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Congress of the United States
House of Representatives
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CONGRESSWOMAN SHEILA JACKSON LEE OF TEXAS
HOUSE COMMITTEE ON THE JUDICIARY
OVERSIGHT OF THE REPORT BY THE SPECIAL
COUNSEL, III: FORMER WHITE HOUSE COUNSEL
DONALD F. MCGAHN
MAY 21, 2019
10:00 AM
2141 RAYBURN



- I thank the Chairman for yielding me time.
- It is critical for me to submit this statement because these are no ordinary times.
- The House Committee on the Judiciary has issued a duly authorized subpoena to a private citizen.
- The subject of that subpoena has not honored the subpoena.
- Some in our nation believe it is time to escalate this dispute and pursue a resolution of this House of Representatives:

Authorizing and directing the Committee on the Judiciary to investigate whether sufficient grounds exist for the House of Representatives to exercise the power vested by Article 1, Section 2, Clause 5 of the Constitution

***in respect to acts of misconduct by Donald John Trump,
President of the United States.***

* * *

- Following a 22-month investigation, a Special Counsel, appointed pursuant to Justice Department guidelines, issued a report into whether Russia interfered in our election and issued his conclusions about whether the President obstructed the investigation into the matter
- On April 18, 2019, a redacted copy of Special Counsel Robert Mueller’s “Report On The Investigation Into Russian Interference In The 2016 Presidential Election” (Mueller Report) was released to the public.
- The Mueller report builds on the U.S. intelligence community’s conclusion that there were two campaigns to elect Donald Trump— one run by Trump and one run by the Russian government.
- Beyond the many lies the Trump team told to the American people, Mueller himself repeatedly remarked on how far the Trump team was willing to go to hide their Russian contacts, stating, “the investigation established that several individuals affiliated with the Trump Campaign lied to the Office, and to Congress, about their interactions with Russian-affiliated individuals and related matters.
- Those lies materially impaired the investigation of Russian election interference.”
 - The report was separated into two volumes: Volume I discussed Russia’s interference in the campaign.
 - Volume II discussed the instances of alleged obstruction by the President in the course of his efforts to conceal attempts to uncover the investigation
 - Volume II is a regrettable tomb of presidential misconduct and lists fully – between 10 and 12 instances – of conduct that can be construed as obstructive conduct

- The man at the center of the allegations of obstruction of justice are former White House Counsel, Don McGahn.
- Don McGahn served as White House Counsel to President Donald Trump from the beginning of his administration until October 2018.
- After publication of the Mueller Report, Mr. McGahn emerged as a critical player.
- Indeed, so prolific was Mr. McGahn in the telling of the President's obstructive conduct, that the New York Times referred to Mr. McGahn as the "unofficial narrator of the special counsel's report on whether the president obstructed justice.
- Mr. McGahn is cited 157 times, more than any other witness.
- In addition to being the lawyer for the office of the presidency, Mr. McGahn has emerged as a critical fact witness who can speak to the President's possible criminal conduct.
- Indeed, the Special Counsel's report laid clear the extent of Mr. McGahn's knowledge of the President's mendacity.
- For example, the Special Counsel indicates:

"In interviews with this Office, McGahn recalled that the President called him at home twice and on both occasions directed him to call Rosenstein and say that Mueller had conflicts that precluded him from serving as Special Counsel. On the first call, McGahn recalled that the President said something like, "You gotta do this. You gotta call Rod." . . . McGahn was perturbed by the call and did not intend to act on the request. . . . When the President called McGahn a second time, McGahn recalled that the President was more direct, saying something like, "Call Rod, tell Rod that Mueller has conflicts and can't be the Special Counsel." McGahn recalled the President telling him "Mueller has to go" and "Call me back when

you do it." McGahn understood the President to be saying that the Special Counsel had to be removed by Rosenstein." (Vol. II, p. 88)

