

The Breach 306: Indicting Trump's Inner Circle

Lindsay B.: Welcome to The Breach, your deep dive into authoritarianism and corruption in the era of Trump. I'm your host, Lindsay Beyerstein. The Breach is a production of Rewire.news, your home on the web for cutting edge reporting and commentary on reproductive health and justice. If you're enjoying the show, please take a moment to rate and review us on Apple Podcasts. It really helps new people find out about the show.

My guest today is Andy Wright, a law professor at Savannah University. He joined the faculty after serving as assistant counsel to President Obama. He also blogs at Just Security. He's here today to talk about the indictment against Trump intimates Paul Manafort and Richard Gates, and the guilty plea of George Papadopoulos.

Andy, welcome to the program.

Andy Wright: Thanks so much for having me.

Lindsay B.: Did you win your indictment pool, guessing who was going to be indicted first?

Andy Wright: I guess I probably did. I didn't actually have any money on it, because I'm trying not to predict behavior in the Trump era. My best money would have been on Manafort, given the fact that he got an indication from the Special Counsel that he was likely to be indicted.

Lindsay B.: Can you give us a big picture overview of what the Manafort/Gates indictments look like?

Andy Wright: Yeah. The Manafort and Gates indictment is really largely focused on their roles as agents of foreign principles in their business transactions. That was specifically related to Ukrainian entities that were part of the pro-Russia, Puppet Master entities in the Ukraine. They engaged in a number of different financial transactions, apparently with these entities that were masked, and were also not disclosed in the course of foreign agent registration requirements as alleged in the indictment. All of that seems to be the core allegations in the Manafort and Gates indictment, so it relates to their job working for these entities, and then getting paid by these entities, and covering it up in various ways.

Lindsay B.: Why would someone be interested in taking money from a Ukrainian party like that, the Party of Nations, and then instead of just reporting it as income from their business, why would somebody want to hide that?

Andy Wright: There could be a couple of different reasons. One could be just greed. If you were engaged in a bunch of foreign transactions, and you wanted to try and just get involved in tax evasion, and hide the amount that you actually earned. That would be one type of motive. It would just be purely financial. In other situations, if you had some other reason to hide it, it could relate to the fact that you were trying not to take on the stigma of association with an unpopular group, so you were trying to

hide the association in that way. Or at the far end of that kind of conduct would be if you were actually working for a hostile government, and there could be some other legal liabilities associated with helping that government. It might be in your interest to try and hide your association.

Lindsay B.: What kind of ties might a Ukrainian party like that, like the Party of Nations, have with Russian intelligence?

Andy Wright: There's been a long history of, in the post-Soviet era, of Russian inter meddling in Ukrainian politics. It's been a struggle for the Ukraine in that period, to try and create and reestablish its separate identity. There's been, obviously, the invasion and annexation of Crimea. During that period there was a tumultuous period of vacillation back and forth between pro-Russian entities within the Ukraine, and groups that were looking for an independent Ukrainian identity that would be turned a little bit more towards Europe.

Lindsay B.: One of your colleagues on the Just Security blog had an interesting post, where he said that there was a very good chance that Manafort was being watched, because the Party of Nations was being watched by the Russian intelligence system.

Andy Wright: Yeah. I would assume that any time you're involved in foreign election work, which it sounds like Manafort's business model involved a fair amount of lobbying and campaign consulting for foreign governments. I would assume that some of those communications are going to be monitored just because you're communicating across international borders. Especially if you have a situation where there might be a geopolitical struggle going on with interests adverse to the United States, like you might have within the context of Ukraine, where they're ... The US at times is on one side, and Russia is on the other in terms of trying to have influence with the government there. Not to say that those are equivalent. Russia has been undermining Ukrainian democracy, whereas I don't believe we have. One would expect to be under surveillance in the modern era.

Lindsay B.: This is something that often trips people up. Can you say a bit about what exactly money laundering is, and how one goes about proving it in a court of law?

Andy Wright: Money laundering involves an effort to take money derived from illegal proceeds, illegal activities, and the laundering of it is designed to allow you to actually use it without tipping off the authorities. There's actually a very good explanation of this in the TV show *Breaking Bad* that Saul Goodman gives when they come in seeking legal advice, and instead get advice on how to conduct their criminal enterprise.

