

Is Trump Trying to Fire Mueller or Preemptively Discredit His Findings?

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Over the past week, nearly a year after he tried to have Robert Mueller fired, Donald Trump went on a tweeting rampage against the special counsel. Trump's escalating Twitter attacks may be a harbinger of Mueller's impending dismissal — or the president could be trying to preemptively discredit and delegitimize Mueller's eventual findings against him.

Mueller was appointed special counsel in May 2017. The following month, Trump ordered White House counsel Don McGahn to fire Mueller. McGahn refused and threatened to resign. Trump backed down but has been champing at the bit to end Mueller's investigation, apparently restrained by his lawyers' promises that the probe is coming to an end. In addition, GOP heavyweights like Sen. Lindsey Graham (R-South Carolina) warned that firing Mueller would spell "the beginning of the end of [Trump's] presidency."

But Mueller's investigation shows no signs of abating. He continues to secure grand jury indictments, as well as plea bargains that make those pleading guilty into cooperating witnesses. And now he has subpoenaed financial records of the Trump Organization.

Mueller's Charge

Although the Department of Justice regulation empowers the Attorney General to appoint a special counsel, that task fell to Acting Attorney General Rod Rosenstein last year, since Attorney General Jeff Sessions recused himself from the Russia investigation.

Rosenstein appointed Mueller to investigate "any links and/or coordination between the Russian government and individuals associated with the campaign of President Donald Trump" as well as "any matters that arose or may arise directly from the investigation."

The [Justice Department regulation](#) allows for discipline or removal of the special counsel only in the event of "misconduct, dereliction of duty, incapacity, conflict of interest, or for other good cause, including violation of Departmental policies."

Rosenstein recently told USA Today that he sees no justification for terminating Mueller as special counsel, stating, "The special counsel is not an unguided missile."

Trump cannot personally fire Mueller. He could order Rosenstein to do it, and if Rosenstein refuses, Trump could fire Rosenstein or force his resignation. Since Associate Attorney General Rachel Brand is about to retire, the next person in line who could fire Mueller would be Solicitor General Noel Francisco, a right-winger with ties to the conservative Federalist Society. Francisco may be amenable to giving Mueller the axe.

Mueller Team Subpoenas Trump Organization, Meets With Trump Lawyers

Last week, the special counsel issued subpoenas to the Trump Organization for financial documents, some of which relate to Russia. [NBC News reported](#) that the subpoena seeks emails, work papers, text messages, telephone logs “and other documents going back to Nov. 1, 2015, 4½ months after Trump launched his campaign.” [According to The New York Times](#), “The order is the first known instance of the special counsel demanding records directly related to President Trump’s businesses, bringing the investigation closer to the president.”

Last July, Trump told the Times that Mueller would cross a “red line” if he investigated any Trump business unrelated to Russia.

A few days after the subpoenas were served, Trump’s lawyers met with Mueller’s team “and received more details about how the special counsel is approaching the investigation, including the scope of his interest in the Trump Organization,” [the Times reported](#).

Mueller’s investigation is apparently pursuing three issues, [according to Timothy L. O’Brien at Bloomberg](#):

First, it is seeking information as to whether Trump or his campaign worked with Russia to help Trump win the election. Second, it is looking into whether Trump or his advisers engaged in obstruction of justice to end the investigation. And third, it is investigating a possible quid pro quo that Trump and family members, particularly son-in-law Jared Kushner, may have sought in return for political favors, such as lifting sanctions on Russia or altering US policy on the Ukraine.

Trump’s Tweet Storm Targets Mueller

After the meeting between the special counsel’s team and his lawyers, Trump let loose with his tweet storm, calling out Mueller by name for the first time on Twitter since the special counsel was appointed. [According to CNN](#), the meeting “unleashed a new level of Trump’s public hostility toward Mueller, even while some of the President’s advisers show a willingness to negotiate Trump’s testimony.”

On March 17, Trump tweeted,

“The Mueller probe should never have been started in that there was no collusion and there was no crime.”

On March 18, Trump tweeted,

“Why does the Mueller team have 13 hardened Democrats, some big Crooked Hillary supporters, and Zero Republicans? Another Dem recently added . . . does anyone think this is fair? And yet, there is NO COLLUSION!”

Trump apparently forgot that Mueller, the head of the team, is a long-time Republican.

Trump is evidently aware that conflict of interest is a ground for firing a special counsel.

Having laid the foundation for that alleged conflict with his tweet about “hardened Democrats,” Trump followed up the next day with a tweet:

“A total witch hunt with massive conflicts of interest!”

On March 21, Trump invoked the opinion of Fox News legal analyst and emeritus Harvard law professor Alan Dershowitz, who opposed the appointment of Mueller in the first place. Trump paraphrased [Dershowitz’s statements](#), tweeting,

“I think President Trump was right when he said there never should have been a Special Council (sic) appointed because there was no probable cause for believing that there was any crime, collusion or otherwise, or obstruction of justice.”

Dershowitz apparently failed to read the regulation, which does not require probable cause of criminal activity at the time a special counsel is appointed. After appointment, the counsel’s investigation may or may not uncover evidence amounting to probable cause, which is the standard for the filing of criminal charges.

Trump’s lawyers have sent conflicting signals about the fate of the Mueller investigation. On March 16, attorney John Dowd [wrote in an email to the Daily Beast](#),

“I pray that Acting Attorney General Rosenstein will . . . bring an end to alleged Russian Collusion investigation.”

