

## Cardinal Comey's Cardinal Sin: A Fabricated Russian Investigation



by John D. O'Connor

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CNN legal analyst Jeffrey Toobin has written an engaging book entitled, [\*True Crimes and Misdemeanors: The Investigation of Donald Trump\*](#). There is only one problem with the book's premise: its predicate investigation was falsified by former FBI Director James Comey. So, the question is better asked: are the crimes shown by the Russian probe those of Trump ... or Comey?

Of course, at first blush, this seems like an absurd question. On March 20, 2017, [Comey testified](#) before the Senate that the Justice Department had authorized him to announce what later became known as "[Russiagate](#)," that is, an investigation into "links between individuals associated with the Trump campaign and the Russian government and ... coordination between the campaign and Russia's efforts." This probe, Comey announced, would include "an assessment of criminal acts."

This proclamation was obviously designed to publicize potential criminality, not so much of lesser campaign individuals, but of Trump himself. Indeed, Toobin correctly notes that Trump was always Comey's true target.

Convincingly portraying Trump as an ignorant legal neophyte, Toobin details Trump's pleas to Comey to announce publicly the Director's private assurances, thrice made, to Trump that the President was not a target. The author disdainfully describes Trump's amateurish attempts to gain Comey's "loyalty," as if it were criminal for the President to so seek from an FBI Director he would like to trust.

Frustrated with the cloud over him caused by Russiagate, Trump fired Comey, very bluntly telling the media that he was not relying on Deputy Attorney General Rod Rosenstein's supporting memo. To Toobin's horror, Trump immediately told Russian diplomats that "the pressure is off" regarding the Russian investigation.

Thereafter, of course, there followed two years of an all-out [Special Counsel investigation](#). Special Counsel Mueller, Toobin argues, was just [too decent](#) to deal with Trump's essential indecency to charge him with crimes.

According to Toobin, the SCO "did a brilliant job of the traditional work of prosecutors," and proved wide-ranging wrongdoing. But Trump's "simplicity" won out over the SCO Report's "complexity" and "opacity" when Trump proclaimed simply, "no collusion and no obstruction." In reality, Toobin argues, the Russian investigation showed numerous Trump crimes, especially "clear" obstruction of justice, such as Comey's firing.

What is wrong about this analysis? The book is dedicated "To Journalists" and this is indeed an all too common partisan journalistic narrative. Unfortunately, when Toobin's narrative critique is put aside, sprinkled throughout the book are multiple crimes and misdemeanors ... of Comey!

How so? Well, for starters, Comey gave the public a false impression that the Russian investigation was at least in substantial part a *criminal* one, not a purely *counterintelligence* investigation. If this was a purely counterintelligence investigation, as it was, assigned to Mueller, it was illegal for Rosenstein to appoint him as Special Counsel under [28 C.F.R. § 600.1](#), requiring a *criminal* case as a predicate. Comey knew that, even if the flummoxed Washington newcomer Rosenstein did not.

But what about the criminal obstruction Comey claimed when Trump fired him? Again, as Comey knew, but Rosenstein and the public may not have, a counterintelligence investigation is not a "proceeding" which was capable of being obstructed, so Comey's firing could not have been a criminal act. Comey thus lied yet again when urging this wrongfully predicated non-crime.

But even if technically there could be no obstruction of the Russian investigation, wasn't Trump's arguable interference with the investigation unethical? No, because this was not the FBI's investigation to control – it was under the Constitution within the President's control as a

national security matter. Could Franklin Roosevelt have stopped a WWII Russian counterintelligence investigation? Of course. He was the Commander-in-Chief.

If all this is so clear, why wouldn't Trump – or the public – have known it? Because Comey concealed it, intentionally, to keep the President off-balance by publicly hanging this false criminal liability over his head, aided by a complicit media simultaneously fooling the public.

Putting these legalities aside, wasn't the SCO Russian investigation necessary to determine "collusion," an issue about which the public should know? No, because the FBI had already determined conclusively the dearth of evidence in this regard by early 2017, according to [recently-released FBI documents](#). And, of course, following that determination, Comey nonetheless orchestrated the "recusal" of Attorney General Jeff Sessions, wrongfully so under [28 C.F.R. § 45.2](#) (requiring a criminal case), so Comey could continue a crimeless and collusionless investigation without interference from Sessions.

While Trump could not obstruct an investigation over which the Constitution gives him authority, Comey, in contrast, could commit crimes of dishonesty, the most glaring of which was concealment from the President of two FISA warrants. See [18 U.S.C. § 1001 \(a\)](#) (1), false statement by concealment. There is at least some cause to believe he made illegal false statements/concealments to Sessions, Trump, Rosenstein and the public by falsely claiming a criminal investigation where there was none, and thus depriving the government and the citizens of his "honest services." See [18 U.S.C. § 1346](#). Special Counsel lawyers have made their careers prosecuting "honest services" cases, but turned their heads when Comey egregiously sinned.

So Comey, called "[Cardinal](#)" behind his back by agents disgusted by his recititious pomposity, arguably committed numerous crimes, but, as he anticipated from the outset, the "opacity" of the SCO Report, and fawning anti-Trump journalists like Toobin, have granted the Cardinal perpetual indulgence.

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