The idea is that you're able to then get access to funds that if you use traditional banking, and traditional transactions, they would end up on the radar of regulators, and raise suspicions with law enforcement as to, how are you getting all this money? It sounds like the special prosecutor here is alleging that Manafort was using loans against properties he purchased with money that was the proceeds of illegal activity. Then used the loans as his ability to access the capital that he invested in those properties.

Lindsay B.: The predicate offense, the illegal thing was not declaring the money that he got from the Party of Nations?

Andy Wright: Yeah. That was part of it, and it also related to the conspiracy to avoid registering as a foreign agent for the payments that were associated with that.

Lindsay B.: Then the thing he did to hide the money, amongst other things, was buying properties, and then getting mortgages on those properties, and then spending that money as if it was just his money, rather than having been earned for somewhere else.

Andy Wright: Right. Sometimes you end up trying to just do a number of transactions, so it's hard for someone to follow the money, and there was apparently, notably, a very large purchase of rugs with these transactions. Part of this is also the use of offshore accounts, and other types of banking institutions, and money repositories that make it harder to follow the chain of money along the way for US regulators. Those are all sort of indications of attempts to conceal, potentially. Although there can certainly be legal uses of those types of entities, but it's not a great set of facts.

Lindsay B.: One crazy part about the indictment that really caught my eyes was the hundreds of thousands of dollars he spent on home automation and customization. I'm not a homeowner, but I don't even know how you could begin to spend that kind of money.

Andy Wright: Yeah. On the one hand, I totally agree. On the other hand, I look at my house, and think, "Wow, I could spend hundreds of thousands of dollars, and not see a thing." But no, that is the kind of thing that you can spend a lot of money on, and mask purchases, and the use of money in ways that aren't necessarily super visible when you put them into something like a property.

Lindsay B.: Then they become equity, and you could sell your house, and if you did, that would be like further money laundering, almost?

Andy Wright: Sure. Absolutely.

Lindsay B.: I've wondered whether that was part of the reason why they had that incredibly elaborate raid, though, whether they knew that he had a moat, and crocodiles, and stuff that he bought around his house with all the money.

Andy Wright: It's interesting, because at some point, hopefully, we'll get a definitive explanation of what motivated that raid, but there were a couple of things going on. If you'll recall, that was the week that negotiations between Manafort and the Senate Judiciary Committee fell apart for his voluntary appearance before the committee. One theory could be that the special prosecutor was watching those negotiations break apart, having had an expectation that he was going to go testify in front of Congress, and then thinking, "Oh, that's falling apart. Then we better move." There was also some discussion about the relation to the Papadopoulos arrest, and that

they might've gotten some information when Papadopoulos started talking to them that suggested that Manafort was obstructing, or destroying evidence, or some sort of flight risk that suggested to them that they needed to start seizing materials, or some other indication that we just don't know about yet.

That's one of those questions that I still hope to find the answer to at some point.

Lindsay B.: Speaking of the Papadopoulos part of the story, what's notable about his first guilty plea in this whole endeavor?

Andy Wright: One point is the fact that it's actually relatively minor. Not that lying to the FBI is a minor offense, but it's relatively minor given the number of different kinds of charges that he potentially could have been charged with, including multiple counts of lying to the FBI, and potentially other substantive charges. The fact that it was a single count was one of the early things that tipped off observers once that became public, that he was probably cooperating. That's a fairly typical type of move to agree to one charge, one felony count, maybe no jail time, maybe a very short amount of jail time that would be reduced based on cooperation, even though there's a lot more that could potentially be brought. That was one sort of indication that I noted.

The second was just the fact that the Papadopoulos plea statement, statement of the offense, really brought us right into the inside of the Trump campaign, albeit by means of someone who's a relatively minor character in the management structure, but certainly not as minor as Trump allies are making him out to be at present.