Dowd first said he was speaking on behalf of the president, but later backtracked and said he was speaking for himself. He resigned a few days later, saying the president wasn’t following his advice.

Ty Cobb, another Trump lawyer, tried to defuse the growing fear that Mueller’s days are numbered, stating on March 18,

“The White House yet again confirms that the president is not considering or discussing the firing of the special counsel, Robert Mueller.”

But Trump just hired attorney Joseph diGenova, who has publicly accused the FBI and Justice Department of “trying to frame” the president, a claim that likely endears him to Trump.

Democrats fear that Trump might set the wheels [in motion to fire Mueller](#) during the forthcoming two-week congressional spring break.

Some Republicans Support Mueller but Won’t Codify It With Legislation

Eight months ago, legislators introduced two bipartisan bills to subject a president’s order to fire a special counsel to judicial review. But Republican lawmakers are not promoting the legislation, which is now stalled in the Senate Judiciary Committee.

Although some Republicans have questioned the constitutionality of the legislation, those

concerns are [without merit](#), and are more likely motivated by political considerations.

GOP lawmakers know that any bill they pass to protect Mueller would require Trump's signature and they would have to override his veto. Republicans are more likely "making a counterintuitive, all-in bet that Donald Trump will save their 51-49 majority" in the Senate, [according to Politico](#). They expect Trump to actively campaign for Republican incumbents as well as challengers.

"If they're going to run with him, how are they also going to stand up to him when he precipitates a constitutional crisis? The answer is that they're not," Michael Tomasky [wrote in the Daily Beast](#).

Senate Majority Leader Mitch McConnell said Mueller "ought to be allowed to finish his job," adding, "I think he was an excellent appointment." McConnell told reporters,

"I think he will go wherever the facts lead him and I think he will have great credibility with the American people when he reaches the conclusion of his investigation. So, I have a lot of confidence in him."

The senator called Mueller "a thoroughly credible individual."

But when pressed about legislation to protect Mueller, McConnell demurred, saying,

"I don't think that's necessary. I don't think Bob Mueller is going anywhere. I think there is widespread feeling, and the president's lawyers obviously agree, that he ought to be allowed to finish the job."

Other GOP senators expressed confidence in Mueller. Sen. Orrin Hatch (Utah) said he told the White House to allow Mueller "to continue his investigation unimpeded," adding,

"I know Mueller well and believe him to be a straight shooter, and I continue to believe that giving Mueller the time and support necessary to get to the bottom of things is in the best interest of all parties involved."

But Hatch didn't think legislation to protect Mueller was necessary at this point, saying,

"I do not believe the president would take such a foolish action."

Senate Majority Whip John Cornyn (Texas) said he doubted Trump would terminate Mueller's appointment because "the consequences would be so overwhelming."

Sen. Jeff Flake (R-Arizona) stated on CNN's "State of the Union" that some of his GOP colleagues told him they would consider the firing of Mueller to be a "massive red line that can't be crossed."

House Speaker Paul Ryan (R-Wisconsin) told reporters,

“I received assurances that [Mueller’s] firing is not even under consideration,” adding, “The special counsel should be free to follow through his investigation to its completion without interference, absolutely. I am confident he will be able to do that.”

A special counsel cannot be removed absent good cause under the Justice Department regulation. But without protective legislation, there could be no review of a meritless decision by Trump to dismiss Mueller.

Can Mueller Indict Trump?

What consequences, if any, could Trump face if the special counsel finds evidence of criminal activity by the president?

Mueller could deliver his findings to the House of Representatives for consideration of impeachment. But that body, with its Republican majority, will not likely entertain any discussion of impeachment, particularly because Trump is dutifully fulfilling their agenda of tax cuts for the rich and the appointment of a right-wing Supreme Court justice and lower federal court judges.

Whether or not a sitting president can be criminally indicted is a matter of controversy.

A [memo from independent counsel Kenneth Starr’s investigation of Clinton](#) says a president can be indicted for criminal activity:

“It is proper, constitutional, and legal for a federal grand jury to indict a sitting president for serious criminal acts that are not part of, and are contrary to, the president’s official duties. In this country, no one, even President Clinton, is above the law.”

Moreover, diGenova once argued in a Wall Street Journal column that a president could be constitutionally indicted. “It would teach the valuable civics lesson that no one is above the law,” diGenova wrote during the Clinton investigation.

Jonathan Turley, [writing in The Washington Post](#), examined the arguments for and against indicting a sitting president and concluded he could be indicted. It is unclear whether a president can pardon himself, but Turley thinks Trump would be impeached if he were to pardon himself.

A Preemptive Strike by Trump?

Trump is notorious for relying on his own instincts rather than the advice of counsel, such as whether to congratulate Russian President Vladimir Putin on his election victory. But Trump is apparently aware of the risks entailed by engineering Mueller’s departure.

As the special counsel zeroes in on him, Trump may instead be mounting a preemptive strike against Mueller’s findings, should they incriminate him. Recall that Trump didn’t expect to be elected president, so he waged a campaign to discredit the election results in advance, repeatedly claiming the election was “rigged.”

The bottom line is that we [may never see Mueller’s findings](#) unless he persuades a grand

jury to return an indictment against Trump.

If Mueller's conclusions do become public, Trump is likely counting on his preemptive campaign of delegitimization in order to escape criminal accountability.

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