

## Mueller defends authority, hearkens back to Garfield administration

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Politico.com 09/28/2018



At issue is the case of Andrew Miller, a former aide to Trump confidante Roger Stone who has so far failed in his bid to knock special counsel Robert Mueller out of his post. | Brendan Smialowski/AFP/Getty Images

Special counsel Robert Mueller cited more than a century's worth of presidential scandal on Friday as part of a sweeping legal defense of his own authorities.

The lead Russia prosecutor made the historical references — that attorney generals have needed special investigators dating back to the 1870s — in a [legal brief](#) to a federal appeals court considering the case of a reluctant witness tied to a longtime supporter of President Donald Trump who is seeking to have Mueller's appointment thrown out on constitutional grounds.

“These instances—involving appointments by Attorneys General under Presidents Garfield, Theodore Roosevelt, Truman, Kennedy, Nixon, Carter, George H.W. Bush, and Clinton—span nearly 140 years and include some of the most notorious scandals in the Nation's history, including Watergate,” wrote Michael Dreeben, the deputy solicitor general on loan to the Mueller team.

At issue is the case of Andrew Miller, a former aide to Trump confidante Roger Stone who has so far failed in his bid to knock Mueller out of his post by challenging the

legitimacy of several subpoenas seeking his documents and testimony in connection to the Russia probe.

A federal district court judge rejected Miller's bid last month to quash the string of grand jury subpoenas, and the ex-Stone aide was later held in contempt of court — a precursor to his current appeal.

In Friday's brief, Dreeben ticked through the history of Mueller's appointment — including Attorney General Jeff Sessions' recusal from all investigations tied to the 2016 presidential election because of his work on the Trump campaign — in arguing that the special counsel was indeed properly appointed under Justice Department regulations.

Mueller is subject to routine supervision and oversight — from Deputy Attorney General Rod Rosenstein because of Sessions' recusal — on everything from his budget to hiring personnel and other key decisions.

"The Attorney General receives a regular flow of information about the Special Counsel's actions; he can demand an explanation for any of them; and he has power to intervene when he deems it appropriate to prevent a deviation from established Departmental practices," Dreeben explained.

Miller's lawsuit isn't the first to challenge Mueller's authority.

Two federal judges earlier this year rejected efforts by former Trump campaign chairman Paul Manafort to have Mueller's appointment invalidated. A Trump-appointed federal judge last month also rejected a bid by the Russian company Concord Management that challenged Mueller's jurisdiction after it was charged in connection to a Kremlin-linked online troll farm accused of targeting the American elections.

Miller's appeal leans on many of the same arguments raised by Concord, including that Mueller's appointment was flawed at multiple levels — and at its core remains unconstitutional. They say Mueller's power is so vast that he should have been subject to presidential nomination and Senate confirmation, rather than treated as an "inferior" officer who may be appointed and supervised by the attorney general.

While Mueller reports to Rosenstein, Miller's lawyers argue that Justice regulations prevent the deputy attorney general from overturning many of the special counsel's decisions. That authority, they argue, should only be permitted for individuals appointed by the president.

Miller's defense team has an October 9 deadline to file its reply brief. Oral arguments are scheduled for November 8 — just two days after the upcoming midterm election.

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