

HELL HATH NO FURY LIKE A SELF-PROMOTING REPUBLICAN LAWYER SCORNED

Yesterday, Jerry Nadler subpoenaed Don McGahn, both to appear and testify on May 21, but also to turn over a slew of documents pertaining to 36 topics, the two most interesting of which are:

23. President Trump's exposure in the Special Counsel Investigation relating to "other contacts," calls," or "ask re Flynn" as mentioned in Volume II, page 82 of the Report.

[snip]

34. Communications relating to United States imposed sanctions or potential sanctions against the Russian Federation from June 16, 2015 to October 18, 2018, including but not limited to the sanctions imposed pursuant to the Magnitsky Act.

I suspect this is a friendly subpoena – a subpoena giving the witness an excuse for testifying. I say that not *just* because McGahn is a self-promoter who likes to pretend he's the hero of saving Trump from prison, but also because McGahn got noticeably more chatty with Mueller's office as Trump grew more unmanageable and the risk to McGahn's future increased. Indeed, because he leaked his heroic role to the press, he ended up getting called in for further interviews.

At least as described by its footnotes, the Mueller Report revealed that McGahn testified five times. The first three seem to be largely sequential interviews covering three big events:

- November 30, 2017: Flynn's firing
- December 12, 2017: Sessions' recusal and Comey's firing
- December 14, 2017: Mueller's appointment and Trump's efforts to fire him, both directly (through McGahn) and indirectly (by firing Sessions)

Then, after the NYT and WaPo reported two versions of the story, in January of last year, that Trump asked McGahn to fire Mueller, McGahn was interviewed at more length about that.

- March 8, 2018: Trump's order to fire Mueller and attempt to force McGahn to correct the NYT story

Then, *this year*, after he had been fired for cooperating with Mueller, he was interviewed again, apparently to clarify some timing related issues (the interview apparently focused on his private phone records), and to explain why he didn't tell Anne Donaldson, Reince Priebus, and others about the order to fire Mueller.

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There are signs that, during the first set of interviews, McGahn was shading the truth. As expected, his story about the Flynn firing (and the CYA memo he drafted the day after Flynn's firing) is dodgy – some of which I'll return to. For example, his CYA memo claimed that, "Yates was unwilling to confirm or deny that there was an ongoing investigation but did indicate that the Department of Justice would not object to the White House taking action against Flynn," when in fact she had told him she alerted him to Flynn's lies precisely so the White House could take action. At times, it was clear McGahn was

trying to put a less damning spin on things, especially notes taken by Anne Donaldson or Sessions Chief of Staff Jody Hunt. For example, he claimed a note that said “No comms, / Serious concerns about obstruction” didn’t mean that his office had tried to set a rule not to speak to Sessions about the investigation, reflected instead a concern about the press spin; that spin might reflect his own concern about his efforts to convince Sessions not to recuse.

In those initial interviews, too, McGahn’s story about his effort to get DOJ to issue a statement claiming the President wasn’t being investigated differs significantly from Dana Boente’s, which is useful to his story as it provides an excuse for his orchestration of blaming the Jim Comey firing on Rod Rosenstein. Perhaps the most ridiculous claim, from the initial meetings, is that Trump insisted on emphasizing Comey’s refusal to say he wasn’t under investigation because he *didn’t* want everyone to know Comey was fired over the Russia investigation. “McGahn said he believed the President wanted the language included so that people would not think that the President had terminated Comey because the President was under investigation” – this, even in spite of the fact that Trump told McGahn that he had told Sergey Lavrov he fired Comey because of the Russian investigation to take the pressure off.

McGahn, and to a lesser degree Donaldson, both invented a bullshit story for why they were asking Richard Burr which Trump aides were targeted by the investigation, which a footnote dismantles.

The week after Comey’s briefing, the White House Counsel’s Office was in contact with SSCI Chairman Senator Richard Burr about the Russia investigations and appears to have received information about the status of the FBI investigation.³⁰⁹

³⁰⁹ Donaldson 11/6/17 302, at 14-15. On March 16, 2017, the White House

Counsel's Office was briefed by Senator Burr on the existence of "4-5 targets." Donaldson 11 /6/17 302, at 15. The "targets" were identified in notes taken by Donaldson as "Flynn (FBI was ~ooking for phone records"; "Comey-Manafort (Ukr + Russia, not campaign)"; [redacted] "Carter Page (\$ game)"; and "Greek Guy" (potentially referring to George Papadopoulos, later charged with violating 18 U.S.C. § 1001 for lying to the FBI). SC_AD_00198 (Donaldson 3/16/17 Notes). Donaldson and McGahn both said they believed these were targets of SSCI. Donaldson 11/6/17 302, at 15; McGahn 12/12/17 302, at 4. But SSCI does not formally investigate individuals as "targets"; the notes on their face reference the FBI, the Department of Justice, and Corney; and the notes track the background materials prepared by the FBI for Comey's briefing to the Gang of 8 on March 9. See SNS-Classified-0000140-44 (3/8/17 Email, Gauhar to Page et al.); see also Donaldson 11 /6/17 302, at 15 (Donaldson could not rule out that Burr had told McGahn those individuals were the FBI's targets).

