

OVERSIGHT OF THE REPORT BY SPECIAL COUN-
SEL ROBERT S. MUELLER III: FORMER WHITE
HOUSE COUNSEL DONALD F. MCGAHN II

HEARING
BEFORE THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ONE HUNDRED SIXTEENTH CONGRESS
FIRST SESSION

TUESDAY, MAY 21, 2019

Serial No. 116-22

Printed for the use of the Committee on the Judiciary



Available via: <http://judiciary.house.gov>

U.S. GOVERNMENT PUBLISHING OFFICE

WASHINGTON : 2019

COMMITTEE ON THE JUDICIARY

JERROLD NADLER, New York, *Chair*

MARY GAY SCANLON, Pennsylvania, *Vice-Chair*

ZOE LOFGREN, California	DOUG COLLINS, Georgia, <i>Ranking Member</i>
SHEILA JACKSON LEE, Texas	DEBBIE MUCARSEL-POWELL, Florida
STEVE COHEN, Tennessee	VERONICA ESCOBAR, Texas
HENRY C. "HANK" JOHNSON, JR., Georgia	F. JAMES SENSENBRENNER, JR.,
THEODORE E. DEUTCH, Florida	Wisconsin
KAREN BASS, California	STEVE CHABOT, Ohio
CEDRIC L. RICHMOND, Louisiana	LOUIE GOHMERT, Texas
HAKEEM S. JEFFRIES, New York	JIM JORDAN, Ohio
DAVID N. CICILLINE, Rhode Island	KEN BUCK, Colorado
ERIC SWALWELL, California	JOHN RATCLIFFE, Texas
TED LIEU, California	MARTHA ROBY, Alabama
JAMIE RASKIN, Maryland	MATT GAETZ, Florida
PRAMILA JAYAPAL, Washington	MIKE JOHNSON, Louisiana
VAL BUTLER DEMINGS, Florida	ANDY BIGGS, Arizona
J. LUIS CORREA, California	TOM MCCLINTOCK, California
SYLVIA R. GARCIA, Texas	DEBBIE LESKO, Arizona
JOE NEGUSE, Colorado	GUY RESCHENTHALER, Pennsylvania
LUCY MCBATH, Georgia	BEN CLINE, Virginia
GREG STANTON, Arizona	KELLY ARMSTRONG, North Dakota
MADELEINE DEAN, Pennsylvania	W. GREGORY STEUBE, Florida

PERRY APELBAUM, *Majority Staff Director & Chief Counsel*

BRENDAN BELAIR, *Minority Staff Director*

C O N T E N T S

MAY 21, 2019

OPENING STATEMENTS

	Page
The Honorable Jerrold Nadler, Chairman, Committee on the Judiciary	1
The Honorable Doug Collins, Ranking Member, Committee on the Judiciary ..	4

**OVERSIGHT OF THE REPORT BY SPECIAL
COUNSEL ROBERT S. MUELLER III: FORMER
WHITE HOUSE COUNSEL DONALD F.
MCGAHN II**

Tuesday, May 21, 2019

HOUSE OF REPRESENTATIVES

COMMITTEE ON THE JUDICIARY

Washington, DC

The Committee met, pursuant to call, at 10:04 a.m., in Room 2141, Rayburn House Office Building, Hon. Jerrold Nadler [chairman of the committee] presiding.

Present: Representatives Nadler, Lofgren, Jackson Lee, Cohen, Johnson of Georgia, Bass, Richmond, Cicilline, Lieu, Raskin, Jayapal, Demings, Correa, Scanlon, Garcia, Neguse, McBath, Stanton, Dean, Mucarsel-Powell, Escobar, Collins, Chabot, Gohmert, Jordan, Buck, Ratcliffe, Gaetz, Johnson of Louisiana, McClintock, Reschenthaler, Cline, Armstrong, and Steube.

Staff Present: Aaron Hiller, Deputy Chief Counsel; Arya Hariharan, Deputy Chief Oversight Counsel; David Greengrass, Senior Counsel; John Doty, Senior Advisor; Lisette Morton, Director of Policy, Planning, and Member Services; Madeline Strasser, Chief Clerk; Moh Sharma, Member Services and Outreach Advisor; Susan Jensen, Parliamentarian/Senior Counsel; Sophie Brill, Counsel; Will Emmons, Professional Staff Member; Brendan Belair, Minority Chief of Staff; Jon Ferro, Minority Parliamentarian; Carlton Davis, Minority Chief Oversight Counsel; Ashley Callen, Minority Senior Adviser and Oversight Counsel; and Erica Barker, Minority Chief Legislative Clerk.

