

WHEN SPECIAL COUNSELS FINISH UP, THEY MUST WRITE REPORTS

A bunch of outlets are reporting that, given Trump's election, Jack Smith is in discussions about how to wind down the two cases against Trump

"Oh, it's so easy. It's so easy," Trump said when asked by conservative radio host Hugh Hewitt whether he would "pardon yourself" or "fire Jack Smith" if reelected.

"I would fire him within two seconds," Trump said.

The discussions between Smith and DOJ leadership are expected to last several days.

Justice Department officials are looking at options for how to wind down the two criminal cases while also complying with a 2020 [sic] memo from the department's Office of Legal Counsel about indictments or prosecutions of sitting presidents.

They're not mentioning a fairly obvious detail. According to governing regulations, when a Special Counsel finishes his work, he must write a report to the Attorney General.

Closing documentation. At the conclusion of the Special Counsel's work, he or she shall provide the Attorney General with a confidential report explaining the prosecution or declination decisions reached by the Special Counsel.

So if Smith is totally done, he has to write a

report.

These reports that Smith is engaged in these discussions come as Bill Barr and others are yapping their mouths about Smith simply dismissing the cases. By telling the press that Smith is already working on shutting down the cases, Smith pre-empts any effort from Trump to offer another solution – and does so before Trump files his response to the immunity brief on November 21.

In other words, this may be no more than an effort to get one more bite at the apple, to describe what Smith found, which would be particularly important if there are still undisclosed aspects of the case, as I suggested there might be.

Where things get interesting, though, is Trump's co-conspirators, people like Rudy Giuliani and Steve Bannon. Those guys could be prosecuted, as Roger Stone was after Mueller finished up. Trump would order his Attorney General to dismiss the cases – they're never going to be prosecuted. But it would impose a political cost right at the beginning of his administration.

Update: NYT's version of this notes that they are trying to preserve the appeal in the 11th Circuit. Of course Walt Nauta is still on that appeal.