation was only highlighted by the recent release of the indictment and guilty plea of Trump campaign adviser George Papadopoulos, who admitted under oath lying to the FBI about his multiple contacts with Russians during the campaign, and acknowledged that the Russians informed him that they possessed “thousands of emails” hacked from Democrats well before any public knowledge of the fact.¹ Papadopoulos admitted that he shared information about his Russian contacts and desire to broker meetings with the Russians with his Trump campaign supervisors. In addition, the special counsel indicted the former Trump campaign chair Paul Manafort and his business partner Rick Gates on 12 charges related to a series of complex financial crimes that are alleged to have taken place both before and during the campaign.² The indictment charges that the pair conspired to move more than \$75 million, largely from a Ukrainian lawmaker who was a supporter of Russian President Vladimir Putin, through offshore accounts and engaged in extensive money laundering; undertook a “conspiracy against the United States”; served as an unregistered agent of a foreign principal; and failed to file reports on their foreign financial and bank accounts.³

The reported areas of interest for the special counsel include Manafort’s finances, potential coordination between Trump campaign officials and Russian hackers in releasing damaging emails during the campaign, and lies to investigators. In addition, other areas of focus for the special counsel likely include the June 2016 Trump Tower meeting between Donald Trump, Jr. and the Russians offering damaging information on Hillary Clinton; the involvement of Russian government-connected

Russian oligarchs in Trump real estate deals; potential intelligence intercepts of communications between Trump associates and the Russians; potential obstruction of justice by President Trump, including his dismissal of former FBI Director James Comey; and potential coordination between the Trump campaign and Russian elements in planting fake news in swing states and the purchase and pushing out of Facebook ads, Twitter posts, and other disinformation.

There is little in his resume to suggest that Mueller, a decorated military veteran and former FBI director, would approach his work as an open-ended fishing expedition designed to impose a political cost on the president. But it is important to note that Mueller's written directive from Rod Rosenstein, the deputy attorney general who appointed the special counsel, establishes that Mueller is to investigate any links between Russia and the Trump campaign, and "any matters that arose or may arise directly from the investigation."⁴ In other words, the special counsel is duty-bound to investigate other serious crimes that may crop up in his investigation, including, but not limited to, money laundering, tax evasion, perjury, abuses at the Trump charities, or espionage. The Manafort-Gates indictments suggest that the Special Counsel investigation traverses a timeline that includes, but again, is not limited to, the campaign.

Given the complex and likely interlocking nature of the special counsel's investigations into these multiple fronts, an obvious question arises: Does the alleged behavior of The Trump Organization amount to an ongoing criminal conspiracy and should it be pursued as such? That answer ultimately lies with prosecutors at the federal and state level, most notably Mueller; these prosecutors have access to evidence and legal expertise well beyond that of a lay person. That said, the media and appropriate congressional oversight committees should recognize that Trump and his circle not only engaged in what appears to be serial misconduct, but acted with coherent purpose in doing so. A close look at the record suggests that The Trump Organization arguably behaved a great deal like the organized crime syndicates, which have been targeted as criminal conspiracies in the past.

Thus far, Trump and his associates—with the exception of George Papadopoulos—deny any such criminal actions, and prosecutors have not indicated that any such charges are pending. However, it is important for the public to better understand what might constitute a potential ongoing criminal conspiracy in the eyes of prosecutors, and to better illuminate the specific conduct of the Trump campaign and The Trump Organization that have given rise to this conversation in the first place.

If prosecutors, including the special counsel, were to approach the alleged actions of the Trump campaign and The Trump Organization as a criminal conspiracy, such as through the use of the Racketeer Influenced and Corrupt Organization Act (RICO), it would give them a set of powerful tools, albeit tools that come with some substantial risks for the prosecution. A RICO case would likely not be a silver bullet to magically put an end to the Trump administration, but it might be an intriguing tool used in conjunction with state level investigations into the activities of Trump and his associates to uncover and punish any potential wrongdoing. Investigative reporters and congressional committees should specifically explore RICO predicate offenses linked to The Trump Organization; the question of whether a RICO case should be brought on its merits deserves to be raised.

Trump and RICO

For months, the suggestion that President Trump’s campaign and/or The Trump Organization would be pursued under RICO was largely treated as the fevered imaginings of fabulists hell-bent on removing Trump from office. However, the interlocking web of alleged criminality that Mueller is investigating bears a strong resemblance to exactly the kind of organized criminal activity that the RICO statute was designed to combat.

RICO 101

RICO was enacted by Congress in 1970, and can be applied in both criminal and civil cases.⁵ In addition to being applied by federal prosecutors, RICO can also be applied by state prosecutors in the 33 states, as well as Puerto Rico and the U.S. Virgin Islands, which have codified their own RICO statute—an important point that will be revisited in this report. The American Bar Association guide to RICO notes that many of the state statutes “are significantly broader in scope than the federal statute,” including in such areas as their periods of limitation and how they can be brought forward. The American Bar Association goes on to explain, “Although federal criminal RICO prosecutions must receive prior approval from the Organized Crime and Racketeering Section of the Department of Justice, in most states RICO prosecutions can be initiated without centralized review, often by any district attorney.”⁶

RICO was developed primarily as a tool to fight organized crime, and particularly the senior leadership of organized crime families, who directed extensive criminal networks but tried to avoid prosecution by keeping an array of intermediaries between themselves and the actual perpetration of criminal acts. RICO proved to be an enormously effective tool in combatting organized crime. For example, in 1985, the State of New York secured indictments of the five chieftains of New York’s major organized crime families utilizing RICO, ultimately convicting four of these individuals, with the fifth being killed by a rival before trial.⁷

Yet, as the Congressional Research Service notes, “In spite of its name and origin, RICO is not limited to ‘mobsters’ or members of ‘organized crime’ as those terms are popularly understood. Rather, it covers those activities which Congress felt characterized the conduct of organized crime, no matter who actually engages in them.”⁸

In 1985, the U.S. Supreme Court affirmed the more expansive use of the RICO statute. The court ruled in *Sedima S.P.R.L. v. Imrex Co.* that RICO could be applied in cases involving legitimate companies engaged in a pattern of criminal conduct.⁹ From that point forward, RICO came to be much more widely used by prosecutors in cases involving white-collar crime. There has also been a concurrent rise in complaints that the RICO statute is being overly broadly applied, and even the statute’s defenders tend to agree that it was drafted expansively. The *Los Angeles Times* in a 1989 editorial called for RICO to be rescinded. The newspaper observed:

*From the moment of its passage, civil libertarians and legal scholars have warned that the federal government’s Racketeer Influenced and Corrupt Organizations Act—the so-called RICO statute—is an open invitation to prosecutorial abuse. Now ... many of those scholars, some of them former prosecutors, believe their anxieties have been realized.*¹⁰

Motorcycle gangs, the Catholic Church, the International Federation of Association Football (FIFA), and even corrupt police forces have been targeted using RICO; these different prosecutions have achieved mixed results. With RICO’s very broad definition, there is also a real risk that it could become a political rather than a law enforcement tool.

The concept of using RICO to go after politicians has sometimes been floated in ways that are grossly irresponsible. Rudy Giuliani, a former U.S. Attorney, argued repeatedly during the 2016 campaign for a RICO case against Hillary Clinton based on her use of a private email server; donations to the Clinton Foundation, and her paid speeches.¹¹ In May 2017, former conservative U.K. parliamentarian Louise Mensch evoked widespread eye-rolling when she suggested on her blog that a RICO case was already well-advanced against Trump and that Trump, Vice President Mike Pence, and Speaker of the House Paul Ryan were facing imminent jail time.¹² Both Giuliani and Mensch seemed united in their stubborn avoidance of the facts and hyperbolic statements designed to grab public attention. Any use of RICO by the special counsel would have to be extraordinarily carefully

considered, but so would any charges that he might bring in this case, so RICO should not be seen as fundamentally different than any other prosecutorial tool in this respect.

It is worth noting that Donald Trump has previously faced RICO challenges, with one of the Trump University civil cases having been filed under a RICO class action suit in California.¹³ That case was in the process of moving forward when Trump settled the lawsuit for \$25 million, without an admission of guilt, shortly after being elected president.¹⁴ Trump's sometimes business partners, the Bayrock Group, are also defendants in a complex civil RICO case initiated by the firm's former chief financial officer.¹⁵

What, then, is the threshold that must be met for application of RICO? As explained in the *Marquette Law Review*:

*Most significantly, "racketeering activities" were defined as violations of any one of over thirty separate, already existing state and federal statutes. These activities have been referred to as the "predicate acts." A "pattern of racketeering" encompasses two violations of any of the predicate acts within the past ten years.*¹⁶

The window in which the predicate acts must have occurred varies by the different RICO statutes at the state level. Thus, for the special counsel to apply RICO statutes in a potential case against Trump, the Trump campaign, and The Trump Organization and Kushner Companies, the special counsel would have to present solid evidence that at least two of these predicate acts took place, with a state prosecutor having to meet a similar state-defined predicate threshold.