Chairman NADLER. The Judiciary Committee will come to order.

Without objection, the chair is authorized to declare recesses of the Committee at any time.

We welcome everyone to today's hearing on "Oversight of the Report by Special Counsel Robert Mueller III: Former White House Counsel Donald McGahn II." I will now recognize myself for an opening statement.

More than a year ago, White House counsel Don McGahn sat for the first of several interviews with special counsel Robert Mueller. Over the course of those interviews, he described how the President directed him to have the special counsel fired. He described how

the President ordered him to lie about it. He described several other obstructive incidents outlined in the special counsel's report.

The President, in contrast, refused to be interviewed by the special counsel or even to answer written questions about his attempts to obstruct the investigation. Instead, to address the allegations spelled out by Mr. McGahn and outlined in the report, President Trump relied on his preferred mode of communication. He took to Twitter to call Mr. McGahn a liar. His lawyers went on cable television to do the same, to call Mr. McGahn a liar.

There are reports of the President and his lieutenants exerting other kinds of pressure on Mr. McGahn. In short, the President took it upon himself to intimidate a witness who has a legal obligation to be here today. This conduct is not remotely acceptable.

The White House asserts that Mr. McGahn does not have to appear today because he is entitled to "absolute immunity" from our subpoenas. We know this argument is wrong, of course, because the executive branch has tried this approach before. In 2007, President George Bush attempted to invoke a similarly broad and unjustified assertion of executive privilege and asked his former counsel Harriet Miers to ignore a subpoena issued by this committee. Ms. Miers also did not appear at her scheduled hearing.

Judge John Bates, who was appointed by President Bush, slapped down that argument fairly quickly. "The executive cannot identify a single judicial opinion that recognizes absolute immunity for senior presidential advisers in this or any other context. That simple, yet critical fact bears repeating. The asserted absolute immunity claim here is entirely unsupported by the case law," from the judicial decision.

In other words, when this Committee issues a subpoena, even to a senior presidential adviser, the witness must show up. Our subpoenas are not optional. Mr. McGahn has a legal obligation to be here for this scheduled appearance. If he does not immediately correct his mistake, this Committee will have no choice but to enforce the subpoena against him.

Mr. McGahn did not appear today because the President prevented it, just as the President has said that he would "fight all subpoenas" issued by Congress as part of his broader efforts to cover up his misconduct. This stonewalling makes it more important to highlight some of the incidents that Mr. McGahn is said to have witnessed. Let me recount some of them.

We know that the President directed Mr. McGahn to prevent then Attorney General Sessions from recusing himself from overseeing the investigation into Russian election interference. On March 3, 2017, shortly after Attorney General Jeff Sessions did recuse himself from the Russia investigation, the President summoned Mr. McGahn to the Oval Office. According to the Mueller report, "The President opened the conversation by saying, 'I don't have a lawyer.'"

The President told Mr. McGahn that he wished that Roy Cohn was his attorney instead. Roy Cohn, of course, is known principally as the chief architect of the Army—McCarthy hearings that destroyed so many lives back in 1954, an actual political witch hunt, not the imaginary kind that the President decries.

Mr. Cohn served as President Trump's lawyer for a long time, defending the President against Federal discrimination suits before he, that is, Mr. Cohn was ultimately disbarred for unethical practices in 1986.

Mr. McGahn refused to follow blindly into unethical behavior. Mr. McGahn told the President that the Department of Justice ethics officials had weighed in and that Mr. Sessions would not unrecuse himself, and he advised the President not to have any contact with Mr. Sessions on the matter. Days later, the President did exactly the opposite.

He summoned Mr. McGahn and Mr. Sessions to Mar-a-Lago, where the President again "expressed his anger." He said he wanted Mr. Sessions to Act as his fixer. He said he wanted Mr. Sessions to undo his recusal and to limit the scope of the investigation. Mr. Sessions, too, refused the President's orders.