"The President also asked McGahn in the meeting why he had told Special Counsel's Office investigators that the President had told him to have the Special Counsel removed. McGahn responded that he had to and that his conversations with the President were not protected by attorney-client privilege. The President then asked, 'What-about these notes? Why do you take notes? Lawyers don't take notes. I never had a lawyer who took notes.' McGahn responded that he keeps notes because he is a 'real lawyer' and explained that notes create a record and are not a bad thing. The President said, 'I've had a lot of great lawyers, like Roy Cohn. He did not take notes.'" (Vol. II, p. 117)

- Moreover, the Special Counsel makes clear that the President encouraged the White House Counsel to suborn perjury.
- For example, **President Trump repeatedly tried to have former White House Counsel Don McGahn lie to investigators.**
- Substantial evidence indicates that in repeatedly urging 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." (Vol. II, p. 120)
- All told, the Special Counsel's report directly undermines the President's refrain that there was no collusion, no obstruction.
- The Mueller report clearly identified collusion between the Trump campaign and Russia, despite repeated denials from Trump and many of his senior advisers and close associates that there were any connections between the two campaigns.

- **A total of 251 contacts between Trump's team and Russia-linked operatives have been identified, including at least 37 meetings.**
- And we know that at least 33 high-ranking campaign officials and Trump advisers were aware of contacts with Russia-linked operatives during the campaign and transition, including Trump himself.
- None of these contacts were ever reported to the proper authorities.
- **Instead, the Trump team tried to cover up every single one of them.**
- Given this background, it would make sense to hear from the individuals at the heart of the production of the report.
- But, to this request, we have been met with the following obstructive conduct.
- Following production of the Mueller Report, the House Committee on Judiciary, indicated its desire to meet with Bill Barr
- In his announcement of the report, the Attorney General said he "specifically asked [Mueller] about the OLC opinion and whether or not he was taking a position that he would have found a crime but for the existence of the OLC opinion. And he made it very clear several times that that was not his position. He was not saying that but for the OLC opinion, he would have found a crime. He made it clear that he had not made the determination that there was a crime." The report, however, clearly points out that the Special Counsel's Office investigation was shaped by the Department's view that it cannot indict a sitting President. "This Office accepted OLC's legal conclusion for the purpose of exercising prosecutorial jurisdiction" and it "determined not to apply an approach that could potentially result in a judgment that the President committed crimes." (Vol. II, pp. 1-2)

- The Attorney General inappropriately allowed the President's private legal counsel to review the report before Congress. He invoked the expired Independent Counsel Statute as the legal justification, which he has repeatedly stated does not govern the Special Counsel's work.
- The Attorney General also claimed that the President gave the Special Counsel "unfettered access" to "the documents and witnesses necessary to complete his investigation." That is plainly wrong—because the President repeatedly refused to make himself available as a witness and provide written answers to follow-up questions.
- The Attorney General selectively quoted that "after making a 'thorough factual investigation' into these matters, the special counsel . . . ultimately determined not to make a traditional prosecutorial judgment," but omitted the full sentence from the report, which explains that the thorough investigation was conducted specifically "in order to preserve the evidence when memories were fresh and documentary materials were available," for "the strong public interest in safeguarding the integrity of the criminal justice system"—that is, Attorney General Barr did not explain that the Special Counsel was trying to leave open the possibility for further investigations, including by Congress and prosecutors when President Trump leaves office. (Vol. II, pp. 1-2)
- Although the Attorney General claimed in his March 24 letter that the absence of an "underlying crime" shows that the President did not "act[] with corrupt intent," the Special Counsel's report makes clear that an underlying crime "is not an element of an obstruction offense." Moreover, the Special Counsel's report points to "a range of other possible personal motives animating the President's conduct," including "concerns that continued investigation would call into question the legitimacy of his election and potential uncertainty that certain events . . . could be seen as criminal activity by the President, his campaign, or his family." (Vol. II, p. 157)
- The Attorney General's March 24 letter also suggested that the fact that the President's actions "took place in public view"

helps show that he didn't engage in obstruction. However, the Special Counsel's report states that "the President's power to influence actions, persons, and events is enhanced by his unique ability to attract attention through use of mass communications. And no principle of law excludes public acts from the scope of obstruction statutes. If the likely effect of the acts is to intimidate witnesses or alter their testimony, the justice system's integrity is equally threatened." (Vol. II, p. 157)

