

**SPOTLIGHT REPORT**

December 6, 2018

## Mulling Over the Mueller Investigation

**What's Happening:** After a quiet period leading up to the midterm elections last month, Robert Mueller's special counsel investigation into Russian interference and possible collusion with the Trump campaign in the 2016 presidential election has been back in the spotlight in major ways over the past month. This includes a new overseer to the Mueller investigation in an acting attorney general, President Trump's legal team submitting answers to the questions from the special counsel, a breakdown of cooperation between the special counsel and Trump's former campaign chair Paul Manafort, the public release of a draft document between the special counsel and conspiracy theorist Jerome Corsi, a plea agreement between the special counsel and Trump's former lawyer, Michael Cohen, and the release of a sentencing memo from the special counsel for Trump's former national security advisor, Michael Flynn.

**Why It Matters:** Perhaps the favorite parlor game among the political class is trying to guess what the special counsel knows and where it is heading in its investigations. The latest developments over the past month have provided further fodder that the depth of knowledge the special counsel has is greater and farther-reaching than anyone from the outside had known. **Three things have become publicly clear since the start of the Mueller investigation: 1) the Russian government interfered in the 2016 presidential election to hurt Clinton and benefit Trump; 2) the connections, financial or otherwise, between members of the Trump campaign and Russia ran deeper than previously recognized; and 3) many in the Trump campaign orbit have lied to investigators and members of Congress about relationships and actions they took related to the Russia investigation. As many pundits have noted, there is a lot of smoke but no fire around findings of collusion between the Trump campaign and Russia. Many questions remain, and the specter of any major further indictments remains uncertain. Then, there is the "so what" factor to the Mueller investigation. On a legal basis, Department of Justice (DOJ) guidelines say a sitting president cannot be indicted, and while not set in stone, this is not a path Mueller would likely choose, regardless of who was overseeing the investigation.** However, it is still yet to be seen whether any other indictments come from Mueller of high-ranking Trump campaign officials who are currently in the White House and/or are part of the Trump family. Such a move by Mueller if (and it's a big if) it was approved by Whitaker would create another external shock to the

White House that will leave them reeling. **On a political basis, the country continues to be heavily divided over the Mueller investigation and Democratic leaders are keenly cognizant of not pushing for impeachment when there is no bipartisan support for it. Impeachment risk continues to remain low and the ultimate verdict of the results from the Mueller investigation will come from the 2020 presidential election.**

**What's Next:** The special counsel is expected to file two more documents tomorrow: one that will outline the details of Cohen's cooperation with the special counsel for the judge overseeing his sentencing, and one that will explain the ways that Manafort broke his plea agreement with the special counsel. These documents, if as detailed as previous Mueller documents have been, will be parsed over and drive the narrative -- including a tweet or two or three from Trump -- of what Mueller knows and where his investigation is heading. [Several pundits](#) view the latest developments over the past month as the special counsel investigation nearing its end. There are many variables that could support such a theory and Whitaker overseeing the investigation may hasten its end. However, such talks of a concluding investigation have been said before, and only the tight-lipped Robert Mueller has a sense of the timeline for the investigation. **Regardless of timelines, Trump has been and will continue to be deeply affected by the investigation. Trump's "moodiness" from the Mueller investigation while sounding trite has serious implications for a White House that is disorganized and revolves largely around the president's mood. If the investigation continues to make waves in the news, we can expect the president to take rash actions in other policy matters to change the news cycle. This only increases the policy uncertainty in several areas, including trade and immigration.**

## Latest Developments

**New Acting AG:** President Trump wasted no time after the midterm elections to dispose of Attorney General (AG) Jeff Sessions, the Cabinet member he resented the most for his recusal in the Russia investigation. Instead of going through the normal lines of succession at the Department of Justice (DOJ), where there were several Senate-confirmed attorneys capable of fulfilling the interim role of AG, Trump instead decided to replace Sessions with his own chief of staff and Trump loyalist Matthew Whitaker. While not explicit, it was clear that Trump's decision to put Whitaker in this post was based on his loyalty to Trump and his open criticism of the Mueller investigation. Though [the Washington Post today reported](#) that former Attorney General William Barr is Trump's leading candidate to be nominated to permanently replace Sessions, and an announcement could be made in the coming days, Whitaker can remain in his acting role as AG until Barr or whoever Trump nominates is confirmed by the Senate.