On June 17, 2017, the President took his displeasure a step further. He called Mr. McGahn at home and directed him to order Rod Rosenstein to fire Robert Mueller. "Mueller has to go," the President barked, "Call me back when you do it."

Once again, Mr. McGahn refused. This time, Mr. McGahn felt the President's behavior was so inappropriate that he said he would rather resign than trigger a constitutional crisis.

In early 2018, after press reports described the President's attempt to force Mr. McGahn to remove the special counsel on his behalf, the President repeated his pattern. He summoned Mr. McGahn to his office, and he got angry. "This story doesn't look good. You need to correct this. You are the White House counsel," President Trump told Mr. McGahn.

"What about these notes? Why do you take notes?" the President said to Mr. McGahn, inquiring why Mr. McGahn had documented their conversation.

The President then told Mr. McGahn to tell the American people something that was not true. He asked him to deny those reports publicly. Mr. McGahn again refused the President's order. He refused the President's order to lie to the American people on the President's behalf. Six months later, the President announced that Mr. McGahn would be leaving the White House.

The special counsel found Mr. McGahn to be "a credible witness with no motive to lie or exaggerate, given the position he held in the White House." That is from the Mueller report.

The special counsel also found the following: "Substantial evidence indicates that by June 17, 2017, the President knew his conduct was under investigation by a Federal prosecutor who could present any evidence of Federal crimes to a grand jury. Substantial evidence indicates that the President's attempts to remove the special counsel were linked to the special counsel's oversight of investigations that involved the President's conduct and, most immediately, to reports that the President was being investigated for potential obstruction of justice."

"Substantial evidence indicates"—and these are all quotes from the report—"substantial evidence indicates that in repeatedly urging Mr. McGahn to dispute that he was ordered to have the special counsel terminated, the President acted for the purpose of influencing McGahn's account in order to deflect or prevent further

scrutiny of the President's conduct towards the investigation. Substantial evidence indicates that the President's efforts to have Sessions limit the scope of the special counsel's investigation to future election interference was intended to prevent further investigative scrutiny of the President and his campaign's conduct." Those are all quotes from the special counsel's report.

I believe that each of these incidents, documented in detail in the Mueller report, constitutes a crime. For the Department of Justice's policy of refusing to indict any sitting President, I believe the President would have been indicted and charged with these crimes.

I am not alone in this belief. Over 900 former Federal prosecutors from across the political spectrum whose job was to determine when the elements of a crime have been satisfied have stated—have agreed that the President committed crimes that would have been charged if he were not the sitting President. I believe that the President's conduct since the report was released, with respect to Mr. McGahn's testimony and other information we have sought, has carried this pattern of obstruction and cover-up well beyond the four corners of the Mueller report.

The President has declared out loud his intention to cover up this misconduct. He told Mr. McGahn to commit crimes on his behalf. He told Mr. McGahn lie about it. After the report came out, the President claimed that Mr. McGahn lied to the special counsel about what happened. Then he directed Mr. McGahn not to come here today so that the public would not hear his testimony and so that we could not question him.

President Trump may think he can hide behind his lawyers as he launches a series of baseless legal arguments designed to obstruct our work. He cannot think these legal arguments will prevail in court, but he can think he can slow us down and run out the clock on the American people.

Let me be clear. This Committee will hear Mr. McGahn's testimony, even if we must go to court to secure it. We will not allow the President to prevent the American people from hearing from this witness.

We will not allow the President to block congressional subpoenas, putting himself and his allies above the law. We will not allow the President to stop this investigation. Nothing in these unjustified and unjustifiable legal attacks will stop us from pressing forward with our work on behalf of the American people. We will hold this President accountable, one way or the other.

It is now my pleasure to recognize the Ranking Member of the Judiciary Committee, the gentleman from Georgia, Mr. Collins, for his opening statement.

Mr. COLLINS. Thank you, Mr. Chairman, and thank you for all that have gathered here again.

Here we go again. The theater is open, and the summations are coming in. In fact, right now we are again running over the norms of congressional oversight. We are dabbling at the edges of running roughshod on the Constitution, asking for things that we don't.

I am glad about one thing. I am glad that Chairman read into the record today the Mueller report. I am glad that he quoted, as he said, this is a quote directly from the Mueller report. I just wish

my chairman would actually go read the rest of it that he has been offered to read, which he has chosen not to read.