He was in some pretty high level meetings, and he was certainly interacting with a lot of the people who were on the senior leadership team of that campaign. We're still learning more about Papadopoulos' role inside the campaign, and how others viewed him. It was interesting how the Manafort and Gates indictment was really focused on financial crimes that were nominally unrelated to the campaign, whereas Papadopoulos is right at the center of the campaign activity. Although I'm a big believer that the Manafort and Gates indictment was a predicate to campaign-related potential liability for them, or efforts to leverage them to start giving information about what happened during the campaign. Rather than just appear interested in their fidelity to foreign agent registration, and paying their fair share of taxes.

Lindsay B.: Manafort's lawyer is yelling and screaming about how this foreign agent registration law has only been used criminally six times since 1966. Is that relevant at all?

Andy Wright: I think on these kinds of statutes, we have incredibly broad federal criminal law, as a matter of substantive coverage. When I teach that class, I give a few hypos that usually probably would encompass almost everyone in the room having committed some sort of technical violation of a mail or wire fraud statute during their lives, to try and illustrate this point. So much of federal criminal law is discretionary, and it's

about when you decide to bring charges based on a range of choices that the prosecutor has, rather than a matter of substantive legal limits within the federal law.

It's not totally irrelevant to look at the historical use of the statute. It is the reason that it's been historically underused, because there was a problem with the statute, or was it because there's an easier statute for prosecutors to use? For example, if you ... Foreign agent registration could have a criminal component violation, but that could be getting enforced by means of false statements' liability rather than agency registrations.

There's a question as to the substance of the law, and as to the policy of the law, but if a prosecutor decides to move forward with it, this is a really interesting signal about how seriously, at least Mueller's team is taking that statute. If I were Mike Flynn, who also seems to potentially have some exposure in this area with respect to Turkey and some other governments, I'd be quite nervous. This argument that they don't use the statute that much didn't even seem to be a speed bump for Mueller's team.

Lindsay B.: Why would it be even an issue, though, if the prosecutor said, "Well, I don't care what other prosecutors have done. I just know what the law says, and I want to reply it to you, and I can prove you broke it. Who cares how many people have been charged before?"

Andy Wright: Yeah. Again, I think it is not going to be a defense to this charge, so let me start with that. However, it might be indicative of some problem with the statute that I'm not aware of, because I haven't spent my time practicing in that area, where there might be some other policy issues that have been leading to the lack of its use. It's a nice talking point, but it's not a defense to the criminal charge without hearing about some sort of legal infirmity to the statute. We have hundreds of statutes that barely get used, but if you got caught up in the wrong kind of scandal, they could be deployed against you, and there'd be nothing constitutionally infirm about their use against you. It's just that you came in the headlights at that time.

Lindsay B.: Speaking of Flynn getting nervous, we've been hearing reports spun as news that Mueller has the evidence to charge Flynn, but what has changed? Why is this suddenly being announced now, because it seems like what they're actually saying in the articles is stuff that has been known for a long time?

Andy Wright: What's interesting about that is, as I've seen the article, they've been sourced to someone who is familiar with the investigation, which that language to me, that could either be from the prosecution side, or from the defense side, and that language suggests to me that it's from the defense side. One of the things that could be a trigger, is that someone has informed Flynn's legal team that he is about to be indicted, and then that is them trying to get out in front of the story, or someone else trying to get that information out.

Lindsay B.: Why would Flynn's people want to be talking up the likelihood that their client is

getting indicted?

Andy Wright: It's High Risk Fool. On the one hand, if you still feel like you have an opportunity to avoid indictment, you might not want that to tumble out into the public space, because then the public pressure on the prosecutor's office will be different. On the other hand, if your strategy is to try and rattle the President's cage sufficiently that he offers a pardon, or take some sort of other action to thwart the investigation, then maybe that makes sense. I don't have 100% answer on what's motivating that, if it were the defense side, but that's one plausible theory of who's talking.

Lindsay B.: A former US attorney from New York's Eastern District was on TV the other day. He said that the range of indictments and the conviction that Mueller's put forward has now made him bullet proof. That Trump can't possibly fire him at this point. Do you think that's true?

