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A time to find a subtitle

# Why Answering Mueller’s Questions Could Be a Minefield for Trump

By Charlie Savage

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WASHINGTON — President Trump has insisted he is eager to make the case to the special counsel, Robert S. Mueller III, that he has done nothing wrong. But the questions that Mr. Mueller wants to ask show why the president’s lawyers have countered that an interview would be a minefield for Mr. Trump.

It is not just that the president has a history of telling demonstrable falsehoods, while the special counsel has already won four guilty pleas for the crime of lying to investigators. The questions would pose additional challenges for Mr. Trump, legal experts said.

Many of Mr. Mueller’s questions, obtained and published by The New York Times, are so broad that Mr. Trump would need a detailed command of a range of issues. And, complicating efforts to try to adequately prepare him for such an encounter, the president’s lawyers do not know everything that the special counsel has learned.

“This list reinforces the notion that the president should not go in for an interview with Mueller,” said Sol Wisenberg, a white-collar defense lawyer who was a deputy independent counsel in the Whitewater investigation. “Mueller knows all kinds of things — we don’t know exactly what he knows — and these are both broad and detailed questions, making real land mines.”

On Tuesday, Mr. Trump denounced the publication of the questions in a pair of Twitter posts. He called it “disgraceful” and again pronounced Mr. Mueller’s investigation a “witch hunt.” He also incorrectly declared both that none of the questions were about “collusion” — in fact, many centered on his campaign’s ties to Russia — and that it would be “hard to obstruct justice for a crime that never happened.” (Efforts to obstruct an investigation can be prosecuted even if no underlying crime is found.)

Most of the dozens of questions are about now well-known events, like the June 2016 meeting at Trump Tower between top Trump campaign officials and Russians promising damaging information about Hillary Clinton. While a few touch on Mr. Trump’s business dealings — in particular, campaign-era talks about a proposed real estate project in Moscow — they do not signal that Mr. Mueller is examining Trump Organization finances more broadly or contain other major surprises.

In many instances, Mr. Mueller wants Mr. Trump to explain his knowledge of, reactions to or communications about private events where there were other witnesses, such as his campaign’s internal discussions of Russia-related matters and his conversations as president with and about James B. Comey, whom he fired as F.B.I. director.

The questions were drawn up in March and reflect no events since then, leaving open the possibility that they may have changed as the president’s lawyers and the special counsel continued to negotiate over an interview.

The handover to the president’s lawyers grew out of a tense moment early that month between Mr. Mueller and Mr. Trump’s lead lawyer at the time, John Dowd. Mr. Dowd had argued that Mr. Trump was too busy running the country to sit for an interview, especially if he was not a target of the investigation, according to a person briefed on the encounter.

Mr. Mueller replied that he had to question Mr. Trump to determine whether he had criminal intent when he took actions like firing Mr. Comey and raised the possibility of subpoenaing Mr. Trump to appear before a grand jury, the person said. News of Mr. Mueller mentioning the subpoena was first reported by The Washington Post.

A few days later, a lawyer working for Mr. Mueller called Mr. Dowd to arrange a second meeting, in the hopes of persuading Mr. Dowd to allow Mr. Trump to sit for an interview. At that meeting, investigators for Mr. Mueller provided Mr. Dowd with the list of questions they had for the president. After reviewing the list, Mr. Dowd become even more convinced, the person said, that allowing the president to be interviewed would be a problem.

One major threat to Mr. Trump posed by such open-ended questions is that, as his Twitter diatribe showed, he has a history of saying things that are not true — especially when he rambles off the cuff. It is a felony to lie to law enforcement officials or to conceal a material fact during a proceeding like a formal interview.

Mr. Dowd quit in March after he advised Mr. Trump that sitting down with investigators would put him in too much jeopardy, but Mr. Trump signaled that he was prepared to ignore Mr. Dowd’s advice.

Moreover, the list of questions is most likely a starting point for follow-ups as investigators try to iron out ambiguities. Paul Rosenzweig, another former Whitewater prosecutor and a senior fellow at the R Street Institute, a conservative and libertarian research organization, said they could be seeking such details as: What was the source of your knowledge? When did you find out? Who told you and what exactly did they say?