Notably, some of the crimes under the RICO statute include money laundering, obstruction of justice, bankruptcy or securities fraud, bribery, theft, and embezzlement. Federal RICO defines certain crimes as constituting racketeering activity, and then criminalizes a pattern of racketeering activity that uses any of the income or proceeds from these activities "in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce."¹⁷

In a criminal RICO case, the racketeering activities must be shown to be related. The U.S. Supreme Court established this precedent in its 1989 decision on *H.J. Inc. v. Northwestern Bell Telephone Co.*, which ruled that

racketeering activities must “have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.”¹⁸ Additionally, the predicates must “amount to or pose a threat of continued criminal activities.”¹⁹

It is not necessary to prove that a defendant “agreed with every other conspirator, knew all of the conspirators, or had full knowledge of all the details of the conspiracy... All that must be shown is: (1) that the defendant agreed to commit the substantive racketeering offense through agreeing to participate in two racketeering acts; (2) that he knew the general status of the conspiracy; and (3) that he knew the conspiracy extended beyond his individual role.”²⁰

Federal criminal cases under RICO must be brought forward by the government and have a trial following a grand jury indictment or end in a plea, while grand jury requirements vary by state. Penalties for RICO convictions are substantial and include imprisonment, criminal forfeiture, plus fines as high as twice the gross profits or proceeds of the RICO offense.²¹

Additionally, according to the legal resource site HG, if a defendant is convicted:

*the government is automatically given a forfeiture of all of the defendant's interest in the organization. So not only do defendants lose all their money and property that can be traced back to the criminal conduct, but the organization itself can be severely crippled. And the government need not wait until after a guilty verdict, when the property expected to become subject to forfeiture may be difficult to locate. The rules of procedure in a RICO prosecution allow the government to freeze the defendant's assets before the case even goes to trial.*²²

These are sweeping powers of asset seizure for the government and they have naturally sparked considerable debate about potential abuses of RICO. The notion that assets can be seized before an individual or criminal entity is found guilty has triggered deep constitutional concerns among groups across the political spectrum, ranging from the Heritage Foundation to the American Civil Liberties Union.²³ The notion of such pre-emptive asset forfeitures were less controversial with RICO when it was being primarily utilized as an anti-organized crime mechanism. Now that its use has become much more widespread, including through civil actions, such asset forfeitures have become an understandable lightning rod. (Abuses of forfeiture procedures in non-RICO cases at a local level have also added considerable fuel to the fire, as has the current administration's effort to expand these powers.)²⁴

Right or wrong, asset seizures inherent in RICO can inflict tremendous damage on a criminal network. As written in the U.S. code on civil forfeiture, this is in large part because the seizure is not just limited to profits from the actual crime, but “property of any kind obtained directly or indirectly, as the result of the commission of the offense giving rise to the forfeiture, and any property traceable thereto, and is not limited to the net gain or profit realized from the offense.”²⁵ For The Trump Organization and Kushner Companies—both real estate empires with sprawling holdings—the potential risk from a RICO investigation would be immense. All the more so because both companies continue to carry a great deal of debt on their property holdings, and any asset seizures could quickly trigger a cascading financial collapse of their portfolios.

The RICO Act itself does not contain a provision for a statute of limitations, therefore it falls under the five-year limit imposed for noncapital federal offenses. Per the U.S. Department of Justice, a substantive RICO charge, therefore, requires that “each defendant must have committed at least one act of racketeering within five years of the date of the indictment.”²⁶ However, “a ten-year statute of limitations applies to RICO charges where the racketeering activity involves a violation of 18 U.S.C. 1344 – bank fraud.”²⁷ Though, as G. Robert Blakey points out in the *Notre Dame Law Review*, in complex crimes, particularly financial ones, it is not always clear when an offense was committed. Most courts consider offenses to have been committed when they are complete, however, some offenses are continuing offenses, in that “the statute of limitations does not begin to run when the perpetrator has satisfied each of the elements of the offense. Rather, the statute of limitations begins to run when the criminal course of conduct ends.”²⁸ Thus, when looking at a pattern of racketeering activities, “where one predicate act of racketeering in a pattern of racketeering falls within the period of limitations, the entire pattern of racketeering is subject to prosecution, even though earlier acts of racketeering might not be subject to prosecution as separate offenses.”²⁹

Civil RICO cases, continues Blakey, are treated somewhat differently than criminal ones. These cases require a civil trial brought either by the government or a private plaintiff, with lower standard of proof than criminal cases, that is to say, that there is a “preponderance of the evidence.”³⁰ RICO civil penalties include “sanctions of injunctions, treble damages [three times the amount of money lost due to the defendant’s actions], costs, and attorney fees.”³¹ Mounting a civil RICO case shifts more of the burden of proof to the defendant, but also

demands that a private plaintiff have standing—in other words, that an individual, company, or institution can demonstrate that they suffered concrete harm as a result of the alleged crimes committed by the defendant.

What Trump actions might meet the RICO threshold?

It is important to remember that the special counsel will not necessarily be drawn to a conspiracy case unless there is very strong evidence toward this end. Should that be the case, the use of the RICO statute (or other types of conspiracy charges) would facilitate Mueller's efforts. As former federal prosecutor Renato Mariotti argues, "It's important to keep in mind what prosecutors do: They investigate discrete crimes."³² He adds, "Mueller won't charge one grand conspiracy involving everyone he's looking at. If he brings charges, expect to see individuals charged separately unless they committed a crime together."³³

So, although there are a large number of potential offenses that have received high profile treatment in the media, some seem highly unlikely to meet the RICO threshold. For example, Trump's repeated abuses related to the Donald J. Trump Foundation, while potentially illegal, would probably not constitute a RICO predicate act.³⁴ Similarly, the initial charges against Donald Trump's former campaign chairman, Paul Manafort, will likely continue to be prosecuted as stand-alone charge—unless money laundering and other charges were part of a more widely orchestrated effort of which Manafort was only a part.³⁵ The RICO statute is designed to allow prosecutors to use initial charges as an effective vehicle for incentivizing cooperation from those charged to move further up the criminal food chain.

The three areas that might be of greatest interest to a special prosecutor looking at The Trump Organization and Kushner Companies through a RICO lens fall into three broad time periods and categories: activities before the presidential campaign, particularly complex financial crimes; coordination with Russian or Russian-supported entities during the campaign; and obstruction of justice since the election.

The composition of Mueller's team suggests that he has accumulated staffing expertise to potentially deal with all of these issues. One of Mueller's first hires was Andrew Weissmann, who is the previous leader of the Justice Department's criminal fraud division and once played a role in a case involving the Russian mob, which is

now linked to Trump.³⁶ Other members of Mueller's team of prosecutors include Aaron Zebley, who has a background in cybercrime and counterterrorism; James Quarles, who served as an assistant special prosecutor during the investigations into the Watergate scandal, specializing in campaign finance research; Jeannie Rhee, who has a background in white-collar crime; Greg Andres, a prosecutor specializing in foreign bribery; Kyle Freeny, who has worked on some of the Department of Justice's highest profile money laundering cases; Andrew Goldstein, who headed the public corruption unit in the U.S. Attorney's office in the Southern District of New York and who had been overseeing an investigation into Manafort's business and real estate dealings before Mueller took over that investigation; Brandon Van Grack, who has often taken the lead in espionage and national security cases out of the Eastern District of Virginia; Michael Dreeben, who is working for Mueller part-time and is currently serving as the deputy solicitor general responsible for overseeing the Justice Department's criminal appellate docket; Lisa Page, who worked as an attorney with the FBI's Office of General Counsel and with the Justice Department's Organized Crime and Gang Section, prosecuting several eastern European organized crime cases and helping with the FBI's investigation of a money laundering case against Manafort; Rush Atkinson, who worked as a trial attorney for the Justice Department's Criminal Division Securities and Financial Fraud Unit; Zainab Ahmad, who was an Assistant U.S. Attorney for the Eastern District of New York and has prosecuted more than a dozen international terrorist suspects. Rounding out the team of prosecutors are assistant U.S. attorney Aaron Zelinsky; appellate lawyer from the Justice Department Adam Jed; and solicitor general's office lawyer Elizabeth Prelogar.³⁷

Activities prior to the presidential campaign, particularly complex financial crimes

The efforts by Trump lawyers to keep the special counsel from looking at his business dealings before the presidential campaign are certainly understandable from a defense perspective. However, The Trump Organization and Kushner Companies have triggered a number of red flags that will surely lead investigators to look at potential money laundering and other complex financial crimes that appear to be some of the criminal offenses most commonly associated with building a RICO case. Time and time again, Donald Trump has insisted that he has had no business dealings with Russia or Russians. As recently as July 2017, he said, “But I have no income from Russia. I don’t do business with Russia.”³⁸ While not illegal to mislead the public about such connections when not under oath, it does suggest that Trump and his associates are attempting to obscure something. Indeed, the facts suggest that financing from Russia, Russians, and others from the former Soviet Union has been an integral part of the Trump business model for years.³⁹ Potentially illegal activities from before the campaign, even if they were unrelated to the campaign itself and Russia’s interference on Trump’s behalf, could potentially be used to build a RICO case.