Andy Wright: I am studiously avoiding predicting Trump behavior. With that said, it certainly drives up the political costs for Trump to take adverse action against Mueller. In the week before these indictments drop there seemed to be a concerted effort among a number of Conservative media outlets ranging from The Wall Street Journal editorial page to Breitbart trying to pave the way for a removal of Muller from office, or calls on him to step down. Once the indictments came out, that made it much more difficult because now all the members of Congress, who are going to have microphones shoved in front of their face every time there's a development in the case, would be put in the position of having to explain how this is a meritless witch-hunt when Mueller already has a guilty plea. It's hard to say that there's nothing there when someone has actually plead guilty to a felony in the Papadopoulos case, and put forward at least, allegations that look quite well researched with respect to Manafort and Gates.

It's going to make it much, much more difficult for the President to remove him without further dire consequences to his Presidency.

Lindsay B.: Do you think convectional Republicans would actually draw a line in the sand about this? That they would be willing to impeach if Trump were to fire the special prosecutor?

Andy Wright: I think that this is more like a grieving process for Republicans that are trying to preserve their ability to get certain agenda items done, than it is a Road to Damascus epiphany kind of thing. I think Democrats are looking for epiphanies, but instead what we're seeing is watching Republicans go through a very individualized process of denial bargaining. Hopefully on a path towards acceptance that the President isn't really acting within the duties of his job.

I don't think any one trigger event is going to be ... That I can predict would be The Watershed moment, but each one of these makes a little bit more erosion in the tracking poles. A little bit more awkward for each member to be able to justify their position when they go home, or talk to the cameras. It's a gradual internal process

for them as well. We've seen a few people like Jeff Flake or Bob Corker who have gotten to acceptance and jumped across the divide at this point, in terms of their assessment of the President's fitness for office. It's a gradual process.

If you look back at Watergate, it was similar. Republicans held on to Nixon for a very long time. They didn't operate in the same level of polarized and media that we do now. It took a long time and a lot more shoes to drop in terms of indictments and trials and everything else before. Supreme Court's opinions about the tapes, before Republican's leadership finally went up to The White House and told Nixon the [chick 00:19:35] was up.

Lindsay B.: Mueller's strategy is obviously to roll up people further and further up the chain of command. What would happen if he got some real dirt on Jeff Sessions?

Andy Wright: Jeff Sessions has had a rough week as people use a measuring stick of his prior statements against what they're learning about the Papadopoulos statement. I think he's already having a hard time. He'd already had several problems along the way when people looked back at what he represented during his Senate Confirmation hearings, and as his actual contact with Russia. I don't think that the Attorney General has that much insulation, because he reportedly isn't in great stead with the President. That's been a touch-and-go relationship for a while. He doesn't have as many patrons on the hill as he once did, given the number of revelations about inconsistencies with facts and his statements to Congress. I think he's vulnerable to further disclosures forcing his removal.

Lindsay B.: Would it be possible for him to simply be charged as a regular person, as a sitting Attorney General?

Andy Wright: Yeah. That's a huge decision, I don't want to make light of it. There's nothing that would constitutionally prohibit the Special Counsel from seeking the indictment of the sitting Attorney General. I'd have to go back and look at the ticktock. Attorney General Mitchell was indicted during Watergate. I think he'd resigned at that point, but it related to conduct that occurred before, and during, his time in office. There's certainly no immunity doctrine that preclude an indictment of a sitting Attorney General. It would be extraordinary nonetheless.

Lindsay B.: On the Just Security blog there was some discussion about Mueller's option to make Trump an un-indicted co-conspirator. What would that mean legally?

Andy Wright: First of all, it would be the first time since Richard Nixon that a sitting President was named as an un-indicted co-conspirator. The allegation means that the President was being assumed to have, or alleged to have engaged in an agreement to engage in felonious criminal conduct with someone else, because that's the nature of a conspiracy. As a legal matter, there are several doctrines that flow from conspiracy that include substantive criminal liability. You've both committed a crime for engaging in the criminal agreement to enter the conspiracy. Then you're liable substantively for all the acts of your co-conspirators.

Let's say that the President got named as an indicted co-conspirator and one of the charges that within the scope of conspiracy was obstruction of justice through the firing of James Comey. If you were someone else who wasn't involved in the decision to fire Comey, but you were within the conspiracy to do so, you could be charged with obstruction of justice for that firing. Even though you weren't involved in the room where the decision was made, or weren't involved in delivering the decision to Comey. You take on a lot of substantive liability because you are then responsible for all the acts of your co-conspirators.