He did leave out one thing. He left out something in the Mueller report from just now. He read McGahn's testimony beautifully, did everything right. He left out what he doesn't want to have to come back to and the frustrating thing that has brought us here again and again and again, and that is the conclusions. There was no collusion. There was no obstruction charge. There is nothing here.

After 2 years of doing this, we can read it in, you can talk about how you don't like it, you can talk about what you would like to have. At the end of the day, it is interesting we will read in the quotes that make the headlines, but we are also not going to read in the bottom line of what was actually concluded.

So, the Democrats are here trying again. The Mueller report concluded there was no collusion, no obstruction. Because the report failed to provide damning information against the President, the majority claims we need to dig deeper, deeper than the 2 years of investigation conducted by what is considered a prosecutorial dream team because that probe ended without criminal charges against the President or his family.

The special counsel closed up shop without giving Democrats anything to deliver to their base. Now the Democrats are trying desperately to make something out of nothing, which is why Chairman has again haphazardly subpoenaed today's witness. That move, though, has actually ensured the witness will not testify.

This is becoming a pattern. The chairman knew this, I believe, when he sent the subpoena last month. Instead of inviting the witness to testify voluntarily and working with McGahn's counsel to find mutual agreeable time and scope for the testimony, Chairman rushed to maximize headlines by issuing a subpoena. That subpoena was the third in just 4 months, more subpoenas than the prior chairman issued in 6 years.

The chairman had several ways out here. He took none of them. The chairman could have invited the witness to testify voluntarily. That was the practice in the 1990s when the White House counsel testified before Congress. Chairman did not do that. Instead, he launched a subpoena at the witness without any consultation or follow-up with the witness' lawyer.

The chairman could have invited the witness to testify behind closed doors, but that would have been politically expedient, and you would not have been here, and the show would not have been as exciting. A closed-door conversation would not have generated those headlines and everything that we are looking at today. Even gaveling in today's hearing without a witness is theatrical.

The cameras love a spectacle, and the majority loves the chance to rant against the Administration. I just am glad today to see that we don't have chicken on the dais.

The chairman orchestrated today's confrontation when he could have avoided it because he is more interested in the fight than the fact finding. Take the Mueller report, which we have already heard quoted from. More than 99 percent the Justice Department has offered to Chairman. For an entire month, Chairman refused to take a look at it.

The Attorney General who volunteered to testify before the committee, Chairman changed the rules for the first time in the committee's 200-year history, thus blocking General Barr from testifying.

I cannot emphasize this enough. The track record demonstrates he does not actually want information. He wants the fight, but not the truth. The closer he actually comes to obtaining information, the further we run from it.

The Democrats claim to need today's witness to investigate obstruction of justice, but that investigation was already done. Robert Mueller spent 2 years running it and then closed it. We are not a prosecutorial body, but a legislative body that does have valid congressional oversight. But let us talk about that Mueller report for just a second. It is really interesting to me that the Mueller report was actually—within 24 hours of coming out, Chairman and the majority subpoenaed for all of the documents.

In fact, we have a legal subpoena that asked the Attorney General to provide documents he cannot legally provide. That has been covered in this Committee for the last 2 weeks exhaustively, and even the panel that was with us last week agreed that the subpoena asked the Attorney General to do something illegal by exposing 6(e) information. That was his own witnesses said that last week.

You know what is interesting to me is that we have subpoenaed the documents. We have subpoenaed that we want underlying documents. We have subpoenaed stuff that we can't get. You know the one thing we seem to avoid is Mr. Mueller himself, the one who wrote it.

We have asked since April about Mr. Mueller coming. Every time we seem to get close to Mueller, Mueller just gets pushed on a little bit. Hadn't seen a subpoena here, and this is what is really amazing. We will get back to subpoenas in a moment.

Just think about that. You wanted the work of the author, but you don't want to talk to the author. Keep that pinned for just a moment. When we look at this, 99 percent of the information is at the Democrats' fingertips, and it is the Mueller report the Attorney General offered to Speaker Pelosi, Chairman Nadler, and others to have seen it, but they refuse.

So don't be fooled. The majority wants the fight. They want the drama. He does not actually want the information he claims to be seeking. After the Administration made volumes of information available to this committee, Chairman issued overbroad subpoenas and now harangues the Administration for being unable to comply with those subpoenas.