[In an op-ed for CNN](#) several months before joining the DOJ, Whitaker wrote, "It does not take a lawyer or even a former federal prosecutor like myself to conclude that investigating Donald Trump's finances or his family's finances falls completely outside of the realm of his

2016 campaign and allegations that the campaign coordinated with the Russian government or anyone else. That goes beyond the scope of the appointment of the special counsel." [In a July appearance on CNN](#), Whitaker suggested another method for limiting the scope of the investigation, saying, "I could see a scenario where Jeff Sessions is replaced with a recess appointment. ...and that attorney general doesn't fire Bob Mueller, but he just reduces his budget to so low that his investigation grinds to almost a halt." While the [regulations for the special counsel](#) indicate that its budget was already set before the fiscal year beginning in October, Whitaker may still be able to affect the budget and has many other tools at his disposal if he wants to curtail the investigation. [This includes](#) denying Mueller the ability to make any further investigative or prosecutorial steps in his investigation if Whitaker believes the "action is so inappropriate or unwarranted under established Departmental practices that it should not be pursued." Whitaker can also decide to not release or heavily redact to Congress the final confidential report explaining the prosecution or declination decisions reached by the special counsel.

But any obstruction by Whitaker on behalf of Trump is unlikely to be a wrecking ball to the Mueller investigation. For one, Mueller was well aware of the looming risk of the president removing Sessions and replacing him with a Trump loyalist who would seek to curtail the investigation. The special counsel could make referrals to ongoing investigations to other US attorneys' offices, as it did with Trump's personal lawyer Michael Cohen, which is largely outside of the prosecutorial jurisdiction of Whitaker. When they take the majority, House Democrats can also ensure that any obstruction of Mueller's investigation is given public scrutiny. They will also be able to directly subpoena Mueller to testify or provide any documentation of the investigation in his possession. Democrats can even seek to move the Mueller investigation under the jurisdiction of a congressional or select committee. All of this is to say that any direct tampering by Whitaker will unlikely put an end to the Mueller investigation. But at the same time, Whitaker in the top spot has likely hastened the already quick pace of the investigations.

***Trump Submitted Responses to Mueller Questions:*** After months of negotiating and the potential specter of a Mueller subpoena for Trump to testify, the president submitted answers to written questions from the special counsel two weeks ago. Jay Sekulow, Trump's lawyer, said, "The President today answered written questions submitted by The Special Counsel's Office. The questions presented dealt with issues regarding the Russia-related topics of the inquiry. The President responded in writing." While the questions and responses were not made public, it is expected that the questions and answers only related to campaign-related activities and did not deal with obstruction of justice allegations.

If Mueller does not end up issuing a subpoena for Trump to testify, Trump will be able to avoid one of the riskier interactions with the special counsel, as the president is prone to lying and could be caught in a lie in an investigative setting. At the same time, providing some response does open the president up to having contradictory statements to other witnesses.

***Upcoming Manafort Memo:*** According to a [court filing from the special counsel last week](#),

former Trump campaign chair Paul Manafort violated his plea deal with the special counsel after repeatedly lying to investigators. The filing stated, "After signing the plea agreement, Manafort committed federal crimes by lying to the Federal Bureau of Investigation and the Special Counsel's Office on a variety of subject matters, which constitute breaches of the agreement. The government will file a detailed sentencing submission to the Probation Department and the Court in advance of sentencing that sets forth the nature of the defendant's crimes and lies, including those after signing the plea agreement herein. ...As the defendant has breached the plea agreement, there is no reason to delay his sentencing herein."

Manafort, who pleaded guilty to charges of financial fraud in September, could face up to more than a decade in prison. The federal judge in charge of sentencing Manafort has requested a memo that lays out the alleged lies from Manafort. While Manafort is disputing that he lied to the special counsel, a spokesman for the special counsel [told Yahoo News](#) that the memo on Manafort that the special counsel will file tomorrow on his alleged lies "will be public." Many are speculating that this memo could provide a platform for Mueller to lay out in detail several of his investigative conclusions revolving around Manafort, who has been a central figure in the Russia investigations. If Mueller views any final special counsel report being stymied by Whitaker, this could be the optimal time to provide a detailed report of the special counsel's findings.

In terms of why Manafort would continue to lie to the special counsel, even after reaching a plea agreement, speculation has mounted that it is an attempted ploy to receive a pardon from the president. In an [interview with the New York Post last week](#), Trump said of a pardon for Manafort that "I wouldn't take it off the table." This came as news of a lawyer for Manafort continued to brief the president's lawyers on Manafort's discussions with federal investigators even after his plea agreement with the special counsel, a very unusual move given that Manafort was supposed to be cooperating with the government.

Also of note was a [bombshell story from the Guardian last week](#) that Manafort held secret meetings with WikiLeaks founder Julian Assange inside the Ecuadorian embassy in London in 2013, 2015, and 2016, the last of which was while he was part of the Trump campaign. While having many serious implications for Manafort and Trump, no US media publication has been able to verify this story, leaving it as more speculation than actual hard evidence. As the US continues to seek the arrest of Assange and Ecuador seeming more willing to hand him over, an eventual arrest of the founder of WikiLeaks, which was a key player around subjects for the special counsel investigation, could prove useful for Mueller or other DOJ prosecutors.