“You don’t just ask, ‘What did you know about the Trump Tower meeting?’ and he tells you the answer,” Mr. Rosenzweig said. “With 48 questions like that, that’s honestly a two-day interview. That’s 12 hours of questioning.”

And in part because former Trump associates who have pleaded guilty are cooperating with the inquiry, the White House does not know what evidence the special counsel has obtained that could contradict Mr. Trump, Mr. Wisenberg said. Because of that, he said, the president’s lawyers were in a worse position to prepare their client for an interview than President Bill Clinton’s team was in the Whitewater investigation.

“It’s totally different than when President Clinton came into the grand jury room to talk to us,” he said. “He pretty much knew everything we knew. It was far less risky.”

Even so, Mr. Clinton perjured himself by falsely denying that he had had a sexual affair with Monica Lewinsky. That became part of the referral to Congress by Kenneth W. Starr, the independent counsel, that led to Mr. Clinton’s impeachment.

As part of those proceedings, the videotape of Mr. Clinton’s false testimony became public, taking its place in his legacy. It is far from clear, however, that any transcript or recording of Mr. Trump’s interview — if he gives one — would similarly become public. Mr. Rosenzweig said the interview would be covered by investigative secrecy rules, and there was no clear mechanism for it to be disclosed under Mr. Mueller, who has less power than Mr. Starr enjoyed.

Mr. Mueller’s authorities remain uncertain; it is not clear that he could charge Mr. Trump with a crime or send an impeachment referral report directly to Congress. That has left his potential endgame unclear if he does conclude the president committed some kind of wrongdoing.

But the list of questions indicates that the investigation remains a significant threat to Mr. Trump even if he were to be honest about everything in any interview.

The questions zero in on Mr. Trump’s possible liability — and little else, noted Samuel W. Buell, a Duke University criminal law professor and a former federal prosecutor who helped lead the Enron investigation.

“‘What did you know and think?’ and ‘When did you know it and think it?’ are not questions you ask someone to determine whether they have information about someone else’s commission of a crime,” Mr. Buell said. “They are questions you ask to determine whether the person you are questioning had the guilty mind required to break the law.”

Mr. Wisenberg said he was struck by Mr. Mueller’s focus on establishing the president’s mind-set when he weighed whether to fire Mr. Comey, and potential steps like whether to oust Attorney General Jeff Sessions, pardon people charged by Mr. Mueller or force the Justice Department to dismiss the special counsel.

No Supreme Court precedent exists to guide Mr. Mueller on whether obstruction of justice can occur if a president exercises a constitutional power with a bad motive, like firing a subordinate to cover up a crime; Mr. Wisenberg counted himself among those who do not think it can. But Mr. Mueller’s questions, he said, suggest the special counsel has adopted a broader interpretation of the law.

Some of the questions may present an opportunity for Mr. Trump, however. Asking him to explain what he meant when he told NBC News that he was thinking about the Russia investigation when he decided to fire Mr. Comey, for example, would permit Mr. Trump to backpedal on the remark or explain it away, perhaps by saying he did not really mean it.

Alan M. Dershowitz, a Harvard Law School criminal law professor who has frequently defended Mr. Trump on television and is informally consulting with him, told CNN on Monday that he thought Mr. Trump could invoke executive privilege to refuse to answer questions about his thinking when he decided to exercise constitutional powers.

But the problem for Mr. Trump is that those questions, Mr. Dershowitz said, were the “easy” ones. By contrast, Mr. Trump could not invoke the privilege about events that took place before he became president, like his business dealings.

Several legal experts said it was unusual for prosecutors to give Mr. Trump a preview of the questions, speculating that Mr. Mueller was bending over backward to defang any accusations of overreach. Mr. Buell said the move might also be aimed at uncovering any disputes over executive privilege now so they do not disrupt an interview.

But he predicted that despite all the “posturing,” Mr. Trump would allow his lawyers to talk him out of sitting down with Mr. Mueller.

“The game,” he said, “is to appear to be interested and cooperating without doing so.”

Michael S. Schmidt contributed reporting.