



## Star Lawyering Protected President Trump From Firing Robert Mueller

Ilya Shapiro

April 19, 2019

Don McGahn is one of the few people who came out looking better after the Robert Mueller report than going in. The former White House counsel, who stepped down in October, saved President Donald Trump from his worst instincts, displaying a legal savvy and high ethical standard that served both the president and the country well.

Indeed, by preventing Trump from firing Special Counsel Robert Mueller, McGahn prevented a political crisis—not to be confused with a constitutional one—that would’ve made the Russia-collusion narrative seem like a jaywalking allegation. When you add that to his execution of a laser-focused strategy on judicial nominations—including two Supreme Court justices and a record number of circuit judges—McGahn is the early leader for MVP of the Trump administration. (Full disclosure: I worked with McGahn at Patton Boggs more than a decade ago, and we have remained on friendly terms.)

Mueller’s report concluded that McGahn was a “credible witness with no motive to lie.” From the 30 hours the White House lawyer spent talking to the special counsel and his team, we learn many of the some of the most portentous developments of the seemingly interminable investigation.

Almost immediately after Deputy Attorney General Rod Rosenstein appointed Mueller in May 2017—after Attorney General Jeff Sessions recused from Russia-related investigations, a necessary move given his campaign involvements but one the president never forgave—Trump wanted to dismiss him. McGahn warned that taking this action would look like an attempt to “meddle in the investigation.”

The president didn’t let it go, calling McGahn at home over the course of a June weekend to push him again to tell Rosenstein to sack Mueller. Here’s what Mueller’s report says about that fraught moment: “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.” McGahn later told White House Staff Secretary Rob Porter that he had planned to resign rather than follow through on the order.

When the president later learned McGahn had told Mueller about the episode, he questioned his counsel's judgment. McGahn explained that "he had to" answer truthfully because there was no attorney-client privilege. The White House counsel's loyalty is to the office of the president—and for some purposes to the executive branch of which the special counsel was a part—not to the man who occupied it.

Trump then asked, "Why do you take notes? Lawyers don't take notes. I never had a lawyer who took notes." McGahn replied that he was a "real lawyer" and that creating notes only helped (assuming nothing illegal was being discussed). He was right, and in that moment proved himself more helpful to the president than any number of yes-men—non-notetaking lawyers or otherwise—who made an appearance during this saga.

But wait, there's more. In January 2018, news broke about Trump's order to McGahn to fire Mueller. According to the Mueller report, the president tried to persuade his counsel to deny the allegations. McGahn refused multiple times. "Did I say the word 'fire'?" the president asked, according to the report.

"What you said is, 'Call Rod, tell Rod that Mueller has conflicts and can't be special counsel,'" McGahn replied.

"I never said that," Trump replied, according to McGahn's recollection. Trump again pressed McGahn to "do a correction" and McGahn refused.

As Mueller concluded, "The President's efforts to influence the investigation [and thus create potential legal headaches] were mostly unsuccessful, but that is largely because the persons who surrounded the President declined to carry out orders or accede to his requests."

Hindsight is 20/20, and nobody knows what would've happened had McGahn relayed Trump's order to Rosenstein, or if he had resigned (or been fired) either in June 2017 or January 2018. But legal pundits who have followed the case recall news cycles devoted to the difference between a special counsel and the Watergate-era "independent counsel," whether interfering with Mueller's investigation would constitute obstruction of justice, and even whether the president can pardon himself. Had McGahn acted differently, we might've found out the answers to those theoretical questions.

When McGahn became White House counsel, he was known as a sharp-elbowed political lawyer who had previously been chairman of the Federal Election Commission. The professionalism he displayed in his tumultuous 21-month tenure as White House counsel have only elevated his reputation. And that's before we take into account his masterminding of the judicial lists that propelled Trump to victory in 2016—and their translation into judicial appointments that will likely be the 45th president's most lasting policy legacy.

*Ilya Shapiro is a senior contributor to The Federalist. He is director of the Robert A. Levy Center for Constitutional Studies at the Cato Institute.*