

Rod Wheeler, Fox News, Donald Trump And The Ghost Of Seth Rich

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Chances are that Justice Department special counsel Robert Mueller III isn't the only person giving President Trump sleepless nights about the roiling charges of collusion between Russia and the Trump campaign in connection with the 2016 presidential election. The odds are that the names "Rod Wheeler" and "Seth Rich" also have given Trump a restless turn or two in the wee small hours.

Rich was a Democratic National Committee staffer who was murdered on July 10, 2016, on a Washington, D.C. street at the age of 27. Since his death, which remains officially an unsolved homicide, right-wing media has been [abuzz with stories](#) suggesting it was Rich, described as a disgruntled Bernie Sanders supporter, who gave WikiLeaks the damaging DNC emails that were published to so much fanfare during the campaign. Rich was gunned down from behind, the stories maintain, in reprisal for the leak and to help promote the now-dominant mainstream account that Russian agents had hacked into the DNC's computers and sent the committee's emails to WikiLeaks.

On May 16, Fox News weighed in on Rich's murder with a blockbuster article by reporter Malia Zimmerman that was [published on the network's website](#). Zimmerman wrote that "law enforcement sources [had] told Fox News" that Rich had provided "thousands of internal [DNC] emails to WikiLeaks."

The only source quoted in Zimmerman's piece, however, was Rod Wheeler, a former D.C. homicide detective who currently works as a private investigation consultant and also has served as a Fox News commentator on law enforcement subjects since 2005. In March, Rich's family hired Wheeler to look into their son's murder with funds provided by a wealthy, Dallas-based Republican donor and Trump backer named Ed Butowsky.

Zimmerman quoted Wheeler in her article as saying: "My investigation up to this point shows there was some degree of email exchange between Seth Rich and WikiLeaks." Another quote has Wheeler adding: "My investigation shows someone within the DC government, Democratic National Committee or Clinton team is blocking the murder investigation from going forward."

Following the article's posting online, several Fox News television personalities — including Lou Dobbs, Steve Doocy and Sean Hannity — hyped the story on air. On his May 16 show, Hannity told viewers, referring to [Zimmerman's report](#), that "explosive developments" [in the Rich story] "could completely shatter the narrative that, in fact, WikiLeaks was working with the Russians, or there was collusion between the Trump campaign and the Russians."

One week later, however, the [network retracted Zimmerman's article](#) and removed it from its website. The retraction was accompanied by an official statement acknowledging that "[t]he article was not initially subjected to the high degree of editorial scrutiny we require for all our reporting. Upon appropriate review, the article was found not to meet those standards and has since been removed."

Wheeler also sought an apology from Fox, claiming that Zimmerman's story had misquoted him. The network declined. On Aug. 1, Wheeler filed a federal defamation and civil rights lawsuit in New York against Fox, Zimmerman and Butowsky, alleging that Zimmerman's story was "fake news" and that his reputation, credibility and career had been irreparably damaged by the false quotes Zimmerman had attributed to him. The suit also claims Zimmerman's story was prepared with advance approval and encouragement from the Trump administration.

According to [Wheeler's 33-page complaint](#), the defendants worked together to publish Zimmerman's

report to “shift the blame” for the release of the DNC’s emails “from Russia and help put to bed speculation that President Trump colluded with Russia in an attempt to influence the outcome of the Presidential election.”

Unlike [some civil complaints](#) that have been filed against Trump since the election, Wheeler’s is highly detailed and specific, in keeping with [recent Supreme Court case law](#) interpreting the requirements for legal pleadings under the [Federal Rules of Civil Procedure](#). In a footnote, the complaint asserts that “[e]very quotation [it contains] is from an email, text message, published news article and/or recorded or videotaped conversation.”

Wheeler is represented by a gritty boutique law firm — Wigdor LLP, which has its offices on Fifth Avenue in the Flatiron section of Manhattan and specializes in employment and civil rights litigation, criminal law and catastrophic personal injury torts. Although the firm has only 12 lawyers, it is no stranger to high-profile cases. According to the [practice’s website](#), founding partner Douglas Wigdor represented the hotel maid in the Dominique Strauss-Kahn sexual assault case and currently represents the victim in the Uber rape case (that recently led to numerous executive resignations), as well as over 20 Fox News employees in claims of gender and race discrimination.

Wheeler’s complaint reads almost like a Scott Turow legal thriller. It opens with a text message Butowsky sent him on May 14, 2017, advising:

Not to add any more pressure but the president [Trump] just read the [Zimmerman] article. He wants the article out immediately. It’s now all up to you. But don’t feel the pressure.

From there, the pleading backtracks to February, when it alleges Butowsky introduced himself to Wheeler and offered to bankroll an investigation into Rich’s murder, explaining that he was working with Zimmerman, who was preparing an article on the killing. On March 14, the Rich family agreed to retain Wheeler for an upfront sum of \$5,000, which Butowsky wired to Wheeler.

But Butowsky and Zimmerman, according to the complaint, “were not simply Good Samaritans attempting to solve a murder.” Rather, their aim was to advance the political agenda of the Trump administration by linking Rich to WikiLeaks and characterizing his murder as an act of reprisal carried out by a “Democrat operative.”

The complaint further alleges that Butowsky and Zimmerman did not act alone, but in the weeks and months leading up to the publication of Zimmerman’s story, Butowsky “kept in regular contact” about the Rich investigation with Trump administration officials, including then-press secretary Sean Spicer, chief strategist Steve Bannon, and Sarah Flores, director of public affairs at the Justice Department. On April 20, the pleading continues, Butowsky and Wheeler met with Spicer in person and handed him a copy of Wheeler’s investigation notes. Spicer asked to be kept abreast of any developments in the case.

