

REVISITING TRUMP'S JOINT DEFENSE AGREEMENT

Betsy Woodruff has a story reminding us that Trump has a joint defense agreement with some of the other people caught up in Mueller's probe.

The president's personal lawyers have teamed up with attorneys for other individuals embroiled in special counsel Bob Mueller's probe, multiple sources tell The Daily Beast. For a while, the president's lawyers even had regular conference calls with other attorneys to discuss the Mueller investigation, according to one source familiar with the calls.

The arrangement is known as a joint defense agreement, and it allows the lawyers to share information—without violating attorney-client privilege. It's a common strategy when multiple defendants are dealing with the same prosecutor on the same matter.

I say "reminding us," because this is not news. When Mike Flynn flipped, the first notice came when he alerted this very same joint defense agreement he could no longer share information (as the story itself notes).

The story doesn't even describe, generally, who is included in it, which might help observers understand the dynamics we're watching. The closest hint of that is the observation that Paul Manafort might be going to jail on Friday.

This week is poised to be less-than-harmonious for at least one person in Mueller's sights: Paul Manafort, who will appear in court on Friday for a hearing where a judge will decide whether or not to revoke his bail.

The article doesn't even confirm that Manafort is part of the defense agreement. But Trump was bragging, back in January, that he had "decided that a key witness in the Russia probe, Paul Manafort, isn't going to 'flip' and sell him out, friends and aides say." That's the kind of thing Trump might have assurance about if Manafort were part of a joint defense agreement, particularly if – as has subsequently been reported – John Dowd offered Manafort a pardon (through one of his lawyers, in the kind of discussion lawyers might assume were shielded by a joint defense agreement) last year.

The pardon discussion with Mr. Manafort's attorney, Reginald J. Brown, came before his client was indicted in October on charges of money laundering and other financial crimes. Mr. Manafort, the former chairman of Mr. Trump's presidential campaign, has pleaded not guilty and has told others he is not interested in a pardon because he believes he has done nothing wrong and the government overstepped its authority. Mr. Brown is no longer his lawyer.

Mind you, now we know that Mueller knows about such offers (because it's one of the questions they posed to Trump in March). That makes Trump's legal impunity for offering such pardons at least slightly more sketchy, particularly if he's pardoning someone so obviously corrupt as Paul Manafort. Add in the fact that Jared Kushner sold out Flynn last fall (which is reportedly what led him to flip), and Manafort may be less certain about Trump's reliability, even in spite of Trump's Tweets suggesting FBI should have prevented him from hiring someone they were investigating back in 2016, posted – with remarkable prescience! – on the eve of the latest setback in Manafort's case.



Still, the reminder that Trump and a number of subjects of this investigation have been comparing notes explains a lot we've seen since. It explains, for example, why Manafort has made such a diligent effort to get the court to disclose information to him— such as the substance of warrant affidavits to seize up to four other people's AT&T phone information, or the other bullet points in Rod Rosenstein's August 2, 2017 memo laying out the scope (at that point) of the investigation – that affects others likely covered by the defense agreement. It explains one advantage to Manafort of insisting on being charged in two jurisdictions: because it gives him two bites at an attempt to challenge Mueller's jurisdiction.

The joint defense agreement also explains several other things we've seen, such as the coordinated messaging – particularly the planted narrative about Spycgate – best explained by the coordination of Victoria Toensing armed with information only legally available to Trump.

Finally, it explains the delay in any charges related to the conspiracy between Trump and the Russians: once Mueller charges those issues, he will have to provide discovery about what he knows, which will then get shared back with others involved in the conspiracy. It appears he's primarily sharing that information (aside from in the form of questions to witnesses who appear before the grand jury) with those who've flipped. Even the questions he has posed to Trump are probably sharply limited to hide the main thrust of the conspiracy investigation.

That's why the stakes for Friday are so high (and the timing of this reminder that there's a

joint defense agreement). Mueller still won't need to provide Manafort the evidence he has about his role in the conspiracy, though the indictment of Kilimnik gets far closer to that. But it raises the cost on Manafort for sustaining a joint defense, minimizes his value to the others, all while the crimes charged could still be refiled in a VA state court.