

# MUELLER TELLS GUY WHO LEGALLY CAN'T BE A TARGET THAT HE'S NOT A TARGET, PERHAPS IN A BID TO MAKE HIM LEGALLY TARGETABLE

The WaPo has a fascinating report describing that Robert Mueller informed Trump's lawyers "in early March" that he doesn't consider Trump a target in his investigation. That news made Trump even more determined to sit for an interview with Mueller, a decision which some of Trump's less appropriate lawyers seem to have supported. That's what led John Dowd to quit on March 22 (which would presumably have been two weeks or so later).

John Dowd, Trump's top attorney dealing with the Mueller probe, resigned last month amid disputes about strategy and frustration that the president ignored his advice to refuse the special counsel's request for an interview, according to a Trump friend.

Of course, as many people have pointed out, a sitting President can't be indicted. NYCSouthpaw pointed to the appropriate section of the US Attorney's Manual, which states that, "A 'target' is a person as to whom the prosecutor or the grand jury has substantial evidence linking him or her to the commission of a crime and who, in the judgment of the prosecutor, is a putative defendant."

If Trump, as President, can't be indicted, then he can't be a putative defendant. So he'll never be a target so long as he remains President. Dowd is likely the only lawyer on Trump's team

who has enough defense experience to understand that this should offer the President zero assurance at all.

He left when the other, ill-suited attorneys refused to believe him on this point.

Which is why the other main thrust of the story is so interesting. Mueller has also indicated that Mueller wants to start writing his report on obstruction – according to Robert Costa, with the intent of finishing it by June or July, just before Congress breaks for August recess, the official start of campaign season – with plans for a second report on the election conspiracy to follow.

The special counsel also told Trump's lawyers that he is preparing a report about the president's actions while in office and potential obstruction of justice, according to two people with knowledge of the conversations.

Mueller reiterated the need to interview Trump – both to understand whether he had any corrupt intent to thwart the Russia investigation and to complete this portion of his probe, the people said.

[snip]

Mueller's investigators have indicated to the president's legal team that they are considering writing reports on their findings in stages – with the first report focused on the obstruction issue, according to two people briefed on the discussions.

Under special counsel regulations, Mueller is required to report his conclusions confidentially to Deputy Attorney General Rod J. Rosenstein, who has the authority to decide whether to release the information publicly.

"They've said they want to write a

report on this – to answer the public’s questions – and they need the president’s interview as the last step,” one person familiar with the discussions said of Mueller’s team.

Trump’s attorneys expect the president would also face questions about what he knew about any contacts by his associates with Russian officials and emissaries in 2016, several White House advisers said. The president’s allies believe a second report detailing the special counsel’s findings on Russia’s interference would be issued later.

That leads us to the question of how a report that Rod Rosenstein has authority to quash could be assured of “answering the public’s questions.” One option is Mueller could propose charges he knows Rosenstein won’t – or can’t – approve, which guarantees that the Chairs and Ranking Members of the Judiciary Committees (currently, Bob Goodlatte, who is retiring, Jerry Nadler, Chuck Grassley, and Dianne Feinstein, who faces a real challenge this year) will get at least a summary.

Mueller could trigger a reporting requirement in the special counsel regulations under which the attorney general must inform “the Chairman and Ranking Minority Member of the Judiciary Committees of each House of Congress” – both parties, in other words – at the end of the special counsel’s investigation, of any instance in which the attorney general vetoed a proposed action. Simply by proposing to indict Trump, Mueller could ensure that Congress gets the word. But this would be of only **limited scope**: instead of an evidence dump, it need only be a “brief notification, with an outline of the actions and the reasons for them.”

Alternately, Mueller could recommend impeachment, but Rosenstein would be bound by grand jury secrecy rules.

If Mueller believes he has information that could warrant impeachment, he could weave it into a narrative like the Starr Report. But even if Rosenstein wanted to make the report public, he would be limited by Federal Rule of Criminal Procedure 6(e), which imposes strict limits on the disclosure of grand jury materials. This rule, which has the force of law, is intended to preserve the integrity of grand jury investigations and encourage witnesses to testify fully and frankly. Rosenstein could, if he chose, issue a redacted report that conveys the gist of Mueller's findings.

While the election conspiracy has involved grand jury subpoenas (to people like Sam Nunberg and Ted Malloch, most recently), the obstruction investigation into Trump has involved (as far as I remember) entirely voluntary interviews and mostly, if not entirely, voluntarily produced evidence. So whereas for the larger investigation, Rosenstein will face this limit (but not if the targets – like Roger Stone – are indicted), he may not here.

All of which is to say we may be looking at a public report saying that Trump should be impeached just as Republicans attempt to keep Congress.

Even as some of Mueller's 17+ prosecutors write that up (by my estimate, only Watergate prosecutor James Quarles has been working the Trump obstruction full time), the rest will continue to roll out evidence – possibly in the form of very inflammatory indictments – of what Trump was trying to obstruct.

Effectively, I think Mueller is giving the GOP Congress a choice. They impeach Trump on the

less inflammatory stuff, which will remove all threat of firing and/or pardons to threaten the investigation, not to mention make Trump eligible to be a target for the actual election conspiracy he tried to cover up. Or after they fail to hold the House while explaining why they're covering up for Trump's cover up, they will face a more serious inquiry relating to Trump's involvement in the election conspiracy.