On May 14, in addition to dispatching the text message advising that the president had read an advance copy of Zimmerman’s story, the complaint asserts that Butowsky left a voicemail message for Wheeler, in which he said: “A couple minutes ago, I got a note that we have the full, uh, attention of the White House on this. And, tomorrow, let’s close this deal, whatever we’ve got to do. But you can feel free to say that the White House is onto this now.”

Initially, Wheeler appears to have gone along with the plan. On May 15, he was interviewed on air by the Fox network’s D.C. television affiliate. In the interview, he stated that he had sources at the FBI who had told him “there is information that could link Seth Rich to WikiLeaks.” Two days later, however, Wheeler [backtracked on those statements](#), terming them “miscommunications.”

Whatever his initial role in promoting the story, Wheeler's complaint maintains that "[a]t no point in time did Mr. Wheeler say that Seth Rich [in fact] sent any emails to WikiLeaks, nor did he say that the DNC, Democratic Party, or [the] Clintons were engaged in a cover-up" to stop the official police investigation of the murder from proceeding.

Some of the "miscommunication" about FBI sources may have come from none other than the venerable investigative journalist Seymour Hersh. As set forth in the complaint, even before Butowsky reached out to Wheeler in February, he spoke over the phone with Hersh about Rich. Butowsky tape-recorded at least part of their conversation.

During his phone chat with Butowsky, the complaint alleges, Hersh said he had a source in the FBI, whom he described as "unbelievably accurate and careful," who had told him of a report that detailed the bureau's search of Rich's computer. The computer search, Hersh said, revealed that in the late spring or early summer of 2016, Rich had made contact with WikiLeaks.

Over the past week, in the aftermath of Wheeler's lawsuit, a redacted — and it must be said, unverified — version of [Butowsky's recorded conversation with Hersh](#) has been making the rounds of the right-wing blogosphere. A full 6:47 in length, the recording is rambling in nature, features only Hersh talking, and cuts off in mid-sentence, clearly before Hersh had completed his thoughts.

By contrast, the summary of the same conversation contained in Wheeler's complaint includes a quote from Butowsky, saying that with information from Hersh's purported FBI contact, "[w]e solve the problem about Russians are the ones that gave the [DNC] emails [to WikiLeaks] because that did not happen." The blogosphere version also does not include Hersh's caution to Butowsky that the "information" from Hersh's source "was not necessarily true, and that, even if true, it did not preclude the possibility that Russians also hacked the DNC."

Wheeler's complaint also alleges that as Zimmerman's story began to unravel in the days immediately after it was published, Butowsky tried to "extort" Hersh in an effort to save the story. Specifically, the lawsuit charges that in a May 19 telephone call to Wheeler, Butowsky said he had a "friend" who does "a lot of crisis management stuff," who would be emailing Hersh to say, "[Y]ou have three hours to write back who at the FBI you spoke to, with his name, that read you the Seth Rich report. If you don't give us that in three hours, a full recording of everything we have will be at every news agency tonight with your name and phone number on it. If you give it to us, you will never hear from us again."

Butowsky does not appear to have followed through on the threat. However, on Aug. 2, the day after Wheeler's lawsuit was filed, the right-wing website Big League Politics [posted an article](#) containing what purported to be an email exchange between Butowsky and Hersh from June 2. In the exchange, Butowsky wrote:

I am curious why you haven't approached the house committee telling them what you were read by your FBI friend related to Seth Rich that you in turn read to me. Based on all your work, it appears that you care about the truth. Even though, as you said you couldn't get a second, shouldn't you tell them so they could use their powers to determine the truth?

In an interview with NPR reporter David Folkenflik on Aug. 1, [Hersh remarked](#), "I hear gossip. [Butowsky] took two and two and made 45 out of it." In a phone interview with me this week, Hersh said much the same, and added that he never claimed to have a source in the FBI on the Rich case.

Folkenflik also reported that a spokeswoman for the FBI had told NPR "that the agency has played no part

in the investigation of the unsolved homicide.” Local police regard the crime as an attempted robbery gone awry.

It must be stressed that each of the defendants sued by Wheeler has denied the essential allegations of the lawsuit. As the plaintiff, moreover, Wheeler bears the burden of proof in the case.

Butowsky has been particularly adamant in his own defense, insisting that in enlisting Wheeler’s investigative expertise to work on the Rich case, he was sincerely trying to [help the deceased young man’s family](#). In addition, Butowsky now says that he was “just joking” when he sent Wheeler the May 14 text message about feeling “pressure” because of the [president’s interest in Zimmerman’s story](#), and that he’s never actually [met Trump](#). He also has accused Wheeler of being “broke” and “trying to get money” by [going to court](#).

Butowsky’s denials and countercharges, however, are not likely to derail Wheeler’s lawsuit, at least not anytime soon. “The case will definitely make it past the pleading stage,” Michael Willemin, one of the attorneys at Wigdor LLP assigned to the litigation, told me in a phone interview last week. If it does, the case will move onto the fact-finding phase of civil litigation known as “discovery.”

“We’re going to handle the case as we would any other, and be very aggressive in discovery,” Willemin said. That means, he explained, requesting all relevant documents and communications between all people with “inside knowledge” about the interactions between Fox, Butowsky, Zimmerman and White House personnel. His office will also be taking several depositions.

When I asked specifically if that could include a deposition from President Trump, Willemin answered: “It would not be unprecedented for a president to be deposed, although it would be unusual. We will consider [deposing anyone] with relevant information, as we would on behalf of any client.”

That possibility, compounded by the ongoing collusion and obstruction of justice probes led by special counsel Mueller, could give the president many sleepless nights to come.

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