Trump SoHo and the Bayrock Group, Sater, Cohen connection

The real estate industry has traditionally been relatively lightly regulated compared to the finance and banking industries, despite of the sometimes-large sums of money involved in transactions. As a result the industry has tended to be a magnet for money laundering. Trump’s long-running engagement with the development company the Bayrock Group and its former managing director, convicted felon Felix Sater, are most certainly under scrutiny by the special counsel. Bayrock has offices in Trump Tower and founded by Tefvik Arif, a former Soviet official; it was also central to putting together multiple deals with Trump, including the troubled Trump SoHo building in New York.⁴⁰

It appears that Trump's children, Ivanka and Donald Trump Jr., narrowly avoided being charged for fraud for their part in promoting the Trump Soho project, according to feature-length reporting by *The New Yorker* and ProPublica.⁴¹ (Both Trumps referred all questions regarding the case to their counsel.) The decision to not bring charges against Ivanka and Donald Jr., despite the recommendation by prosecutors, was made by the Manhattan District Attorney Cyrus Vance Jr., who later received more than \$50,000 in campaign contributions from Trump's lawyer, Marc Kasowitz, and his partners.⁴² Kasowitz, denies having made this contribution "as a 'quid-pro-quo' for anything."⁴³ Vance, for his part, defended his decision, saying that he did not, "at the time believe beyond a reasonable doubt that a crime had been committed."⁴⁴ (The case and its handling could certainly be re-opened by the special counsel.)

Bayrock has been embroiled in long-running, complicated, and contentious series of lawsuits, initially filed in 2010 by lawyers representing its former chief financial officer. The lawsuits have alleged that Bayrock maintained links to Russian criminal syndicates and conducted \$250 million in tax evasion with money laundering central to its business model. Bayrock's former chief financial officer suggested that at moments when Bayrock was running low on funds, large infusions of cash would come in from Russia or Kazakhstan from shadowy investors hoping to hide their money.⁴⁵

Bayrock has derided these charges as baseless. Some of the lawsuits have been dismissed, while other variations have been refiled and are ongoing.⁴⁶ This period of business activity at Bayrock reflects a time when Trump was actively engaged with the real estate development firm. Trump was deposed as part of this lawsuit, but is not named as a target in the suit. In his deposition, Trump stated under oath: "It's ridiculous that I wouldn't be investing in Russia," and added, "Russia is one of the hottest places in the world for investment."⁴⁷ Trump and Arif settled a somewhat overlapping lawsuit that claimed that they had misled investors in Trump SoHo to the tune of several million dollars. The terms of that settlement remain confidential.⁴⁸

One of the key figures involved in these deals has been the Russian-born, mob-linked businessman Felix Sater, who plead guilty to racketeering for his role in a \$40 million stock fraud scheme involving the Genovese and Bonanno crime families⁴⁹ and was convicted of stabbing a man in the face with a broken margarita glass in New York. Sater avoided jail time by cooperating as an informant in the stock fraud case. And, in a twist worthy of Hollywood, he also

appears to have done covert work for the CIA as part of his successful efforts to avoid further jail time.⁵⁰ One of the allegations in the lawsuits against Bayrock is a conspiracy to conceal Sater's role and beneficial ownership in Bayrock, a critical point in light of regulations governing information presented to potential investors.

Despite their long association, Trump has repeatedly denied knowing about Sater's criminal past, notwithstanding the fact that Sater widely represented himself as a Trump associate in business deals. Moreover, a member of Trump's security detail actually worked on Sater's case when he was in the FBI.⁵¹ Indeed, it recently came to light that Sater exchanged a series of emails with Trump's lawyer, Michael Cohen, in an attempt to broker a Trump project in Moscow with the help of Russian president Vladimir Putin. A November 3, 2015, email from Sater to Cohen claimed in reference to Trump, "Our boy can become president of the USA and we can engineer it."⁵² The email continued, "I will get all of Putins team to buy in on this, I will manage this process."⁵³

Further highlighting the potential to view these machinations as part of an ongoing criminal enterprise is the fact that Cohen, Trump's lawyer, and Sater have been friends since childhood; Cohen himself has been linked to a series of high-profile real estate purchases in New York that appeared to be financed by money flowing out of Ukraine.⁵⁴ Cohen, his family members, and business partners purchased close to a dozen Trump properties in a very short period of time starting around 2001 when Cohen was 40 years old. These purchases seemed to far outstrip his assets and resources at the time.⁵⁵ Cohen's brother was married to the daughter of Alex Oronov, a very wealthy Ukrainian businessman who had links to Ukrainian and Russian underworld figures.⁵⁶ Oronov died in March 2017, leading some commentators to claim the timing of his death was suspicious, while family members insisted that he had suffered a long illness.⁵⁷

The evidence makes clear that even as Trump was running for president and claiming he had no Russia ties whatsoever, a Soviet-born real estate developer with whom he worked closely in the past was trying to broker a Russian deal for him and bragging about its potential political and economic benefits to his Ukrainian-connected lawyer. The potential criminal violations in the Bayrock-Sater-Cohen thicket are complex and numerous. Trump could face specific jeopardy related to bank fraud charges—a RICO predicate—if he attempted to put these financial deals together knowing beforehand that Sater had a felony conviction but failed to reveal this to investors, which he was legally obligated

to do. Notably, one of the prosecutors who worked on Sater's initial plea deal, where he helped implicate mob figures and Russian criminals with which he had worked in a major tax avoidance scheme, is now on Mueller's investigatory team. There is also a separate case moving forward as a number of investigative journalists are pushing to have Sater's criminal records unsealed.⁵⁸

Real estate transactions and possible money laundering

One of the most frequent means of money laundering has been high-end real estate purchases conducted through shell companies. The U.S. government has made repeated efforts to crack down on this practice. For purposes of the investigations by the special counsel and others, there are a broad number of Trump and Trump-affiliated real estate transactions that suggest suspicious behavior and possible RICO predicates. Significantly, Donald Trump Jr. told a real estate conference in 2008, "Russians make up a pretty disproportionate cross-section of a lot of our assets."⁵⁹ In fact, *Bloomberg* reported:

*FBI investigators and others are looking at Russian purchases of apartments in Trump buildings, Trump's involvement in a controversial SoHo development in New York with Russian associates, the 2013 Miss Universe pageant in Moscow and Trump's sale of a Florida mansion to a Russian oligarch in 2008.*⁶⁰

A number of other suspicious real estate deals involving Cohen, Trump's lawyer, came to light in October 2017. According to the McClatchy news service, "In 2014, a mysterious buyer using a limited liability company (LLC) that hid the purchaser's identity paid \$10 million in cash for a small apartment building on New York's lower east side that Cohen had purchased just three years before for \$2 million."⁶¹ At the time of the sale the apartment building was assessed for roughly the same \$2 million price that Cohen originally paid for the property. In addition, three other Cohen properties were purchased by similar LLCs, all utilizing the same lawyer. The McClatchy article quotes Louise Shelley, a specialist in money laundering, who observed, "what should raise red flags among money laundering experts are purchases way above the assessed value, combined with all cash purchases. These are potential fingerprints of money laundering."⁶² Cohen has insisted that these transactions were legitimate with the purchases made in cash through a family fund in an effort to legally defer taxes. He also claimed the sale amounts were not inflated because "he bought the property at a 'great price.'"⁶³

Similarly, in what was at the time the most expensive single residential property sale in the United States, Trump sold his Palm Beach, Florida, estate to Dmitry Rybolovlev, a Russian businessman and investor, for \$95 million. The price appeared curiously high, since Trump had purchased the property for \$41 million just four years previously.⁶⁴ Reporting by *The New York Times* noted that Rybolovlev, who apparently never lived at the estate, used a limited liability company (LLC) controlled by an offshore trust to purchase the property. Interestingly, the Panama Papers—leaked documents exposing how a number of rich individuals used offshore companies to hide their wealth and avoid taxes—referenced Rybolovlev “as having used offshore trusts to hold assets.”⁶⁵ The trusts, Rybolovlev’s spokesman said, “were used for ‘asset protection and estate planning.’”⁶⁶ The spokesman also denied allegations that he was trying to hide assets as part of a divorce settlement.