Perhaps most tellingly, the first time McGahn got asked about Trump's efforts to fire Mueller, he was not all that forthcoming.

When this Office first interviewed McGahn about this topic, he was reluctant to share detailed information about what had occurred and only did so after continued questioning.

From the footnotes, it appears that Mueller's office went back to Don McGahn in March 2018, after flattering stories about his heroic role showed up in NYT, WaPo, and CNN and got more clarification about how McGahn prevented Trump from firing Mueller (basically, by ignoring

him). That interview, too, gathered information about how Trump tried to bully McGahn into correcting the NYT story, which falsely claimed that McGahn had told Trump he would quit. (Truthfully, McGahn's threats to quit are as pathetic as I expected when the stories first came out, and the NYT story is as misleadingly flattering as I expected.)

It's at that March 2018 meeting where McGahn admitted his real motivation: he envisioned himself as an esteemed judicial ideologue and not a historic hack.

McGahn also had made clear to the President that the White House Counsel's Office should not be involved in any effort to press the issue of conflicts.⁵⁷⁸ McGahn was concerned about having any role in asking the Acting Attorney General to fire the Special Counsel because he had grown up in the Reagan era and wanted to be more like Judge Robert Bork and not "Saturday Night Massacre Bork."⁵⁷⁹

Finally, after being fired himself *for cooperating with Mueller* (and, probably, for seeding so many self-serving stories with the NYT), Mueller interviewed McGahn once more, this February, one of the very last interviews that appears in the report. It appears they were cleaning up two discrepancies: the dates of the calls (it appears McGahn may have said one happened later than it did to separate it from coverage that Trump was under investigation for obstruction), and to get McGahn to explain why he didn't tell Donaldson or Priebus and Bannon that he had been ordered to get Rosenstein to fire Mueller.

Incidentally, while self-proclaimed Mueller investigation hero McGahn appears to have been happy to tell Mueller's team that Trump's claims that Mueller had a conflict, he never told the press, not even in any of those seeded stories to the NYT.

There's one detail about the Mueller report of particular interest, however, given the subpoena to testify. That note Donaldson took, recording that "McGahn told the President that his 'biggest exposure' was not his act of firing Comey but his 'other contacts' and 'calls,' and his 'ask re: Flynn'?"

Nowhere is his explanation for that comment cited to an interview report from him.

Which brings us to the subpoena, which (as I said) I suspect is a friendly one.

McGahn is almost certainly one of the people who sourced stories (including with his favorite reporters at the NYT) saying they were worried about all the damning things they said exposed in the Mueller Report. In McGahn's case, he was right to be worried. The other day, Politico revealed that Trump replaced Jones Day as his 2020 campaign firm, in a move that was attributed to cost-cutting but that Politico's sources say is retaliation not just for McGahn's cooperation with Mueller but also a story (written by McGahn's favorite NYT journals the same day he last interviewed with Mueller) on Jared Kushner's inappropriate security clearance.

[C]lose Trump advisers say the decision also stems from disappointment with the White House's former top attorney and current Jones Day partner, Don McGahn, whose behavior has irked the president and some of his family members.

Taking business away from Jones Day is payback, these advisers say, for McGahn's soured relationship with the Trump family and a handful of articles in high-profile newspapers that the family blames, unfairly or not, on the former White House counsel.

"Why in the world would you want to put your enemy on the payroll?" said one adviser close to the White House. "They do not want to reward his firm. Trump

arrived at that point long ago, but the security clearance memo stories put a fine point on it.”

One February 2019 story, in particular, caught the White House’s attention, when The New York Times reported that the president ordered John Kelly, his chief of staff at the time, to grant a security clearance to Jared Kushner. Kelly had written an internal memo on it, according to the Times. That fact was closely held inside the White House, and few officials other than Kelly and McGahn knew, say two close White House advisers – and the administration blamed McGahn for the leak.

One other thing HJC is asking for are “communications with the Executive Office of the President regarding your response to the March 4, 2019 document request” by HJC.

Which, I’m sure they have reason to know, reflect White House opposition to his public testimony.

Don McGahn apparently imagined working for a corrupt asshole like Trump would get him named to the Supreme Court.

Instead, his firm has a lost a very lucrative client. He appears to be upping the ante by further distancing himself from Trump’s corruption. That may get ugly, because Don McGahn knows where a whole lot of Donald Trump’s bodies are buried. And given that McGahn, not Trump, is the one who packed the courts, the Republicans may have really divided loyalties over this fight.

Update: The White House is fighting McGahn’s subpoena.