In fact, it is the Democrats who are not engaging in the accommodation process, abruptly cutting off negotiations, rejecting olive branches by the Administration. I want to come back to something my chairman just said a moment ago. His quote was in his opening statements that our subpoenas are not optional.

Well, we found out a lot about subpoenas over the last month or so in this committee. I found out that subpoenas maybe now are not optional. Let us add to the list. Subpoenas are also a discussion starter. A subpoena is to give us better standing in court. Not my quotes, Chairman's quotes.

So what is it? Is a subpoena the legal document that we have talked about all along in here and the forceful document that all attorneys in this country actually use, or is it a discussion starter? Is it to help our standing in court, or is it we don't want it ignored?

At this time, it is amazing to me that the accommodation process—and we talk about the committee, and Chairman forcefully talked about our oversight. I agree with Chairman on this point. This Committee and all committees in Congress have oversight responsibility, but it is also the sacred responsibility of Chairman and the majority to use it properly and to not headlong rush into subpoenas when you don't get what you want.

That is all we have seen in 5 months here. When we don't get what we want, we subpoena. The first one was the Acting Attorney General. We subpoenaed, and then we backed off. We caved. Then everything else has become a race to get a headline. The accommodation process, not happening. The accommodation process, never here.

So don't be fooled. You may have come wanting—you may have an opinion that says everything is wrong today with the Mueller report and the President is guilty, but don't undercut congressional oversight because you can't wait. That is the problem we have right now.

So the question is, are we tearing at the fabric of congressional oversight? It was really interesting to hear some of that last week. When you have a Committee that has issued subpoenas that ask the Attorney General to do something illegal, when you have the subpoenas when no accommodation process has been put in place, when you have contempt issues that have been in part with no process and no time going through, I just submit to you this.

Whatever your opinion on the Mueller report, great. Glad you have it. You didn't get it here today, and you are not getting it from this Committee because this Committee undoubtedly doesn't like the author or want to talk to the author of the report. They just want to talk about the report and make innuendo and attack the President at the middle of the day when this committee, who has charge of immigration, who has charge of intellectual property, who we have touched none of with a crisis at the border.

We have an admission that the economy is good, jobs are happening, unemployment is at its lowest rate. I guess at the end of the day, we can't find something that the Mueller report lets them hang their I-word, "impeachment," on, which they can't even agree on, because the President is continuing to do his job. We are here again with the circus in full force.

With that, I yield back.

Mr. COHEN. Mr. Chairman? Mr. Chairman?

Mr. CHABOT. Mr. Chairman?

Chairman NADLER. Thank you, Mr. Collins. Who seeks recognition?

Mr. COHEN. Move to strike the last word.

Chairman NADLER. The gentleman from Tennessee?

Mr. COHEN. Move to adjourn.

Chairman NADLER. Motion is made to adjourn.

Mr. CHABOT. Mr. Chairman? Mr. Chairman?

Chairman NADLER. Motion to adjourn is not debatable.

All in favor?
 Opposed?
 Mr. CHABOT. Recorded vote.
 Chairman NADLER. Do I hear a request for a recorded vote?
 Mr. CHABOT. Request for recorded vote.
 Chairman NADLER. The clerk will call the roll on the motion to adjourn.
 Ms. STRASSER. Mr. Nadler?
 Chairman NADLER. Aye.
 Ms. STRASSER. Mr. Nadler votes aye.
 Ms. Lofgren?
 Ms. LOFGREN. Aye.
 Ms. STRASSER. Ms. Lofgren votes aye.
 Ms. Jackson Lee?
 Ms. JACKSON LEE. Aye.
 Ms. STRASSER. Ms. Jackson Lee votes aye.
 Mr. Cohen?
 Mr. COHEN. Aye.
 Ms. STRASSER. Mr. Cohen votes aye.
 Mr. Johnson of Georgia?
 Mr. JOHNSON of Georgia. Aye.
 Ms. STRASSER. Mr. Johnson of Georgia votes aye.
 Mr. Deutch?
 Ms. Bass?
 Ms. BASS. Aye.
 Ms. STRASSER. Ms. Bass votes aye.
 Mr. Richmond?
 Mr. RICHMOND. Aye.
 Ms. STRASSER. Mr. Richmond votes aye.
 Mr. Jeffries?
 Mr. Cicilline?
 Mr. CICILLINE. Aye.
 Ms. STRASSER. Mr. Cicilline votes aye.
 Mr. Swalwell?
 Mr. Lieu?
 Mr. LIEU. Aye.
 Ms. STRASSER. Mr. Lieu votes aye.
 Mr. Raskin?
 Mr. RASKIN. Aye.
 Ms. STRASSER. Mr. Raskin votes aye.
 Ms. Jayapal?
 Ms. JAYAPAL. Aye.
 Ms. STRASSER. Ms. Jayapal votes aye.
 Mrs. Demings?
 Mrs. DEMINGS. Aye.
 Ms. STRASSER. Mrs. Demings votes aye.
 Mr. Correa?
 Mr. CORREA. Aye.
 Ms. STRASSER. Mr. Correa votes aye.
 Ms. Scanlon?
 Ms. SCANLON. Aye.
 Ms. STRASSER. Ms. Scanlon votes aye.
 Ms. Garcia?
 Ms. GARCIA. Aye.