Earlier this year *The Wall Street Journal* reported on troubling sources of finance associated with the Trump International Hotel and Tower in Toronto. As reported in *The Wall Street Journal*, the Russian state-run bank Vnesheconombank (VEB) was a key, though not direct, source of financing for the Trump Toronto project. Trump’s partner on that project, Alexander Shnaider, a Russian-Canadian developer, who built the 65-story Toronto hotel and tower, “put money into the project after receiving \$850 million from a separate asset sale that involved the Russian bank.”⁶⁷ According to the article, that infusion of cash came at a “key moment for the project.”⁶⁸

Through his licensing arrangement with Shnaider’s company for the hotel and tower, Trump still profits from the building, and by extension, from Shnaider’s sale involving VEB. At the time Shnaider received the money from VEB, Russian President Putin was chairman of the bank’s supervisory board. A Trump Organization spokesman told *The Wall Street Journal* that Trump was not involved in any of the financial dealings with VEB, noting that the organization, “merely licensed its brand and manages the hotel and residences.” VEB did not respond to the newspaper’s request for comment. Shnaider’s lawyer wrote in an email that he was unable “to confirm that any funds” from the VEB deal “went into the Toronto project,” according to *The Wall Street Journal*.⁶⁹

Also of interest will be Trump, his family, and his associates’ possible overlapping ties to the Russian-owned company Prevezon Holdings, which has been accused of trying launder money stolen via a fraud scheme from the Russian treasury through Manhattan real estate deals.⁷⁰ The case against Prevezon, which was launched in

New York by former U.S. Attorney Preet Bharara, whom Trump fired in March, was settled this past May, just two days before it was scheduled to open in court. Prevezon agreed to pay \$5.9 million with no admission of guilt on the part of the defendants.⁷¹ The case and its abrupt settlement have come under renewed scrutiny as more details have emerged related to the now infamous June 9, 2016, meeting in Trump Tower involving Donald Trump Jr.; Jared Kushner, the president's son-in-law and current senior advisor to the president; and several Russians.

The June 9 meeting was initiated by British publicist Rob Goldstone, who wrote in an email to Trump Jr., "The Crown prosecutor of Russia ... offered to provide the Trump campaign with some official documents and information that would incriminate Hillary."⁷² Goldstone went on to write that the documents were "part of Russia and its government's support for Mr. Trump."⁷³

At the time of the meeting, the Prevezon money laundering case was still pending. In what can be most charitably described as a remarkable coincidence, the lawyer who represented Prevezon, Natalia Veselnitskaya, was one of the Russians present at the June 9 meeting. In addition to representing Prevezon, Veselnitskaya was a leading lobbyist against the Magnitsky sanctions.⁷⁴

Furthermore, according to an investigation by *The Guardian*, Kushner, made a multimillion-dollar real estate deal in 2015 with Uzbek-born oligarch Lev Leviev, who was a business partner of Prevezon and was cited in the Prevezon lawsuit. In that deal, Kushner purchased several floors of the old *New York Times* building in Manhattan from the U.S. branch of Leviev's company, Africa Israel Investments (AFI), for \$295 million.⁷⁵

According to *The Guardian's* analysis of court documents, AFI and Prevezon partnered in 2008, at which time Prevezon purchased a 30 percent stake in four AFI subsidiaries in the Netherlands for €3 million. *The Guardian* article noted that when AFI tried to return the money to Prevezon five years later, the Dutch authorities intercepted and froze their transfer at the request of the US government as part of the Prevezon money-laundering investigation. Leviev had also sold Prevezon condominiums in Manhattan, which were also eventually frozen by U.S. prosecutors. Neither Kushner nor Leviev responded to *The Guardian's* requests for comment.⁷⁶

As a result of these revelations, Democratic members of the House judiciary committee have sent a letter to Attorney General Jeff Sessions demanding answers to a number of questions about the Prevezon case settlement and whether Trump, his family, or any members of his campaign and/or administration intervened in any way in the case.⁷⁷ Additionally, as *The Guardian* reported, constitutional experts are also demanding an official inquiry into the Prevezon case's settlement. As Harvard University constitutional law professor Laurence Tribe stated, "We need a full accounting by Trump's justice department of the unexplained and frankly outrageous settlement that is likely to be just the tip of a vast financial iceberg."⁷⁸ In addition to the many other issues at play in the Kushner- Prevezon-Trump-Veselnitskaya dealings, the special counsel will likely be very interested to see if there was any push by the White House for the Justice Department to quickly settle the Prevezon case, evidence of which would certainly suggest an effort toward the obstruction of justice.

Among those in the Trump universe, there has also been a curious pattern of corporate entities purchasing multimillion dollar properties with cash, and then subsequently taking out a mortgage on these same properties. Reporting earlier this year by WNYC public radio revealed that over the past 11 years, Manafort has made a number of questionable real estate purchases in New York, some of which law enforcement and real estate experts said, "fit a pattern used in money laundering" even before his multiple count indictments were announced.⁷⁹ These transactions took place while Manafort was working as a consultant for business and political leaders in the former Soviet Union. And indeed, two New York properties—a condo in New York's SoHo district and a house in Brooklyn—figured prominently in the special counsel's indictment of Manafort. Both property purchases were all-cash transactions that used Cyprus-based shell corporations.⁸⁰

WNYC's analysis of property records revealed, "Manafort's New York City transactions follow a pattern: Using shell companies, he purchased the homes in all-cash deals, then transferred the properties into his own name for no money and then took out hefty mortgages against them."⁸¹ According to the radio report, these tactics are similar to those used by money launderers.⁸² Between 2006 and 2013, Manafort purchased three properties in New York City – one in Trump Tower, one in SoHo, and one in Brooklyn – and then borrowed roughly \$12 million against them between April 2015 and January 2017, a time that overlaps with his various roles in the Trump campaign.⁸³

Manafort's 2006 purchase of his Trump Tower apartment through a shell company took place the same year he signed a secret \$10 million contract with pro-Putin Russian oligarch, Oleg Deripaska, to implement a strategy in the U.S. to "greatly benefit the Putin Government," as revealed by the *Associated Press*.⁸⁴ According to the *AP*, Deripaska has been cited in U.S. diplomatic cables as, "among the 2-3 oligarchs Putin turns to on a regular basis," and "a more-or-less permanent fixture on Putin's trips abroad."⁸⁵ Manafort confirmed to the *AP* that he had worked for Deripaska but denied that his efforts had been pro-Russian in orientation. As reported by the *AP* representative for Deripaska acknowledged that there was an agreement between the two men "to provide investment consulting services" related to Deripaska's business interests.⁸⁶

In 2012, Manafort used another shell company to purchase a SoHo property for \$2.85 million, which he used to borrow \$3.4 million against in April 2016, shortly before he became Trump's campaign manager. For his Brooklyn property, which he purchased through a shell company in 2013 for roughly \$3 million, Manafort took out several loans, including a \$7 million loan he received just three days before Trump's inauguration. That loan was provided by a bank run by Trump fundraiser and economic adviser Steve Calk, and has raised some questions itself.⁸⁷

Emails indicate that Manafort's relationship with Deripaska was front and center in the campaign, as the *Washington Post* observed, "Less than two weeks before Donald Trump accepted the Republican presidential nomination, his campaign chairman offered to provide briefings on the race to a Russian billionaire closely aligned with the Kremlin, according to people familiar with the discussions."⁸⁸ These same email exchanges suggest that Manafort may have been eager to sell access to the Trump campaign to an oligarch with close Russia links as a means to help settle an ongoing business dispute with Deripaska.⁸⁹