***Jerome Corsi and Roger Stone Theatrics:*** One area of interest of the Mueller investigation is the release by WikiLeaks in October 2016 of emails stolen from Clinton campaign chair John Podesta by Russian hackers. In particular, the special counsel is looking at the potential involvement of Trump campaign advisor Roger Stone. While no indictments have yet come, one of the potentially key conduits between Stone and WikiLeaks is conspiracy theorist Jerome Corsi.

The former Washington bureau chief of the conspiracy theory site InfoWars, Corsi last week in an unusual move disclosed to NBC News and the *Washington Post* a [draft special counsel document](#) that was a part of plea talks, alleging Corsi alerted Stone in early August 2016 that WikiLeaks "planned to release material damaging to Hillary Clinton." This draft document shows that Corsi and Stone corresponded about emails before they were released and had some sort of channel to WikiLeaks in a ploy to hurt Clinton and help Trump.

Corsi claims that he just used his deduction from gossip and publicly available information that WikiLeaks would be releasing these emails, and Corsi has this week filed a complaint with the DOJ alleging that special counsel prosecutors "tried to coerce him to give false testimony." After Stone said, "I will never testify against Trump," the president this week tweeted, "'I will never testify against Trump.'" This statement was recently made by Roger Stone, essentially stating that he will not be forced by a rogue and out of control prosecutor to make up lies and stories about 'President Trump.' Nice to know that some people still have 'guts!'" Trump's tweet created additional fodder for charges that he is engaging in witness tampering and obstruction of justice from a [series of legal experts](#). But it is clear that Corsi and Stone are seeking to engage in theatrics that pleases the president in hopes that any potential indictment would be allayed through a pardon.

Still, the details of the draft document indicate that the special counsel has significant information on Corsi, provoking other questions about how Podesta's emails got distributed to WikiLeaks and if people part of the Trump administration were privy to or even actively involved in this.

***Another Cohen Plea:*** President Trump's former lawyer Michael Cohen became the 33rd person Mueller has charged in his special counsel investigation when he pleaded guilty last week to making false statements to Congress related to his involvement in real estate deals in Russia on behalf of Trump. While Cohen pleaded guilty in August to eight federal charges brought by the Southern District of New York, including charges of campaign finance law violations in connection with women who alleged to have had affairs with Trump, this is the first guilty plea related to the Mueller investigation. The [charging document](#) shows that Cohen gave false testimony to Congress in 2017 about negotiations around a deal to build a Trump Tower in Moscow. Instead of the negotiations concluding in early 2016, they continued as late as June 2016, when Trump was the presumptive Republican nominee. Cohen's plea also indicates that the "status and progress" of the project in Moscow was discussed several times with Trump and his family, and that Cohen even reached out to Russian President Vladimir Putin's spokesperson to help revive the deal.

While none of this proves that the Trump campaign coordinated or colluded with Russia to win the 2016 election, it provides another touchpoint of what the Mueller team knows, presenting an indication that Trump was far more involved with Russia than he previously let on. Cohen has reportedly spent more than 70 hours since his August plea agreement meeting with and testifying to the special counsel team. The Trump world has long worried that Cohen's long-time work for the president could present serious problems that were

even greater than the Mueller probe. Now that Cohen is coordinating with the Mueller probe, those problems could be compounded. Seeking to counteract such involvement by Cohen, Trump has sought to sully Cohen's reputation. With Cohen's attorneys seeking no prison time when Cohen is sentenced, Trump this week tweeted, "'Michael Cohen asks judge for no Prison Time.' You mean he can do all of the TERRIBLE, unrelated to Trump, things having to do with fraud, big loans, Taxis, etc., and not serve a long prison term? He makes up stories to get a GREAT & ALREADY reduced deal for himself, and get. ...his wife and father-in-law (who has the money?) off Scott Free. He lied for this outcome and should, in my opinion, serve a full and complete sentence."

Another significant development from this plea was the willingness for Mueller to charge someone for lying to Congress. This presents a legal risk to the multitude of people who have testified before Congress around issues pertaining to the Mueller investigation. To that end, [Reuters today reported](#) that House Democrats in January "plan to send Special Counsel Robert Mueller the transcripts of testimony by some of President Donald Trump's closest associates so they can be reviewed for evidence and possible falsehoods."

***Flynn Sentencing Memo:*** Rounding out all of the developments in the past month around the Mueller investigation is the news this Tuesday that the special counsel recommended Michael Flynn, Trump's first national security advisor, should receive no prison time for lying to the FBI about conversations he had with the Russian ambassador to the United States.

