

# Mueller Should Have Subpoenaed Trump?

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*During **Special Counsel Robert Mueller's** televised appearances before the House Judiciary Committee and the House Intelligence Committee, he testified to facts that amount to lawbreaking by **Donald Trump**. Contrary to Trump's [mantra](#) of "No Collusion, No Obstruction, Complete and Total EXONERATION," Mueller affirmed that his 448-page [report](#) did not exonerate the president or reach a conclusion about whether Trump committed obstruction of justice.*

The Mueller team found "substantial evidence" of the elements required to convict Trump of obstruction of justice. But, constrained by a Justice Department rule forbidding the indictment of a sitting president, Mueller's report did not conclude whether Trump actually committed the crime.

Judiciary Committee **Chairman Jerrold Nadler** asked Mueller, "And your investigation actually found, quote, 'multiple acts by the president that were capable of exerting undue influence over law enforcement investigations, including the Russian interference and obstruction investigations.' Is that correct?" Mueller answered, "Correct."

Those acts, according to the Mueller report, include "efforts to remove the Special Counsel and to reverse the effect of the Attorney General's recusal; to the attempted use of official power to limit the scope of the investigation; to direct and indirect contacts with witnesses with the potential to influence their testimony."

When Democratic **Rep. Debbie Mucarsel-Powell** inquired whether the president's efforts were largely unsuccessful because the people around him refused to obey his orders, Mueller replied, "Correct." But Mueller also confirmed that an attempt to obstruct justice can be a crime even if it doesn't succeed.

## **Mueller's Failure to Subpoena Trump**

During his 22-month investigation, Mueller did not interview Trump and did not subpoena him to compel his attendance. Mueller told Nadler that Trump refused a request to be interviewed even though the special counsel and his team told the president's lawyer that "an interview with the president is vital to our investigation" and "it is in the interest of the presidency and the public for an interview to take place."

Democratic **Rep. Sean Patrick Maloney** asked Mueller why he didn't subpoena Trump. Mueller said they negotiated with Trump for a little more than a year. As they neared the end of the investigation with little success in getting the interview, they declined to use their subpoena power because Trump would fight it and they wanted to expedite the end of the investigation.

Maloney queried, "Did you have sufficient evidence of the president's intent to obstruct

justice, and is that why you didn't do the interview?" Mueller responded, "We had to make a balanced decision in terms of how much evidence we had, compared to the length of time." That entails balancing "how much evidence you have, does it satisfy the last element against how much time are you willing to spend in the courts litigating the interview with the president."

When he said "the last element," Mueller was referring to the intent to obstruct, which is the third element necessary to prove obstruction of justice. The crime of obstruction of justice requires (1) an obstructive act (2) connected with an official proceeding (3) with an intent to obstruct.

Mueller's failure to subpoena Trump was a mistake. John Dean, White House counsel during the Watergate scandal, criticized Mueller because he didn't vigorously pursue Trump's testimony. Appearing on *CNN*, Dean speculated that Mueller wouldn't have gone after the Nixon tapes because it would take too long. It was the court order to produce those tapes that led to Nixon's resignation.

There is no substitute for an in-person confrontation to determine whether a person is being truthful. Bill Clinton was impeached for lying to a grand jury.

An interrogation of Trump by the special counsel could have made a significant difference in the findings of the report. Mueller admitted that Trump's written responses to the special counsel's questions were "certainly not as useful as the interview would be." When asked whether Trump "wasn't always being truthful" when he provided written answers, under oath, to the special counsel's questions, Mueller replied "I would say generally."

Mueller should have subpoenaed Trump a couple of months after the investigation began.

While the Democrats on the committees queried Mueller about the contents of his report, the Republicans did not question the facts. They focused on the origins of the Russia investigation and tried to discredit Mueller's methodology. GOP Rep. James Sensenbrenner asked Mueller why he spent 182 pages analyzing obstruction of justice if he didn't make a traditional prosecutorial decision. Mueller replied that you don't know where it will go until you investigate and the Justice Department regulation says you can continue an investigation even if you don't indict.

Mueller testified that the Russian government interfered in the 2016 election in a "sweeping and systematic fashion" to help Trump win the election. He said, "We did not address 'collusion,' which is not a legal term. Rather, we focused on whether the evidence was sufficient to charge any member of the campaign with taking part in a criminal conspiracy. It was not." Mueller said his team believes their investigation "was hampered by Trump campaign officials' use of encryption communications" and "the deletion of electronic messages."

The Mueller report, however, did not determine whether Trump committed obstruction of justice. "If we had confidence after a thorough investigation of the facts that the President clearly did not commit obstruction of justice, we would so state," the report says. "Based on the facts and the applicable legal standards, we are unable to reach that judgment. Accordingly, while this report does not conclude that the President committed a crime, it also does not exonerate him."

## Mueller Passes the Baton to Congress

Mueller's report "determined that there was a sufficient factual and legal basis to further investigate potential obstruction-of-justice issues involving the President."

Although he wouldn't use the word "impeachment" during his testimony, Mueller alluded to it. His report says,

"The conclusion that Congress may apply the obstruction laws to the President's corrupt exercise of the powers of office accords with our constitutional system of checks and balances and the principle that no person is above the law."

The power of impeachment lies with the House of Representatives and the process begins in the House Judiciary Committee. If a majority of the House votes to impeach, the case moves to the Senate for trial. Two-thirds of the senators must agree to convict and remove the president from office.

**House Speaker Nancy Pelosi** has thus far resisted launching impeachment proceedings, opting instead to continue the process of holding committee hearings on Trump's culpability. Pelosi, however, [told](#) *The New York Times* that the Mueller hearing "is a crossing of a threshold in terms of the public awareness of what happened and how it conforms to the law — or not." She added, "I do believe that what we saw today was a very strong manifestation — in fact, some would even say indictment — of this administration's code of silence and their cover-up."

The House Judiciary Committee is [pursuing enforcement](#) of its subpoena of former White House counsel **Donald McGahn** to testify publicly at a hearing. Shortly after Trump learned that Mueller was investigating him for criminal activity, the president ordered McGahn to fire Mueller. McGahn refused and threatened to resign. Trump backed down. McGahn is a [key witness](#) to obstruction of justice by Trump.

Democratic **Rep. Jamie Raskin** [told](#) *The New York Times*, "The case for impeachment based on the Mueller investigation has been now publicly crystallized and articulated." Democratic Rep. Pramila Jayapal concurs. "What became clear today was that this is a groundbreaking moment," she said. "This now has allowed us to break open what was stuck in the Mueller report."

The number of House members who favor impeachment has [climbed](#) above 90 since the Mueller hearings.

As the congressional hearings continue to unfold, the public will become increasingly aware of Trump's criminal responsibility and popular support for impeachment will grow.

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