There are also some things like hearsay exceptions. All of the hearsay comments of your co-conspirators can be entered as evidence against you, even if they're hearsay. There are also some other things related to being tried. Whether you can be tried separately, or have to sit at the same table with other people, who might look more guilty than you. There's just a lot of consequences associated with conspiracy charges and law that come even before its been proven beyond reasonable doubt.

Lindsay B.: Let's say that they were able to prove that you were part of a conspiracy to rob a bank. Would that mean that you would be liable ... If say your two other co-conspirators went and stole a car to rob the bank, would that make you liable for the auto theft too, just because you were in on the bank robbery conspiracy?

Andy Wright: Yeah. As long as the auto theft was within the scope of the conspiracy. Meaning that the purpose of stealing the car was to use it as the getaway car during the robbery, you could then be charged with grand theft auto also, even if you had nothing to do with that.

Lindsay B.: But even if you knew, "Okay, I'm board for robbing a bank." But you're not too concerned about what the details are, the grand theft auto could still come back to you if you're two other co-conspirators say, "Oh, what we're going to do is go and execute this theft to pull off the robbery, and not tell him."

Andy Wright: Yeah. They don't even have to tell you they're going to do it, as long as it was within the scope of the conspiracy, which was the scope of this conspiracy was to rob the bank. Then whatever tools they go to do so, however they get them, if they commit other crimes along the way, you could be charged with those crimes.

Lindsay B.: How is Trump's own handling of this affected his liability? A lot of people have said things about what he's saying on Twitter, and how that's affecting his legal fortunes. What do you think?

Andy Wright: I think he's done absolute catastrophic damage to his legal standing in this whole matter by continuing to talk and continue to get involved in things he has no need to be involved in. First of all my old boss, Bob Bennett, when I worked at ... Law Firm for him, used to tell clients, "You may have flunked the facts, but I'm not going to let you flunk the investigation." Donald Trump's been flunking the investigation from day one. The first thing you do when you're in a ditch is you put down the shovel. Every time he talks he gives more ammunition to prosecutors and

congressional investigators about his motives, about his propensity to be dishonest. It's helping shape their decision-making about how to move forward with investigations, and with how to assess his version of events when they finally interview him. All of these comments are incredibly unhelpful to him.

One of the absolutely most damaging things was this allegation that he was personally involved in crafting a false statement in defense of his son Donald Trump Junior, with respect to the June 2016 meeting with the Russian lawyer. Where they were offered dirt on Hillary Clinton, or maybe it was about adoptions, which is also not great. The fact that the President of The United States would be on Air Force One crafting a statement to be released for the American people that's filled with falsehood about an open criminal investigation is just beyond the pale.

Having worked for two Presidents in a capacity to help them manage political scandal, I just can't even believe that they let that get 100 miles within reach of the President. Your job is to protect the President in order for the President to be able to do the job that they were hired to do by the American people. The more that they're involved in these scandal issues, the less time they're spending on their policy portfolios. Really, very damaging.

Lindsay B.: It's also pretty amazing that Trump and his people are out there in public saying, "Mueller better not look into Trump's assets and business deals in Russia. Better not, better not." Is there any strategy that, that could be furthering?

Andy Wright: You got to look at the audiences. When Trump allies or defenders make those comments, they have several different audiences. One, is the Conservative media. They're encouraging Conservative media outlets to run with that, to try and make sure that the political base holds, and de-legitimizes ahead of time any potential problems that relate to something that they've tried to define out of the equation.

They're also sending a message to Mueller that they might be in better stead to remove him from his position if he crosses some sort of line, if they've been able to establish in the public space. I think they might be trying to deter him from having his team look at those kinds of transactions.

The problem for them is, it would be one thing if Mueller just started off ranging investigation of Trump organization finances, and whether or not he was filing all of his taxes properly. It's a totally different thing to be looking back to say, "Why does he have relationships with certain Russian affiliated entities?" And taking those relationships all the way back to their beginning and origins, even if that was a long time ago, in transactions that happened 20 years ago. That would be completely within his mandate to try to understand a potential Russian influence operation.