In a [highly redacted six-page addendum to the sentencing memo for Flynn](#), the special counsel notes that Flynn has participated in 19 interviews with the special counsel and the DOJ since he began cooperating, and that "his early cooperation was particularly valuable because he was one of the few people with long-term and firsthand insight," into many areas of interest for the Mueller investigation. This includes help in several ongoing investigations, including but not limited to an undisclosed criminal one and the special counsel's investigation "concerning links or coordination between the Russian government and individuals associated with the Trump campaign."

One of the areas for the special counsel investigation that Flynn provided information with was around the interactions between the Trump transition team and Russian government officials with regards to "a United Nations Security Council vote on a resolution calling for Israel to cease settlement activities in Palestinian territory and the Obama Administration's imposition of sanctions and other measures on Russia for interfering in the 2016 elections. Several senior members of the transition team publicly repeated false information conveyed to them by the defendant about communications between him and the Russian ambassador regarding the sanctions." This highlight of Flynn's cooperation has increased speculation that Jared Kushner, who was a senior member of the transition team, could be in legal peril from what information Flynn provided.

**Trump Fights While Republicans (and Even Democrats) Shrug**

In a [report by the Atlantic today](#), according to current and former White House officials, "the administration has no plans in place for responding to the special counsel's findings—save for expecting a Twitter spree." Even a "counter report" from the White House has yet to take shape and may never come to fruition. While not entirely surprising that there is no actual organized plan in the Trump White House for rebutting, legally and politically, the conclusions of the Mueller investigation, it speaks to the unpredictability of what comes next from Trump and his allies.

Perhaps the one coordination Trump is doing around the Mueller investigation is with Fox News, where all pretenses of not being a conduit for Trump were thrown out the window when multiple Fox News personalities campaigned with the president during the midterm elections. When news of the Flynn sentencing memo emerged, Fox News personality Sean Hannity called it a "sad and pathetic moment" coming "out of the Mueller witch hunt." On his radio show this week, Hannity told people who are potentially under questioning or investigation from the Mueller investigation that "the advice I have to give you now is, 'Don't talk to the FBI.'" Hannity's comments are essentially an informal endorsement for obstructing justice and giving Trump political clearance to obstruct justice himself. With Trump having the full cooperation of Fox News to attack the Mueller investigation and any outcomes it produces, the president remains in a strong position to maintain his support from the Republican base.

The midterm elections, while a blue wave in many ways, did show that the president continues to maintain very high and unwavering levels of support among Republicans. His Twitter campaign against the special counsel "witch hunt" has proven to be a savvy move to ensure that Mueller and the potential for impeachment remain divisive issues. The [exit polls from NBC News for the midterms](#) showed voters are closely divided on the ongoing special counsel investigation, with 42 percent of voters nationwide approving of Mueller's handling of the investigation, while 45 percent disapproving. This includes just two in 10 Republicans approving and independents even divided, with 43 percent approving and 42 percent disapproving. The [exit polls](#) also showed that a majority of voters today do not think Trump should be impeached, with 54 percent of voters saying Congress should not impeach Trump, while 41 percent saying Congress should do so. Though Republicans gained only two seats in the Senate, the result belies just how much more pro-Trump the Senate Republican caucus will be, as two of Trump's biggest critics -- Senators Bob Corker (R-TN) and Jeff Flake (R-AZ) -- will no longer be there, while all of the newly-elected senators, besides Senator-elect Mitt Romney (R-UT), are major Trump supporters. When two-thirds of the Senate is required for conviction of an impeachment trial, the odds of 20 Republican senators joining Democrats in removing the president are remote.

Though Trump and Republicans may have no formal plans to address the results of the Mueller investigation and possible calls for impeachment, Democrats certainly are preparing for the moment. Impeachment is a political action and will be viewed by many key voters in such a prism. At this moment, there may be more downside for Democrats to push for impeachment. While a majority of Democratic voters are behind impeachment, Democrats are seeking to broaden their base of support and are weary of investigation and impeachment overreach that can easily backfire. This is the current mindset of House

Democratic leaders, including likely-Speaker Nancy Pelosi (D-CA) and incoming House Judiciary Committee Chair Jerry Nadler (D-NY) who both are wary of going the impeachment route. Additionally, [46 newly elected Democrats wrote a letter](#) to House Democratic leaders that "they should prioritize action on health care, immigration, gun control and other topics over investigations into the Trump administration." In many ways, it would be in the political interest of the Democrats to not pursue impeachment. If the Mueller investigation comes out with some damning conclusions that erodes his support among Republicans and Republican-leaning independents, Democrats may be better positioned to face a weakened Trump in 2020 rather than face a Republican alternative like a Mike Pence or Nikki Haley.



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