As reported in June, Mueller had taken over a Justice Department investigation of Manafort,⁹⁰ and this helps explain the speed with which he was able to bring money laundering charges against Manafort and his business partner Richard Gates.⁹¹ Both the Senate and House intelligence committees are also investigating Manafort for possible money laundering, and investigators for New York Attorney General Eric Schneiderman and Manhattan District Attorney Cyrus Vance Jr. are also looking into Manafort's real-estate transactions. Schneiderman's office will likely focus on indications of money laundering while Vance's office will most likely focus on possible fraud.⁹²

While Manafort has continued to deny wrongdoing and plead innocent against the Special Counsel's charges, FBI agents raided his home in Virginia, without warning, in order to seize documents and materials related to Mueller's investigation.⁹³ The raid, while not reported until August 2017, took place in July 2017, the day after he met with Senate Intelligence Committee staff and the day before he was scheduled to testify before the Senate Judiciary Committee. As the *Washington Post* reported, in order "to get a judge to sign off on a search warrant, prosecutors must show that there is probable cause that a crime has been committed."⁹⁴

Earlier this year, *NBC News* also reported on some unusual financial activity by Manafort related to his bank accounts in Cyprus.⁹⁵ That report stated that according to banking sources with direct knowledge, a Cypriot bank investigated accounts associated with Manafort for possible money laundering. Manafort "was associated with at least 15 bank accounts and 10 companies on Cyprus, dating back to 2007," and some of the account transactions had raised "sufficient concern to trigger an internal investigation" at one of the banks to see if any money laundering had taken place. After the bank raised questions about the account activities, Manafort reportedly closed the accounts.⁹⁶ The use of multiple foreign bank accounts and multiple U.S. passports were also cited in the Special Counsel indictments of Manafort.⁹⁷

In October 2009, one of Manafort's associated accounts reportedly received a payment of \$1 million that left the account the same day, which according to experts who spoke to *NBC* suggests the account was "set up deliberately to make it difficult for auditors to track the movement of funds." In response to the reporting, Manafort's spokesman said that the accounts "all were legitimate entities and established for lawful ends."⁹⁸ Also, *The New York Times* later reported that certified financial records they obtained from Cyprus and seemingly connected to Manafort through shell companies "indicate that he had been in debt to pro-Russia interests by as much as \$17 million before he joined Donald J. Trump's presidential campaign in March 2016."⁹⁹ The debt aligns with claims by Deripaska in a 2015 Virginia court complaint that "Manafort and his partners owed him \$19 million related to a failed investment in a Ukrainian cable television business." Manafort's spokesman told *The New York Times* that the Cyprus records were "stale and do not purport to reflect any current financial arrangements," and that "Manafort is not indebted to Mr. Deripaska or the Party of Regions, nor was

he at the time he began working for the Trump campaign.”¹⁰⁰ He also added that Manafort “did not collude with the Russian government to influence the 2016 election.”¹⁰¹

Several points are key here for the special counsel and RICO concerns. The fact that Manafort may have been heavily in debt to Russian interests is a classic indicator for investigators that an individual may be vulnerable to blackmail or manipulation by foreign agents, and excessive debt can be a disqualifying factor for individuals seeking a U.S. government security clearance. In addition, the fact that Deripaska dropped his lawsuit against Manafort after Manafort joined the Trump campaign will almost certainly raise the question for prosecutors of whether there was some sort of quid pro quo involved. With the charges by the special counsel, Manafort is in considerable legal jeopardy and there is broad speculation that Mueller is attempting to compel his cooperation in the Trump probe.¹⁰² It is also useful to note: Although these initial charges against Manafort are extensive, there is nothing that precludes the special counsel from bringing additional charges if he has grounds to do so.

Other areas of pre-election concern

While initially looking like less strong RICO predicates, money laundering at Trump Casino; potential tax evasion; and possible Foreign Corrupt Practices Act violations are three other areas the special counsel might want to explore during his investigations of the pre-election period.

Trump’s Taj Mahal Casino in Atlantic City has repeatedly been investigated for claims that it has engaged in money laundering; it has settled all such claims without admission of guilt. In 2015, the Financial Crimes Enforcement Network (FinCEN), fined the Trump Taj Mahal Casino Resort \$10 million. The fine—the largest penalty FinCEN has ever levied against a casino—docked the property for “willful and repeated violations” of anti-money laundering (AML) regulations under the Bank Secrecy Act (BSA).¹⁰³ Additionally, Trump Taj Mahal, “admitted to several willful BSA violations, including violations of AML program requirements, reporting obligations, and recordkeeping requirements” dating from 2010 through 2012, according to a FinCEN press release.¹⁰⁴ Investigators from both the House and Senate committees looking into Trump and his top aides have requested the FinCEN records on the casino’s violations over the years, which will include details not provided in the publicly available documents, such as the identities of

the casino employees and gamblers involved, to see if there is a brighter line to be drawn to elements of Russian organized crime.¹⁰⁵ It is likely Mueller will also be reviewing these documents.

Tax evasion and tax fraud have often been cornerstones of RICO criminal cases, and this is an area where Trump's unwillingness to share his returns publicly suggests that he may have some potential liabilities. Even with his returns held in secret, a number of transactions have already caught the attention of journalists, and there have been press reports that the special counsel is working with the Criminal Investigation unit of the Internal Revenue Service (IRS).¹⁰⁶ For instance, in July, ProPublica and *The Real Deal* co-published a report detailing Trump's April 2016 sale of two condos to his son, Eric, at a highly discounted rate, likely allowing Trump to avoid gift taxes.¹⁰⁷

Lastly, the Foreign Corrupt Practices Act (FCPA), forbids U.S. companies and their representatives from bribing foreign officials (with the term foreign official being very liberally applied). The FCPA is not a RICO predicate, but it can form the basis for a Travel Act violation which is a RICO predicate. A Trump Organization business deal in Azerbaijan—where the Trumps engaged in extensive dealings with the Mammadov family, notorious for their corruption and financial entanglements with an Iranian family tied to the Iranian Revolutionary Guard Corps—has drawn attention as possibly running afoul of the FCPA.¹⁰⁸

Coordination with Russian, or Russian-supported, entities during the campaign

While the special counsel obviously has rich territory to mine when it comes to the behavior of the Trump and Kushner organizations before the campaign, the question of potential collusion between Trump and/or Trump associates and Russian entities during the campaign remains at the heart of his writ. Indeed, these questions remain in many ways far more complex than even the murky and troubled world of Trump and Kushner finances before the campaign.

There is no actual criminal offense known as “collusion.” That said, the special counsel appears to be examining a number of actions that occurred during the campaign, which suggest he is investigating serious criminal violations, and indeed violations that could serve as RICO predicates. As Paul Rosenzweig, a former deputy assistant secretary at the Department of Homeland Security, commented, “We should all just stop using ‘collusion’ as a short-hand for criminality. But that doesn’t mean that the alleged cooperation between the Trump campaign and Russia is of no criminal interest. To the contrary, if true, it may have violated any number of criminal prohibitions.”¹⁰⁹

Perhaps the most telling starting point begins with Manafort, who was the subject of a Foreign Intelligence Surveillance Act (FISA) surveillance order both before and after he joined the Trump campaign as chair.¹¹⁰ The hurdles for obtaining such a FISA warrant are considerable, particularly because Manafort is a U.S. citizen. The threshold for obtaining such a warrant required that the FBI demonstrate that it had probable causes that Manafort “knowingly engaging in clandestine intelligence activities” on behalf of a foreign power.¹¹¹ This is a point that cannot be emphasized strongly enough: Trump’s campaign chair was being investigated as a foreign spy while running Trump’s campaign. This indicates Manafort may be subject to a number of charges. In addition, Carter Page, one of the first people cited by Trump as a foreign policy adviser to the campaign, also appears to have been under FISA surveillance, also for his suspicious Russia links.¹¹²

There have also been numerous reports indicating that U.S. intelligence services have secured multiple communications showing interaction between different individuals associated with Trump and his campaign and Russian intelligence officials. As CNN noted, citing former intelligence and law enforcement officials, there was “constant communication during the campaign” involving “high-level advisers close to then-presidential nominee Donald Trump” and senior Russian officials.¹¹³

The following section outlines incidents involving Trump campaign officials and surrogates, as well as members of the Trump Organization will surely be closely examined by the special counsel, and a number of them involve potential RICO predicates.