Let's assume that President Trump is totally innocent of any criminal intention to collude with Russia, or advance Russian interest at the expense of Americans. It's very clear that the Russians were trying to infiltrate the Trump campaign through a variety of different levels. They were trying to assist his campaign in a variety of different ways. It would be natural for the counter intelligence investigation, or

related criminal investigation to look at how those relationships and efforts started, even if those were started, and the Russians were playing the long game, and trying to get involved in the Trump orbit 20 years ago.

I think it would be very hard to sustain a position that a certain time period, or certain type of transaction is completely off limits when the nexus here is about Russian relations.

Lindsay B.: From a legal perspective, if Trump were to make a move against the special prosecutor, does he have to come up with a legal reason? Something Mueller's done wrong? Or can he just say, "I don't like you, you're boring, goodbye."

Andy Wright: The regulations that are in place at The Department of Justice require that Mueller would be removed for cause. The person that would have to do it would be the person acting the Attorney General role, which in this case is Rod Rosenstein. First of all Trump doesn't have the power to directly fire Mueller under the regulations, it would have to come from Rosenstein.

Second of all the regulations require removal for cause. Now the President could do a Saturday Night Massacre type of move where he tells the Attorney General to do it. And the Attorney General says, "I can't, I refuse." And then resigns, and then Rosenstein refuses to do it and resigns. And then someone else ends up in the top position and is willing to do it. Or he could potentially try to have the regulations of The Department of Justice amended or changed by Presidential decree.

In any of those invents, there would be intermediate steps that again would make it very politically damaging for the President to do so. Note, the President already tried to come up with a justification for why James Comey was being removed from his position, even though he had a 10 year term. That didn't actually have a for cause position, but they came up with this false justification about how it related to the Clinton campaign. That was quickly debunked. He's already been burned once trying to do that.

One of the problems with acting in this manner is that ... Let's say Mueller really did act in a way that was a for cause justification for removal, the President by acting in this manner is making it harder for the regs to operate, even if they were justified to be used. Just making it harder for himself.

Lindsay B.: What would be an example of Mueller doing rule breaking that would make it legitimate to withdraw him or fire him?

Andy Wright: It would have to be something significant, like let's say Mueller detained a bunch of people without probable cause and threw them in a cell and denied them their constitutional rights and browbeat them into confessions of all sorts of illegal activity with respect to the President. That kind of abuse of power and abuse of people's constitutional rights, that could potentially be a for cause reason.

If we found out that an entity with which Mueller has deep personal or financial

ties becomes a target of the investigation. Not something that's just a client of his former firm, but somewhere he's got a pension invested, or something. It's an entity that turns out to be a major subject of the investigation. He would need to be recused at a minimum and in certain circumstances it could become such a distraction that it would be reasonable for him to be removed.

It's hard to think of total hypotheticals, but there are certainly reasons a prosecutor could get to the point where it turned out that family member ended up becoming suspected of wrong doing in the case. That would be another recusal or potential removal situation.

There are certainly things where that could come, but we haven't seen a whiff of it. The idea that he was the Director of the FBI when some fake scandal about uranium happened is not a for cause justification for removal from this investigation by any stretch.

Lindsay B.: And that's the best they've got so far? That they've articulated publicly?

Andy Wright: It sounds like it. I haven't seen anything more.

Lindsay B.: That's all the time we have for today. Thank you so much for coming on the show.

Andy Wright: Alright. Thank you so much for having me.

Lindsay B.: Now it's time for recommended reading. A hand-picked selection to deepen your understanding of our current political moment.

Today's reading is called, Commerce Secretary's Offshore Ties To Putin 'Cronies'. It's about how Wilbur Ross, our Commerce Secretary, retained investments in a shipping company linked to Russian President Vladimir Putin's inner circle. That's by Mike McIntire and colleagues in The New York Times.

That's it for recommended reading.

The Breach is produced by Nora Hurley for Rewire Radio. Our executive producer is Marc Faletti. Our theme music is Dark Alliance performed by Darcy James Argue's Secret Society. I'm your host Lindsay Beyerstein.

Follow Rewire at [rewire_news](https://www.rewirenews.com) for the latest on the issues that matter most.

See you next week.