

Trump Has Defied Nearly All Subpoenas. What Can the House Do?

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Global Research, May 11, 2019

Region: [USA](#)

Theme: [Law and Justice](#)

After the redacted Mueller report was made public, Donald Trump [tweeted](#), “No Collusion, No Obstruction, Complete and Total EXONERATION.” But when the House Judiciary Committee asked to see Mueller’s full report, Trump said no way.

The Constitution gives Congress the authority to check and balance the executive branch. That includes the power to issue and enforce subpoenas. In the 1927 Teapot Dome scandal case about government corruption, the Supreme Court [held](#) that Congress’s “power of inquiry — with process to enforce it — is an essential and appropriate auxiliary to the legislative function.” Justice Willis Van Devanter wrote for the unanimous Court that when the Constitution was adopted, “the power of inquiry, with enforcing process, was regarded and employed as a necessary and appropriate attribute of the power to legislate — indeed, was treated as inhering in it.”

Yet Trump has defied nearly all of the nine subpoenas and [requests](#) for testimony and/or documents that House committees have issued.

Barr Refuses to Produce the Unredacted Mueller Report

On April 19, House Judiciary Committee Chairman Jerrold Nadler [issued a subpoena](#) ordering Attorney General William Barr to produce the unredacted Mueller report and evidence undergirding it by May 1.

Instead, Assistant Attorney General Stephen E. Boyd sent a [letter](#) to Nadler on May 1, stating that Barr was refusing to comply with the committee’s subpoena.

On May 8, Boyd [notified](#) Nadler that

“the President has asserted a protective assertion of executive privilege over the entirety of the subpoenaed materials.”

Trump has not actually asserted executive privilege yet. A protective assertion means he is reserving the *right* to assert it in the future after reviewing the requested materials.

“[A] formal executive privilege claim requires scrutiny of the precise documents and information withheld to determine whether 1) that material fits within a component of executive privilege and 2) Congress’s need for the information is not sufficiently weighty to overcome the privilege,” Jonathan Shaub [wrote](#) at Lawfare.

Barr claimed that the judiciary committee had “not allowed sufficient time” for Trump to decide whether to make a “conclusive assertion” of executive privilege.

After Barr’s refusal to comply with the Judiciary Committee’s subpoena to produce the unredacted Mueller report and supporting documentation, the committee voted to issue a contempt citation against Barr on May 9.

Now the full House of Representatives will decide whether to hold Barr in contempt of Congress. In the likely event that occurs, there are four possible avenues to enforce the congressional contempt citation.

First, the House could ask the U.S. attorney in Washington, D.C., to initiate a criminal prosecution of Barr. But the U.S. attorney answers to Barr, the nation’s chief law enforcement officer, making it less likely that the U.S. attorney would actually pursue the prosecution.

Second, the House could order the sergeant-at-arms to take Barr into custody until he complies with the subpoena. There is a jail in the congressional building. This procedure, known as the power of “inherent contempt,” was last used in 1935.

Third, the House could file a civil lawsuit to enforce the subpoena. However, this type of suit could take years. And, as Adam Liptak [noted](#) in *The New York Times*, even if the House were to prevail, it “is not clear that the Trump administration would comply with any eventual court order.”

Fourth, if the House convenes an impeachment proceeding, it would bolster the chances of receiving testimony and documents.

“Judges have repeatedly ruled that Congress has a greater claim to sensitive government documents and personal information when it can point to an ongoing legal matter, instead of just a congressional investigation or legislative debate. And impeachment would give lawmakers that legal matter,” Darren Samuelsohn and Josh Gerstein [wrote](#) at Politico.

Trump Defies All Subpoenas

Of the nine subpoenas and requests that House committees have issued, Trump is [resisting](#) nearly all of them.

Trump declared to reporters outside the White House, “We’re fighting all the subpoenas.”

Even [John Yoo](#), author of the most egregious torture memos and champion of the “[unitary executive](#)” theory of presidential power, [said](#):

The thing that’s unusual is the blanket refusal. It would be extraordinary if the president actually were to try to stop all congressional testimony on subpoenaed issues. That would actually be unprecedented if it were a complete ban.... He’s treating Congress like they’re the Chinese or a local labor union working on a Trump building.

On May 2, the day after his withering appearance at a Senate Judiciary Committee hearing, Barr refused to appear at a scheduled hearing before the House Judiciary Committee.

Then, on May 9, the House Intelligence Committee issued a subpoena for Barr to produce the unredacted Mueller report and underlying documentation.

After the House Judiciary Committee subpoenaed former White House counsel Don McGahn to testify and produce documents, Trump asserted executive privilege to prevent McGahn from testifying.

Meanwhile, both the House Judiciary Committee and the Senate Judiciary have subpoenaed Robert Mueller to testify before them. The 10 Democrats who sit on the Senate Judiciary Committee wrote a [letter](#) to committee chair Lindsey Graham, asking that the committee hold a hearing with Mueller. They listed 60 unanswered questions they wish to ask Mueller.

Barr said he had no objection to Mueller testifying. Trump then [tweeted](#), “Bob Mueller should not testify.” A few days later, however, Trump stated, “I’m going to leave that up to our very great attorney general. He’ll make a decision on that.”

What About Impeachment?

Nearly 800 former federal prosecutors, both Republicans and Democrats, signed a statement saying that if it weren’t for the Justice Department’s Office of Legal Counsel opinion that a sitting president can’t be indicted, Trump would be charged with multiple felonies. They [wrote](#),

“Each of us believes that the conduct of President Trump described in Special Counsel Robert Mueller’s report would, in the case of any other person not covered by the Office of Legal Counsel policy against indicting a sitting President, result in multiple felony charges for obstruction of justice.”

Ten million people have signed a [petition](#) calling for the House of Representatives to initiate impeachment proceedings.

The Democratic-controlled House would have the votes to impeach Trump. The case would then move to the Senate for trial, where two-thirds of the senators must agree to convict Trump and remove him from office. That is nearly impossible, as the Republicans control the Senate.

And so, even if Trump were to be impeached, he would be acquitted in the Senate and Trump would claim victory. Bill Clinton’s impeachment in the House and acquittal in the Senate garnered sympathy for the president. Although there is strong sentiment for impeachment, the procedure is politically risky for Democrats. However, it is possible that televised evidence of Trump’s crimes could turn GOP senators against him, as happened during the Watergate hearings.

James Reston Jr. [wrote](#) in *The New York Times* about the “power of the televised [Watergate] hearings of the House Judiciary Committee” in 1974. “Far from being politically divisive, they proved a dignified and appropriate response to egregious presidential misconduct — enough to persuade seven out of the committee’s 17 Republicans to vote in favor of at least one of the articles of impeachment.”

The articles of impeachment against Richard Nixon included obstruction of justice, abuse of power and refusal to comply with eight congressional subpoenas regarding the Watergate scandal.

Will Trump follow a Nixon-like path, with television — ironically — becoming the site of his downfall? Or will he manage to strong-arm his way to legal impunity?

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