

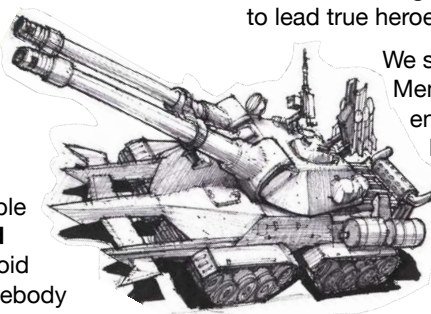
SHREDDING THE MILITARY

During my three decades in the Marine Corps, as an enlisted marine and officer, on active duty and in the Reserves, I received endless training. Some was devised to instill **discipline** and inculcate **high standards** of conduct. Other training stressed the importance of **ethics** and adherence to **laws and regulations**. Some of the training was scenario-based, to demonstrate that choices weren't always easy or clear, particularly in combat. We were taught to **"choose the hard right over the easy wrong."**

And it is because of that adherence to a code of conduct, to the Uniform Code of Military Justice — including the obligation to punish those who break it — that the U.S. military retains its **reputation**, gains the trust of civilians here and abroad, and maintains exquisite **discipline**. (The UCMJ is in place *"to promote justice, to assist in maintaining good order and discipline in the armed forces [and] to promote efficiency and effectiveness in the military establishment."* *Pardoning those who have been accused or convicted of serious crimes would undermine the military-justice system . . . Those who fail in their duties and responsibilities must be held accountable for their decisions and actions.*) **If a president pardons war criminals, he undermines the discipline, the values and the rule of law that are foundational to those defending a constitutional republic.**

Enter South Bend, Ind., Mayor Pete Buttigieg, who calls out President Trump's personal cowardice and lambastes the false machismo by which Trump seeks to hide his shame. Appearing on ABC's "This Week," he had this exchange with Martha Raddatz:

- **RADDATZ:** On this past Memorial Day weekend the president and first lady on Thursday went to Arlington Cemetery. At about the same time you were saying that the president **faked his disability** to get out of serving in Vietnam. Pretty positive about that?
- **BUTTIGIEG:** Yes. There is no question, I think, to any reasonable observer that **the president found a way to falsify a disabled status**, taking advantage of his privileged status in order to avoid serving. You have somebody who thinks it's all right to let somebody go in his place into a deadly war and is **willing to pretend to be disabled** in order to do it. That is an assault on the honor of this country.



- **RADDATZ:** I want to go to comments about — that the president made about service members who have either been accused of war crimes or convicted of war crimes. He said we teach them to fight and they **get treated unfairly**, and he is going to look at those cases to see if perhaps they can be pardoned.
- **BUTTIGIEG:** The idea that being sent to war turns you into a murderer is exactly the kind of thing that *those of us who have served* have been trying to beat back for more than a generation. For a president, especially a president who never served, to say he's going to come in and overrule that system of military justice undermines the very foundations, legal and moral, of this country. **Frankly, his idea that being sent to fight makes you automatically into some kind of war criminal is a slander against veterans that could only come from somebody who never served.**

For that alone, we should be grateful Buttigieg is in the race.

Trump's refusal to serve — his use of wealth and fame to save his own hide and force someone else to serve in his place — is the ultimate grotesque expression of privilege and cowardice. However, his disgrace becomes a threat to American values when he compensates for his past inadequacies by egging on those who serve (either at home or abroad) to commit acts of moral depravity and crimes of war (e.g., telling police to rough up suspects, cheering for indiscriminate violence against noncombatants, pining for a return to interrogation techniques that we have emphatically outlawed). This is meant to assuage his own shame but, instead, this conduct underscores his unfitness to lead true heroes.

We should express our admiration and gratitude every day, not merely on Memorial Day, for those who have given their last full measure. That must entail providing those currently serving in the military with civilian leadership, including a commander in chief, who will respect and support them and their code of conduct. In turn, that requires **removing a commander in chief who undercuts their safety, honor and values.**

Jennifer Rubin
washingtonpost.com

PRESIDENTIAL IMMUNITY, IMPUNITY, OUT-OF-TUNE-IT'Y

The outlines of a potential civilian prosecution of a former president Trump are already emerging.

In the second volume of his 448-page report, Mueller sets forth evidence of obstruction of justice that any competent federal prosecutor could use to draft an indictment. And **Mueller made it clear himself that his detailed report was intended, in part, to "preserve the evidence" because "a President does not have immunity after he leaves office."**

Mueller's team examined 10 distinct courses of conduct by Trump that could constitute obstruction of justice. Three of the potential charges are so strong that they are virtually certain to be included in any indictment of Trump. They're strong enough that over 1,000 former federal prosecutors signed a letter stating that Trump would be indicted if he were not president.

