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Robert Mueller's Last Resort

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Mr. Tye and Mr. Zaid started the nonprofit legal group Whistleblower Aid.

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Robert Mueller. Jim Lo Scalzo/European Pressphoto Agency

It's a nightmare scenario, but it's not hard to imagine: President Trump, growing tired of the Russia investigation as it closes in on him, fires Robert S. Mueller III and moves to dismantle the Office of Special Counsel.

This would be a serious assault on the rule of law in the United States. The ability of the Department of Justice to enforce the laws would be in grave doubt. By now, Mr. Mueller has presumably amassed a great deal of evidence, some of which is highly classified, that may point toward serious crimes. Americans might reasonably wonder whether perpetrators, if they exist, would ever face justice.

We hope that such a constitutional crisis is unlikely. But if it does come to pass, there is a way that Mr. Mueller and his staff could prevent their important work from being permanently buried: They could become lawful whistle-blowers.

Many people think that exposing classified misconduct requires breaking the law. Not necessarily. If Mr. Mueller is fired, he and his team would not have to do anything illegal to disclose classified information and ensure that the American people learned the truth.

Here's how it could work:

The moment he was dismissed, Mr. Mueller could lawfully take all the evidence he had collected — even the most highly classified materials — straight to Congress. If he personally lost access to the evidence, a remaining member of the Office of Special Counsel could do the same.

Such a move would require speedy execution, so his office should already have a contingency plan. It is illegal to send classified documents across the regular internet, and Congress does not have access to the secure email system used by the executive branch. Therefore, someone with proper security clearance would probably need to manually transport the evidence — hard copy pages or encrypted hard drives — from the special counsel's facility to Capitol Hill, less than a mile away.

Every detail of such transports is governed by regulations for handling classified information. The president might order federal marshals to arrest the courier en route, alleging national security information was being mishandled, so this individual would have to know and follow the law.

But if the evidence safely reached Congress, the president probably could not contain it. The 37 members of Congress on the House and Senate Intelligence Committees, as well as their staffs, are authorized to receive the most sensitive of classified information. Committee members from both parties would get access.

If necessary, members of Congress could unilaterally release classified information on the floor of the House or the Senate. The Constitution's speech and debate clause would protect them from criminal prosecution and civil lawsuits. If Mr. Trump attempted any legal action, courts would almost certainly dismiss it on separation-of-powers grounds. With bipartisan support, Congress could even pass a new statute specifically to declassify key documents, overriding a presidential veto if necessary.

If individual whistle-blowers know what to ask for, they can also litigate. To force the government to release specific classified documents, they can follow administrative declassification procedures and sue under the Freedom of Information Act. Any Justice Department official who destroyed documents during litigation would be violating multiple criminal statutes. In such a high-profile case, it's hard to say how successful such litigation would be, but in other matters, journalists have quite often won such lawsuits against the government.

Mr. Mueller could also write an article describing what he learned, and submit it to the Department of Justice for prepublication review for classified material. If the department insists on redacting even one word, Mr. Mueller could sue to enforce his own First Amendment rights to communicate with the American people on matters of public concern. Courts have sometimes ruled favorably in less-prominent cases.

President Trump and the Justice Department could certainly try to make these whistle-blowers' lives difficult. They could drag the cases out for lengthy periods of time or even seek to prosecute the whistle-blowers based on various legal theories.

These mechanisms are imperfect and would produce uncertain results. And they're still risky. A whistle-blower giving a media interview could inadvertently disclose classified information and wind up in prison. But these mechanisms are lawful.

As you read these words, it is likely that a handful of civil servants are out there, sitting on evidence of official lawbreaking that none of us know about. We don't yet know their names. But if we enter a constitutional crisis, they could play a special role in defending the republic. They are national heroes waiting to be born.

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