- GOP operative Peter Smith’s effort to track down Hillary Clinton’s State Department emails. A series of stories by *The Wall Street Journal* indicate that Smith was eager to work with anyone who might help him obtain the emails, explicitly including Russian hackers, and that this is an area being explored by the special counsel.¹¹⁴ Michael Flynn, who was prominent on the campaign and then served as President Trump’s National Security Adviser, features prominently in Smith’s account of his activities. In multiple conversations with a computer hacking expert, Smith indicated that he was in close contact with both Flynn and Flynn’s son, Michael Flynn Jr., about how best to use any hacked emails obtained. In addition, the *WSJ* notes, “Investigators have examined reports from intelligence agencies that describe Russian hackers discussing how to obtain emails from Mrs. Clinton’s server and then transmit them to Mr. Flynn via an intermediary, according to U.S. officials with knowledge of the intelligence.”¹¹⁵ Just days after speaking with the *WSJ*, Smith apparently committed suicide in a Minnesota hotel room, leaving behind a note that said, “‘NO FOUL PLAY WHATSOEVER’ was involved in his death.”¹¹⁶ Flynn’s lawyer has repeatedly declined to comment about his client’s relationship with Russia or other pending legal matters, amid multiple unverified press reports that the special counsel feels he has enough material on which to indict Flynn.
- Trump campaign adviser George Papadopoulos pleaded guilty to charges from the special council and admitted to multiple contacts with Russians during the campaign and that through these interactions learned that the Russians possessed “thousands of emails” hacked from Democrats well before any public knowledge of the fact.¹¹⁷ Papadopoulos admitted that he shared information about his Russian meetings with his campaign supervisors.

Thus, Mueller will likely follow the trail of those on the Trump campaign who knew about this hack well before the public and their responses. In addition, the special counsel will most likely try to ascertain if any of those Trump campaign officials who had advance knowledge of the hack lied about this fact in subsequent government clearance processes to investigators or in congressional testimony.

- Manafort offered to provide special insider briefings on the Trump campaign to the pro-Russian Ukrainian oligarch Oleg Deripaska. The Manafort email exchanges with Deripaska's representative not only suggest that Manafort saw giving Deripaska special access to a U.S. presidential campaign as a means to help erase his debts to the oligarch, but also as a means of financial enrichment. The emails in question contained multiple references to a code phrase "black caviar," which was apparently short-hand for cash payments.¹¹⁸ Manafort spokesperson Jason Maloni said that the email exchanges were legitimate, however he argued that the back-and-forth was "innocuous," and claimed Manafort was simply trying to collect money he was owed.¹¹⁹
- In June, Donald Trump Jr., Manafort, and a number of Russians infamously met in the New York Trump Tower to discuss supposed Hillary dirt. That meeting also included Russian lawyer Natalia Veselnitskaya; Rinat Akhmetshin, a Russian-born lobbyist who was formerly a Soviet intelligence officer; and Irakly Kaveladze, an executive in the company owned by the Kremlin-linked oligarch who helped arrange the meeting.¹²⁰ In setting up that meeting Veselnitskaya and her associates promised to deliver documents that, "would incriminate Hillary and her dealings with Russia and would be very useful to your father."¹²¹ The Russians also indicated these documents were "part of Russia and its government's support for Mr. Trump."¹²² Donald Jr.'s response to the overture: "If it's what you say, I love it."¹²³ The email exchange rather bluntly makes clear that Trump Jr. and his colleagues were not only willing, but eager, to elicit support from a hostile foreign power in influencing the U.S. presidential election. Trump Jr.'s explanations regarding the meeting have shifted and evolved a number of times, and he has insisted that nothing of substance came from the meeting, claiming that Veselnitskaya simply lobbied him on the Magnitsky Act.¹²⁴
- Trump campaign officials and associates held multiple meetings with Russians during the 2016 campaign, which were initially denied by Attorney General Jeff Sessions.¹²⁵

- Trump loyalists attempted to soften the language regarding providing support for lethal assistance to Ukraine, which was part of the GOP platform during the 2016 Republican National Convention.¹²⁶
- Trump confidante Roger Stone had multiple contacts with the infamous hacker known as Guccifer, who is widely identified as a Russian asset or operative by the U.S. intelligence community.¹²⁷
- Wikileaks and Donald Trump Jr. had multiple communications. Jared Kushner, for his part, shared that communications between the campaign and Wikileaks were taking place, but he failed to turn over such communications to Congressional investigators.¹²⁸
- Facebook, Google, and Twitter admitted that Russia directed ads, bots, and influencers that reached millions of people in swing states through their platforms.¹²⁹ This has naturally led to considerable discussion as to whether the Trump campaign facilitated the targeting of Russian influence operations during the campaign. There are several actors here sure to draw particular attention. For example, Cambridge Analytica, a data mining firm that has received considerable financial support from conservative mega-donors the Mercer family and also has close links to Jared Kushner, would be well-versed in exactly the kind of targeting deployed by the Russians. Also of interest is Brad Parscale, the digital director for the Trump campaign, whose firm collected more than \$90 million from the Trump campaign during 2016.¹³⁰ The head of Cambridge Analytica, Alexander Nix, reportedly wrote in an email during the campaign that he had reached out to Julian Assange in an effort to help Wikileaks release Clinton's missing emails, a further sign of the Trump campaigns eagerness to work with Russian-backed forces to disseminate illegally acquired computer information.¹³¹ Cambridge Analytica, Kushner, Mercer, Nix, and Parscale have all denied any suggestion they coordinated with the Russians in targeting Russian influence operations during the campaign.¹³²

The question facing prosecutors is this: What potential crimes might emerge from these and other interactions between the Trump campaign and this constellation of Russian actors and interests that are relevant to establishing a criminal conspiracy or RICO predicates?

First, it is worth noting that it is illegal to lie to federal investigators, to lie on a security clearance form or to lie to congressional investigators. Given the extreme reluctance of Trump and Kushner and their associates to reveal the true nature and extent of their interactions with the Russians, they may well have committed a crime in actively trying to obscure those interactions, including potential obstruction of justice charges. In addition, such efforts to obfuscate could veer into wire fraud, a frequently cited RICO offense, if said individuals used electronic communications to coordinate actions to mislead investigators.

Donald Trump Jr. and others in the June Trump Tower meeting could also be charged with conspiring to violate election laws, which explicitly prohibit foreign nationals from donating things of value to a campaign. This, however, is not a RICO predicate.

Any efforts to assist Russians or other hackers in stealing, or potentially disseminating, stolen computer information may have potentially run afoul of the Computer Fraud and Abuse Act, or could be charged as a conspiracy to commit cybercrime, which would be a RICO predicate. The knowledge that campaign adviser Papadopoulos had advance warning that the Russians held hacked emails raises the risk for campaign officials that they aided and abetted the Russian effort.

It might also be possible to make the case that a conspiracy existed for the express purpose of defrauding the United States, another clear RICO violation.

If members or officials of the Trump campaign knew that the Russians were directly attempting to assist their campaign, which there seems to be considerable evidence that they did (including the email to Donald Jr. that made this point explicitly) they could also be charged for abetting a criminal conspiracy.

However, it is important to add a caveat regarding the investigation of Trump's Russia involvement. The Special Counsel is in essence leading both a criminal investigation and a counterespionage investigation. This dual role will create some tensions in what he can reveal to the public. As Asha Rangappa, a former associate dean at Yale Law School and a former special agent in the Counterintelligence Division of the FBI, observed, "We are less likely to get direct public evidence of this since most of the information obtained by the FBI about Russia's network and tactics will be classified unless someone is prosecuted for a crime."¹³³

Obstruction of justice and other areas of concern since the election

The Special Counsel's investigation will also naturally cover events since the election, and in this area the primary concern is one that very often lies at the heart of RICO charges: the obstruction of justice. The U.S. code makes clear that a large number of activities can potentially fall under obstruction of justice charges such as destroying or altering evidence, obstructing a criminal investigation, retaliating against witnesses, obstructing examination of a financial institution, retaliating against a federal law enforcement officer by false claim, and other similar actions.

The apparent pattern of obstruction since the election by the Trump administration and associates regarding their ties with the Russians would appear to give the special counsel a great deal to work with, and would provide the special counsel not only with an offense routinely used to build RICO cases, but also a potentially impeachable offense. (It is worth noting that the three articles of impeachment against President Richard Nixon did not refer to the break-in at the Democratic National Committee, which he and his staff helped engineer, but cited obstruction of justice, abuse of power, and contempt of Congress.)¹³⁴ The Brookings Institution recently concluded, “the public record contains substantial evidence that President Trump attempted to obstruct the investigations into Michael Flynn and Russia’s interference in the 2016 presidential election through various actions, including the termination of James Comey.”¹³⁵

The incidents below, while serious, and sometimes potentially criminal, in their own right, also seem to paint a broader picture of interconnected actors working very hard to obscure the full extent of their interactions with the Russians during the course of the campaign and before. Some also suggest a pattern of activities that could amount to obstruction of justice.