- Moreover, in testimony before a House Appropriations Subcommittee on April 9, 2019, the Attorney General was asked:
- "Reports have emerged recently, general, that members of the Special Counsel's team are frustrated at some level with the limited information included in your March 24th letter, that it does not adequately or accurately necessarily portray the report's findings. Do you know what they're referencing with that?"
- Barr said: "No, I don't."
- In actuality, three days after the Attorney General issued a 4 page summary of the Special Counsel's report, ostensibly vindicating the president, the Special Counsel wrote to the Attorney General and indicated:
- "The summary letter the Department sent to Congress and released to the public late in the afternoon of March 24 did not fully capture the context, nature, and substance of this office's work and conclusions. There is now public confusion about critical aspects of the results of our investigation. This threatens to undermine a central purpose for which the Department appointed the Special Counsel: to assure full public confidence in the outcome of the investigations.")
- Our attempts to question the Special Counsel have been met with unprecedented obstruction, too.

- For many weeks, the House Judiciary Committee has been attempting to find a mutually agreeable time with which to meet with the Special Counsel.
- We have been met with alternating theories of whether the Special Counsel can testify, and whether he has permission from the Attorney General to do so.
- We have also had a hard time selecting a date with which to meet with the Special Counsel.
- Which brings us to Don McGahn.
- On April 22, 2019, Don McGahn was subpoenaed by the House Judiciary Committee for testimony and documents related to the Committee's ongoing investigation into obstruction of justice, public corruption and other abuses of power by President Trump, his associates and members of his Administration.
- Following revelations uncovered during the course of Special Counsel Robert Mueller's investigation into obstruction of justice by President Trump, the House Judiciary Committee is seeking public testimony from Mr. McGahn, who is a critical witness to many of the alleged instances of obstruction of justice and other misconduct described in the Special Counsel's report.
- The Special Counsel's report, even in redacted form, outlines substantial evidence that President Trump engaged in obstruction and other abuses. It now falls to Congress to determine for itself the full scope of the misconduct and to decide what steps to take in the exercise of our duties of oversight, legislation and constitutional accountability.
- Following the scheduled testimony of Attorney General William Barr on May 2, 2019 and the expected testimony of Special Counsel, which we have requested, the Committee has now asked for documents from Mr. McGahn by May 7, and to hear from him in public on May 21.

- His testimony will help shed further light on the President's attacks on the rule of law, and his attempts to cover up those actions by lying to the American people and requesting others do the same.
- "The Special Counsel and his team made clear that based on their investigation, they were unable to 'reach [the] judgment "that the President clearly did not commit obstruction of justice.'
- As a co-equal branch of government, Congress has a constitutional obligation to hold the President accountable, and the planned hearings will be an important part of that process."
- Last week, we heard testimony from legal scholars, who gave forthright and constitutionally sound answers to my questions, notably about executive privilege:
- Professor Neil Kinkopp indicated that recognizing executive privilege cannot be used to interfere with the constitutional prerogatives of the Congress
- Professor Jonathon Turley indicated that executive privilege cannot be used as an absolute bar to all legitimate requests for oversight, as this president has indicated he plans to do
- Professor Kinkopf listened to my reading of Professor Turley's scholarship, and agreed with the following statement:
- The final area of conflict concerns whether certain key witnesses can be prevented from appearing before Congress. The President has stated publicly that he opposes the appearance of witnesses like Robert Mueller and Don McGahn. For his part, Attorney
- General Barr has stated that he believes that Mueller should testify. But regardless of the position taken on these witnesses, Congress is again in a strong position to demand their appearance. It would prevail ultimately in any litigation and

this is a fight that would be excellent ground for litigation on the part of the legislative branch.