The strongest count would be his attempt to fire Mueller, the man appointed to investigate the Russian government's interference in the 2016 election and the possibility that the Trump campaign conspired with it. Very simply, obstruction of justice is when someone acts to undermine an investigation with the intent to do so, and there can be no serious question that firing Mueller would have curtailed the investigation. By the time Trump tried to fire Mueller, he knew the special counsel was also investigating him for obstructing justice. **Trump tweeted about how he was under investigation a day before he tried to fire Mueller, and White House counsel Don McGahn warned Trump about his "exposure" for obstructing justice.**

On June 17, 2017, Trump directed McGahn to get Deputy Attorney General Rod Rosenstein to remove Mueller, telling him, "You gotta do this." When McGahn didn't follow through, Trump called him a second time the next day, after which McGahn decided to resign. Ultimately, he didn't quit, but didn't follow through on Trump's order, either. Weeks earlier, McGahn advised Trump to avoid "trying to meddle in the investigation" and that "knocking out Mueller" would be "another fact used to claim obstruction of justice." **When your lawyer tells you that doing something could be a crime and you do it anyway, that is extremely strong evidence of your criminal intent - "substantial" evidence, in Mueller's own words.**

That episode would be the strongest count in an indictment of Trump, but at least two others would almost certainly also be charged. The first came two days later, on June 19, 2017, when Trump summoned former campaign manager Corey Lewandowski (then a cable news commentator) to the Oval Office. In a private meeting, **Trump dictated a private message and asked Lewandowski to personally deliver it to then-Attorney-General Jeff Sessions, who had recused himself from the Russia probe. This is notable because McGahn previously had made clear to Trump that he could not contact the DOJ or the FBI about the investigation. Going through a private citizen allowed Trump to bypass McGahn's directive.**

The third count that would almost certainly be included in any indictment of Trump was his effort to pressure McGahn to create a false record to hide the fact that Trump had directed him to fire Mueller. **Trump's attorney initially made a request to McGahn's attorney to deny a New York Times article reporting that Trump ordered him to fire Mueller. When McGahn refused to recant the story, Trump became angry. He told one aide that McGahn was a "lying bastard" and**

said that if McGahn didn't write a letter denying the Times' account, Trump would fire him.

Later, after McGahn refused to comply with Trump's request, Trump called him to discuss the matter. Trump told McGahn he did not say what McGahn remembered him saying - he hadn't used the word "fire," he said. Trump asked why McGahn had told Mueller's team about his directive to McGahn. McGahn told Trump that he had to, that their conversations were not protected by attorney-client privilege, and moreover, that he had notes of the conversation. Trump told McGahn that he "never had a lawyer who took notes." McGahn memorably retorted that a "real lawyer" does.

The evidence supporting these three counts tells a tightly knit story of Trump's efforts to fire and curtail Mueller and Trump's attempt to hide the fact that he had done so. Some prosecutors would limit an obstruction indictment to these, but others might include Trump's efforts to dissuade Paul Manafort, his former campaign chairman, from cooperating, which Mueller appears to believe is supported by substantial evidence. A strong argument could also be made to include Trump's direction to former FBI Director James Comey to "let former national security adviser Michael Flynn go" and potentially his subsequent decision to fire Comey. While Mueller does not think the evidence supporting this conduct is as strong as the evidence supporting the potential charges discussed above, it demonstrates a pattern of behavior: **Trump tried to control the scope of the investigation of him and his associates and was willing to fire those who oversaw the investigation because they posed a danger to him.**

Things could get even worse for Trump between now and January 2021. Federal prosecutors in the Southern District of New York told a federal judge that Trump directed certain payments to women with whom he had had affairs, constituting campaign finance crimes for which Trump's former lawyer, Michael Cohen, pleaded guilty. This does not necessarily mean that there is sufficient evidence to charge Trump; that statement by the Feds operated under a lower standard of proof. They will have to prove Trump's knowing intent. Nonetheless, the claim represents a significant danger for Trump, given that their investigation is ongoing. There are numerous other ongoing federal- and state-level investigations of Trump and his associates - from a probe of his inaugural committee's finances to an investigation of the whole Trump Organization (about 500 business entities of which Donald Trump is the sole or principal owner).

State-level charges have an extra dash of jeopardy because Trump cannot be pardoned for them by a president. It's entirely possible for a recently-defeated Trump to step aside and allow another president - potentially Vice President Mike Pence - to pardon him before a federal case could even be brought. That would not be unprecedented. About a month after he became president, Gerald Ford pardoned Richard Nixon.

There is also the danger that Trump could engage in additional obstructive conduct before the next election, particularly if the House of Representatives initiates an impeachment inquiry. This might give Trump an incentive to pressure or influence potential witnesses against him, like McGahn.

Most clients in legal jeopardy know not to make matters worse for themselves, but Trump has demonstrated that he does not always follow the advice of his attorneys.



So, for Trump, much more is riding on the next election than remaining in office. The five-year federal statute of limitations applies to obstruction of justice. And obstructing a federal investigation is not a state crime, which means that a reelected President Trump could not be prosecuted for his obstruction in 2017 until he left office in January 2025, which is years after the statute of limitations would have run.

Some have argued that the statute of limitations would be tolled (essentially, put on hold) while Trump was in office, but no court has reached that conclusion officially, and it's unclear if one ever will. For that reason, winning the election must be Trump's best path to avoid being charged with a felony. The 2020 stakes could not be higher for him.

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