- National Security Adviser Michael Flynn admits that he lied to FBI investigators about the extent of his interactions with the Russian ambassador during the transition between the election and Trump’s swearing in, and that these discussions related to U.S. sanctions on Russia for its election meddling—despite his

previous denials that this was the case.¹³⁶ (Flynn's multiple interactions with the Russian ambassador appear to have shown up in routine U.S. surveillance efforts.)¹³⁷ This gives rise to potential charges that other senior administration officials that also had knowledge of, and had authorized, Flynn's conversations with the Russians attempted to obstruct justice as these conversations were being investigated or perjured themselves in conversations with the FBI. These events also call into question if there was some sort of quid pro quo offered to the Russians where sanctions relief would be exchanged for supporting Trump during the campaign and improved bilateral relations.¹³⁸ Those who have reportedly had access to the intercepts between Flynn suggest a quid pro quo was not directly discussed during the calls, although the subject of reviewing the sanctions and the expulsion of Russian diplomats did take place.¹³⁹

- Flynn repeatedly failed to disclose that he received substantial payments from Russian and Turkish entities on his security clearance forms as required by law, a violation of both the Foreign Agents Registration Act and making a false statement on a clearance form, which is a felony.¹⁴⁰ The fact that these disclosure failures were not mentioned in his plea deal suggests that he had testimony that the special counsel viewed as being of significant value, and would likely only be seen as of such value if they implicated officials in even higher positions (of which there are very few.)
- Despite the fact that the FBI had apparently warned the White House Counsel that Flynn presented a security risk due to his potential to be black-mailed by the Russians regarding his failure to disclose his conversations with the Russian ambassador and payments from Russian sources, President Trump failed to take any action regarding Flynn until the FBI's concerns became public. Indeed, former Acting Attorney General Sally Yates flagged concerns regarding Flynn for White House Counsel Donald McGahn on January 26, 2017, a full 18 days before Flynn was dismissed and a period during which he continued to take part in sensitive national security conversations.¹⁴¹ It will be of particular interest to the special counsel if the president or any of his team took specific actions to attempt to curtail the Flynn investigation during this interregnum, which would amount to obstruction of justice.
- Attorney General Jeff Sessions repeatedly failed to fully disclose meetings with Russians during the course of the campaign despite being asked point-blank about these interactions while under oath during his confirmation

hearings. Sessions' lack of candor on this front led him to ultimately recuse himself from the Russia investigation—a move that by all accounts enraged President Trump.¹⁴²

- Jared Kushner has repeatedly failed to fully disclose his foreign contacts on his security clearance forms.¹⁴³ What is most striking is that, again and again, the failure of Trump administration officials to engage in proper disclosure almost always seems to come back to the issue of Russia; this again suggests a broader pattern or conspiracy to obstruct investigators.
- Former FBI Director James Comey testified before the Senate Intelligence Committee that, shortly after the inauguration, Trump asked him to a dinner at the White House, attended only by the two men. During the dinner, Trump repeatedly demanded Comey's loyalty, stating, "I need loyalty, I expect loyalty."¹⁴⁴ Eventually, Comey replied to Trump's demands by saying that Trump would "always have honesty" from him.¹⁴⁵
- In the immediate aftermath of Flynn's forced resignation, Trump maneuvered to have a private conversation with Comey, at which time he tried to convince Comey to drop his investigation of Flynn, stating, "I hope you can see your way clear to letting this go, to letting Flynn go. He is a good guy. I hope you can let this go."¹⁴⁶ In his Senate testimony, Comey asserted that he took Trump's request "as a direction."¹⁴⁷ In both of these conversations, Trump ensured that he spoke with Comey alone, leaving no other witnesses to the conversation.
- Trump contacted Comey again via telephone on March 30, at which time Trump "described the Russia investigation as a 'cloud' that was impairing his ability to act on behalf of the country," according to the former FBI director.¹⁴⁸ Trump then asked Comey "what we could do to 'lift the cloud'" and to "find a way to get out that [Trump] wasn't being investigated."¹⁴⁹
- President Trump fired Comey on May 9, 2017, later directly attributing the firing to the ongoing Russia investigation.¹⁵⁰ The White House initially claimed that Comey was fired at the suggestion of the Deputy Attorney General Rod Rosenstein for mishandling the investigation into Hillary Clinton's emails. However, Trump quickly made clear that he fired Comey because he was displeased with the Russia investigation. On May 10, 2017, Trump allegedly told the Russian ambassador in the Oval Office that, "I faced great pressure because of Russia," and by firing Comey, "that's taken off."¹⁵¹

Trump echoed that exact same reasoning when he told NBC news on May 11, 2017: “When I decided to [fire Comey], I said to myself, I said you know, this Russia thing with Trump and Russia is a made-up story.”¹⁵²

- Trump’s admission that he fired Comey because of the Russia investigation was essentially an admission that he was trying to obstruct or halt the FBI investigation into his campaign’s ties to Russia.¹⁵³ An initial draft of President Trump’s letter citing his reasons for firing Comey, penned jointly by Trump and aide Stephen Miller, was seen as so problematic that it was quickly shelved by White House Counsel Donald McGahn.¹⁵⁴ And while never sent, it will help further illuminate the intent behind Comey’s firing.
- Trump reportedly tried to enlist the heads of the intelligence agencies both to help shut down the Russia investigation led by the FBI and to issue statements dismissing any idea of he and his team colluding with the Russians. According to reporting by *The Washington Post*, Trump tried to enlist Director of National Intelligence Dan Coats and National Security Agency (NSA) Director Michael Rogers to “help him push back against an FBI investigation into possible coordination between his campaign and the Russian government,” although both refused to do so.¹⁵⁵ Later reporting by *The Washington Post* revealed that Trump went even further, suggesting to Coats that he intervene in Comey’s investigation. Such attempts demonstrate that “Trump aimed to enlist top officials to have Comey curtail the bureau’s probe.”¹⁵⁶
- The White House confirmed that President Trump was directly involved in drafting the initial, and highly misleading, statement by Donald Trump Jr. that tried to explain away his meeting with Russians at Trump Tower as largely being about “the adoption of Russian children.”¹⁵⁷ Trump has maintained that he did not know about the meeting with the Russians until well after the fact, despite being in the building the same day and later that day at rally promising that damaging information against Clinton would soon emerge. As *The Washington Post* noted, Trump’s “advisers worry that the president’s direct involvement leaves him needlessly vulnerable to allegations of a coverup.”¹⁵⁸
- Trump is now threatening Mueller’s investigation. In an interview with *The New York Times*, Trump claimed that it would be a “violation” if Mueller were to look into his finances while undertaking his investigation.¹⁵⁹ The

president, along with his staff, have also tried to discredit Mueller and other members of his investigatory team by implying that they are biased or have conflicts of interest, despite no evidence of either.¹⁶⁰

Any one of these incidents would likely not be enough to convince a prosecutor (or Congress) to level an obstruction of justice charge against a sitting president of the United States. But taken cumulatively, along with the fact that The Trump Organization covered up that it was still engaged in business talks with Russians in Moscow even as the campaign was ongoing, begins to paint a far darker picture.¹⁶¹

Other post-election matters

In addition to the obvious obstruction of justice concerns, in May 2017 *The Washington Post* reported that representatives of Kushner Companies, including Jared Kushner's sister Nicole Meyer, gave a presentation in Beijing encouraging Chinese citizens to invest \$500,000 in one of their complexes in exchange for an EB-5 immigrant visa, which essentially allow individuals who make large investments in the United States that create jobs to immigrate to the United States.¹⁶² The marketing event highlighted the company's connections to the Trump administration, with Jared's sister making direct mention of her brother and his new role in the Trump administration. While Kushner has stepped down from his role in the family business, he is still a beneficiary of much of the business through his trusts.¹⁶³ A spokesperson for Kushner Companies declined to comment on the *Post's* story.