- Professor Kinkopf agreed with this sentiment. As did Professor Turley.
- At a minimum, this morning, the former White House Counsel has flouted a duly-authorized subpoena.
- He has ignored an act of this Committee.
- He has opened himself up to a citation of contempt.
- Had he shown up, and honored the subpoena from this committee, he would be asked to answer the following questions:

QUESTIONS

1. On June 17, 2017, the President called McGahn at home and directed him to call the Acting Attorney General and say that the Special Counsel had conflicts of interest and must be removed. McGahn did not carry out the direction, however, deciding that he would resign rather than trigger what he regarded as a potential Saturday Night Massacre. Did the President ask you to do this and did you think doing so would be construed as a “Saturday Night Massacre?”
2. The Special Counsel’s report indicates that you instructed the President not to communicate with the Department of Justice to avoid the perception or reality of political interference in law enforcement. Do you recall making that statement? How many times did you instruct the president not to communicate with law enforcement?
3. As you know, as evidenced by the President’s twitter feed, he was quite annoyed by his first Attorney General’s decision to recuse himself from the Russia investigation. The Special Counsel’s report indicated that the President spent considerable energy trying to get Attorney General Sessions to modify his recusal. Are

you aware of the President's attempts to reverse his recusal? Did the President attempt to get the Attorney General's recusal modified? Did you advise the President on this matter?

4. The Special Counsel's office indicated the President was quite upset following his March 2017 testimony which indicated that the FBI had opened a counter-intelligence investigation into the Trump campaign—this mandate would be the precursor to the Special Counsel's investigation. Do you remember this moment? How do you recall the President Responding to this matter?
5. The Attorney General indicated that there was no obstruction of justice on the part of the President. One of the bases for the "no obstruction" conclusion, as stated by the Attorney General, was his belief that the President was being wrongfully investigated? Does a person's belief, no matter how well-founded, that he is being wrongfully investigated, permit that subject to commit obstruction of justice?
6. Turning now to the Attorney General and his clean bill of health for the President. Assuming that the Office of Legal Counsel opinion that the president cannot be indicted, what is the appropriate way to deal with a president that may have committed criminal wrongdoing?

POSSIBLE LINES OF QUESTIONING

- I. McGahn has a long history of working with President Trump and has no reason to lie

- II. Contemporaneous events during McGahn's role as White House Counsel demonstrate a pattern of obstruction
 - A. The Special Counsel Accurately Documented McGahn's Statements
 - B. The President Waited Weeks to Ask Flynn to Resign Despite Knowing He Violated Federal Law
 - C. The President Directed McGahn to Tell Sessions Not to Recuse Himself
 - D. McGahn Advised Priebus to Resign Rather Than Carry Out the President's Order to Fire Sessions
 - E. The President Directed Comey to Stop Investigating Flynn / Russia
 - F. DHS Secretary Nielsen Claims She Was Told Not to Bring Up Russian Election Interference "In Front of the President"
 - G. The President Thought He Was "Fucked" When Mr. Mueller Was Appointed
 - H. The President Directed McGahn to Fire the Special Counsel
 - I. The President's Counsel Directed McGahn to Lie
 - J. The President Personally Asked McGahn to Lie
 - K. McGahn Was Not Aware of the President's Other Attempts to Fire the Special Counsel

- III. McGahn stood up to President Trump regarding Jared Kushner's security clearance

- IV. The President continues to engage in a cover up by lying about events that occurred during McGahn's time at the White House
 - A. The President Lied When He Said He Did Not Direct McGahn to Fire the Special Counsel
 - B. The President Lied When He Said His Advisors Did Not Take Notes
 - C. The President Lied That McGahn Had A Better Chance of Being Fired Than the Special Counsel

D. The President/His Associates Asked McGahn to Say the President Didn't Obstruct Justice

- V. McGahn witnessed firsthand what Mueller concludes was an obstructive pattern of behavior by the President
- VI. Everyone who disobeyed President Trump's orders is gone
- VII. President Trump wanted an Attorney General who would do his bidding
- VIII. The White House waived privilege by allowing McGahn to testify and providing McGahn and his counsel documents including regarding presidential communications
- IX. Rebuttal: McGahn told the special counsel he didn't think Trump obstructed justice before he had all the facts