Ms. STRASSER. Ms. Garcia votes aye.
 Mr. Neguse?
 Mr. NEGUSE. Aye.
 Ms. STRASSER. Mr. Neguse votes aye.
 Mrs. McBath?
 Mrs. MCBATH. Aye.
 Ms. STRASSER. Mrs. McBath votes aye.
 Mr. Stanton?
 Mr. STANTON. Aye.
 Ms. STRASSER. Mr. Stanton votes aye.
 Ms. Dean?
 Ms. DEAN. Aye.
 Ms. STRASSER. Ms. Dean votes aye.
 Ms. Mucarsel-Powell?
 Ms. MUCARSEL-POWELL. Aye.
 Ms. STRASSER. Ms. Mucarsel-Powell votes aye.
 Ms. Escobar?
 Ms. ESCOBAR. Aye.
 Ms. STRASSER. Ms. Escobar votes aye.
 Mr. Collins?
 Mr. COLLINS. No.
 Ms. STRASSER. Mr. Collins votes no.
 Mr. Sensenbrenner?
 Mr. Chabot?
 Mr. CHABOT. No. And this is disgraceful.
 Ms. STRASSER. Mr. Chabot votes no.
 Mr. Gohmert?
 Mr. GOHMERT. No.
 Ms. STRASSER. Mr. Gohmert votes no.
 Mr. Jordan?
 Mr. JORDAN. No.
 Ms. STRASSER. Mr. Jordan votes no.
 Mr. Buck?
 Mr. BUCK. No.
 Ms. STRASSER. Mr. Buck votes no.
 Mr. Ratcliffe?
 Mr. RATCLIFFE. No.
 Ms. STRASSER. Mr. Ratcliffe votes no.
 Mrs. Roby?
 Mr. Gaetz?
 Mr. GAETZ. No.
 Ms. STRASSER. Mr. Gaetz votes no.
 Mr. Johnson of Louisiana?
 Mr. JOHNSON of Louisiana. No.
 Ms. STRASSER. Mr. Johnson of Louisiana votes no.
 Mr. Biggs?
 Mr. McClintock?
 Mr. MCCLINTOCK. No.
 Ms. STRASSER. Mr. McClintock votes no.
 Mrs. Lesko?
 Mr. Reschenthaler?
 Mr. RESCHENTHALER. No.
 Ms. STRASSER. Mr. Reschenthaler votes no.
 Mr. Cline?

Mr. CLINE. No.
 Ms. STRASSER. Mr. Cline votes no.
 Mr. Armstrong?
 Mr. ARMSTRONG. No.
 Ms. STRASSER. Mr. Armstrong votes no.
 Mr. Steube?
 Mr. STEUBE. No.
 Ms. STRASSER. Mr. Steube votes no.
 Chairman NADLER. Is there anyone who wishes to vote who hasn't voted?
 [No response.]
 Chairman NADLER. The clerk will report.
 Ms. STRASSER. Mr. Chairman, there are 21 ayes and 13 noes.
 Chairman NADLER. There are 21 ayes and 13 noes. The motion to adjourn is adopted, and the hearing is adjourned.
 [Whereupon, at 10:27 a.m., the Committee was adjourned.]