Following apologies by Kushner Companies and Jared's sister, CNN reported that Jared Kushner's status and position in the administration was again "used to lure Chinese investors to his family's New Jersey development."¹⁶⁴ CNN found that online promotion materials from two of the businesses working with the company to find Chinese investors for the New Jersey property made references to Kushner's previous role as head of Kushner Companies and his role in getting Trump elected. A Kushner Companies spokesperson told CNN that, they were "not aware of these sites" and have "nothing to do with them."¹⁶⁵ The company also said it would "be sending a cease and desist letter regarding the references to Jared Kushner."¹⁶⁶

Later reporting by *The Wall Street Journal* revealed that New York federal prosecutors are investigating Kushner Companies over their use of the EB-5 visa program.¹⁶⁷ Prosecutors reportedly subpoenaed the company in May, though it is unclear what potential violations are being investigated. In a statement, the Kushner Companies' general counsel, Emily Wolf, said that the

company use of the visa program, “fully complied with its rules and regulations and did nothing improper.”¹⁶⁸ Further, she said that the company was “cooperating with legal requests for information.”¹⁶⁹

Kushner’s attempts to secure funding for a troubled Kushner Companies real estate venture may also be of interest to prosecutors. During the transition, Kushner met with Sergey N. Gorkov, the head of Russian state-owned Vnesheconombank (VEB), which is currently on the U.S. sanctions list and has served as a front for known Russian spies.¹⁷⁰ The White House described Kushner’s meeting as part of routine diplomatic encounters; however, Gorkov indicated that he met with Kushner in Kushner’s capacity as the chief executive of Kushner Companies.¹⁷¹ That the line between Kushner’s official duties and his business interests was so poorly defined by the two participants in the same meeting is striking.¹⁷²

There were some suggestions that Kushner may have discussed with Gorkov his 666 Fifth Avenue property in New York City, which has required critical infusions of capital to avoid dragging down the entire Kushner real estate empire, in a bid to obtain additional funding from the bank.¹⁷³ White House spokeswoman Hope Hicks has said that no business discussions took place at that meeting. She also added that the topic of sanctions did not come up in their discussion either.¹⁷⁴ Efforts to attract Chinese funding for the same property may give rise to similar concerns that Kushner was attempting to leverage his position within the incoming administration to his family’s direct financial benefit.

What is for sure, however, is that concerns about Trump and Russians have not waned since the election. A Reuters investigation revealed that “at least 63 individuals with Russian passports or addresses have bought at least \$98.4 million worth of property in seven Trump-branded luxury towers in southern Florida.”¹⁷⁵ According to the reporting, some of the buyers included “politically connected businessmen,” as well as “people from the second and third tiers of Russian power.” Additionally, Reuters noted that their final count could have been low, as at least 703 owners of the 2,044 units examined were limited liability companies (LLCs), which allow buyers to obscure their identities. Reuters investigation, however, did not reveal any suggestions of wrongdoing by Trump or The Trump Organization. Additionally, according to analysis by *USA Today*, most Trump real estate properties are now being sold to highly secretive shell companies, making it even more difficult to determine if these purchases are designed in whole or part to curry favor with the president.¹⁷⁶

Conclusion

There are a number of key takeaways with regard to The Trump Organization and the potential application of RICO as a prosecutorial tool.

As noted in the introduction of this report, the Trump Organization arguably behaves a great deal like the organized crime syndicates which the RICO statute was originally designed to target. The Trump Organization engages in a sweeping range of activities, many of them perfectly legitimate, some of them apparently in open violation of the law, and many more which appear to take short cuts to avoid both the spirit and the letter of the law. These Trump structures appear at times to be loosely organized, driven by personalities more than formal structure, with loyalty to, and profit for, the Trump and Kushner families being the only over-riding imperative to the business model. The degree to which Trump and his associates have avoided basic norms of transparency are remarkable. Trump and his associates are engaged in some highly irregular financial transactions, and he and his associates have repeatedly veered into behavior that bears striking resemblance to the obstruction of justice. And, importantly, organizations and individuals rarely engage in systemic obstruction of justice efforts if they are not trying to obscure other underlying felonious behavior. In short, there is a colorable claim that these many diverse allegations of criminal activity provide a sufficient basis for one or more RICO actions at either the state or federal level. And, the recent indictments of Paul Manafort and his business partner Richard Gates, as well as the guilty plea by George Papadopoulos only add further momentum to the potential to make a RICO case.

That said, there is enormous difference between being able to make a RICO case and a prosecutor, particularly a special counsel investigating a sitting president, deciding that it is in the best interests of justice to do so. That caution is both understandable and merited, and both former Acting Attorney General Sally Yates and Preet Bharara, the former U.S. Attorney, argued recently that the special counsel will face a high bar in bringing criminal charges regarding his

probe of Trump and the Russians.¹⁷⁷ Tackling the case, or cases, involved in the Trump probe as a RICO case could lead to a sprawling prosecution where the special counsel is not only required to prove beyond a reasonable doubt any specific criminal charges that he decides to bring, but also to make an equally persuasive case that these criminal actions are parts of a larger ongoing criminal enterprise.

The nature of any potential charges is also quite important in this instance. Given Mueller's core mandate to investigate Russian interference in the 2016 election, any RICO case established by the Special Counsel would likely need at least one RICO predicate related to the Russia issue, with obstruction of justice the most obvious candidate. (In contrast, a New York or other state prosecutor could very well be comfortable mounting a RICO case involving Trump based on predicates stemming from complex financial crimes alone, with money laundering, bank and wire fraud, and obstruction all obvious candidates.) Whatever charges a prosecutor at either the state or federal level may bring if they deem it appropriate to do so will almost certainly be painted as a fishing expedition by the president's lawyers, regardless of the merits of the case.

The special counsel is also acutely aware that the president enjoys the expansive power of federal pardons, and there have been media reports that the special counsel's team is carefully researching the limits of the power of the pardon. The president's power to issue pardons for federal, but not state, crimes, makes it more difficult for the special counsel to flip potential witnesses who might avoid testifying as to their involvement in criminal activity based on hope or knowledge that the president would pardon them. It is also useful to note that while not a matter of settled law, there is some skepticism that a sitting president can face criminal charges, with impeachment most widely viewed as the obvious remedy for such presidential abuses, and impeachment remains a relatively unlikely prospect with both the Senate and the House held by the president's party at this juncture and seemingly reluctant to challenge his authority.

Thus, the special counsel would seem to face extraordinarily complex calculations in both presenting his findings and deciding what charges he would potentially bring. A highly logical strategy for the special counsel is to engage in burden sharing with the New York and/or Virginia attorney generals.

By having some of the potential charges pursued at a state level, prosecutors can ensure that potentially helpful witnesses or co-conspirators do not have the potential of a presidential pardon being held out to discourage their assistance.

In September 2017, *Politico* reported that just such cooperation is already taking place between the special counsel's office and the New York attorney general. As *The Washington Post* observed:

*Federal rules and Justice Department policy clearly provide for such cooperation and would even allow Mueller to share confidential grand jury information with Schneiderman's office with court approval. Beyond that, there is always a great deal of information not covered by grand jury secrecy that could be freely shared. But although certainly not unheard of, federal and state prosecutors cooperating in an investigation is relatively unusual, at least in a white-collar case.*¹⁷⁸

But having a sitting president investigated for collaborating with hostile Russian forces to tilt a presidential election is certainly an extraordinary case.

The involvement of the New York attorney general has a number of other benefits as well: This is an office that has already repeatedly investigated the Trump Organization with some degree of success; a significant number of the financial transactions concerning Trump, Sater, Manafort, and others all took place in the state of New York; and, the office is well familiar with making complex financial cases. The possibility that the New York attorney general would bring a RICO criminal case against The Trump Organization as it relates to complex financial crimes and or money laundering is an intriguing one, and it would hold a sword over key actors in the process while allowing the Special Counsel to direct his greatest firepower on Trump's Russia links and what appears to be a pattern of obstructing justice.

On balance, RICO instruments can and should be seen as a viable potential tool for prosecutors probing the actions of President Trump both before and after he took office. The more that is learned about the Trump universe, and the better the investigative research by prosecutors, the media, Congress, and concerned citizens, the sharper a pattern of criminality appears to come into focus. Less than a year into his presidency, Trump's national security adviser has pleaded guilty to lying to the FBI, his former campaign chairman is facing multiple indictments,

and a campaign foreign policy adviser has pleaded guilty to lying to the FBI and acknowledged that the Russians claimed to have Clinton's emails before the public knew about such hacking. More dominoes seem almost inevitable to fall given the special counsel's efforts to secure cooperating witnesses, and RICO statutes give him a powerful card to play if he wishes to do so.

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