

Despite Being a Reluctant Witness, Robert Mueller Confirms Report High Points at House Judiciary Hearing - *InsiderNJ*

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Prior to his testimony, commentators were predicting that the testimony of Robert Mueller was the movie for people who did not read the book. If so, the movie was not an action movie, but if a viewer focused on the themes presented, the evidence of obstruction of justice by Donald Trump was eventually revealed. The hearings involve testimony by Robert Mueller before the Judiciary Committee on Wednesday morning and the House Intelligence Committee on Wednesday afternoon. Both proceedings lasted a total of seven hours, including break time.

Media analysts have criticized the Democrats for not obtaining a “home run sound bite” from Mueller which would advance impeachment proceedings, but given the limitations Mueller put on his testimony and the logistical challenges of the questioning, the hearings accomplished as much as was realistically possible to inform the public and confirm the high points of the Mueller Report. This article will primarily focus on the 3 hours of testimony before the Judiciary Committee, because it dealt primarily with the obstruction of justice allegations. Evidence of obstruction of justice is the “ballgame” as to whether or not the House Judiciary Committee will vote for an impeachment inquiry and ultimately for Articles of Impeachment.

By agreement, the questioning for members of the Committee was limited to 5 minutes each for both Republicans and Democrats in an attempt to allow all members to pose questions. This presented a difficult format to dig out the truth, because some questioners put too many facts in their questions or rushed through a question to get to as many questions as they could in their 5 minutes of time. More importantly, Mueller occasionally gave an answer at the end of his 5-minute period – particularly when the integrity of his investigation was

challenged – which cried out for a follow-up, but the next questioner merely moved onto his/her previously prepared question. Since Mueller was a reluctant witness he had to be cross examined, but cross examination is impeded by the format of alternating blocks of 5-minute questions since the questioner is unable to establish a rhythm or pose penetrating follow up questions. Questioning by only one or two members would have been far more effective.

Mueller did not make things easier for either side because he steadfastly adhered to his earlier proclamation that he would not comment on or speculate about matters outside of his two volume Report; nor would he comment about matters which were still under investigation or which were part of the deliberative process or his interaction with Attorney General Barr. Media accounts tabulated that he declined to answer questions at least 100 times. Mueller appeared highly motivated to deny either side's political sound bites. His stumbles and halting performance during his testimony undercut the Democrats' attempts to obtain sound bite answers, but undercut the Republicans' attempts to paint him as the leader of a witch hunt.

Despite these challenges, the Democrats were very well prepared to ask questions which required Mueller to acknowledge the findings in his Report. They also were coordinated as to subject matter so that each would ask about a particular instance of obstruction of justice that had not been previously covered. Through arduous pick and shovel work the Democrats were able to highlight the incriminating evidence against Donald Trump of obstruction of justice in their movie for people who had not read the ponderous and legalistic 448-page book. Mueller was somewhat compliant in that he acknowledged what was in his Report was true if the questioner phrased the question correctly.

Without regurgitating all the questions and questioners, the following are the highlights of the facts acknowledged during Mueller's testimony during both hearings:

1. Despite Donald Trump's persistent claim, Mueller said Trump was not exonerated from obstruction of justice.
2. Trump could still be charged with obstruction of justice after leaving office.
3. Once Mueller was appointed, Trump recognized the legal quagmire he was in and according to the Mueller Report stated: "Oh my God. This is terrible. This is the end of my presidency. I am fucked."
4. The President made efforts to remove the Special Counsel during conversations with White House Counsel, Don McGahn.
5. The President made efforts to curtail the Special Counsel's investigation by asking Corey Lewandowski to deliver a message to Attorney General Sessions.
6. The President ordered Don McGahn to lie and deny that the President tried to fire Special Counsel.
7. Despite the claim of Donald Trump, the investigation by Robert Mueller was not a "witch hunt," nor was the allegation about the Russian interference in the election a "hoax." (afternoon session)

8. The activity on WikiLeaks was illegal and the praise by President Trump of WikiLeaks was “problematic.” (afternoon session) Asked about his reaction to praise of WikiLeaks by Donald Trump during the campaign, Mueller responded in what was his most direct criticism of Trump: “It’s problematic – is an understatement, in terms of what it displays in terms of giving some hope or some boost to what is and should be illegal activity.”
9. Russian interference in the election was massive and premeditated and he fears that this interference is the “new normal.” (afternoon session)
10. After a year of negotiation, Donald Trump declined to submit to a face-to-face interview about any subject, and his written answers to questions posed by the Mueller team were incomplete and “generally untruthful.” (afternoon session)

Many of the Democratic questioners stated in the Judiciary Committee hearing that, if the average citizen had engaged in the conduct that Donald Trump had, he or she would be immediately arrested and indicted for obstruction of justice. Two questioners referred to a letter signed by more than 1,000 former state and federal prosecutors which stated that, aside from the President of the United States, any citizen who engaged in the conduct set forth in the Mueller Report would be criminally charged with multiple felonies. He refused to take any position on whether or not impeachment was appropriate, but he also reluctantly acknowledged to a persistent questioner that Congress had alternative remedies and did not dispute that one of those remedies is impeachment.

The Republicans were less successful in attacking Mueller because their persistent theme was to attack the thoroughness and the integrity of his investigation, and the alleged bias of highly experienced lawyers on his staff. The only time Mueller exhibited anger during the course of the day involved questions that suggested that Mueller’s experienced team had a political bias towards the Democratic Party. As Mueller stated, he never asked a potential employee about their political affiliation and his only concern was their ethics and competence. He also pointed out that many of his staff were transferred from prosecutorial positions they were holding within the Department of Justice. The hostile Republican questioning did not lay a glove on Mueller, and to my mind it was a mistake because it suggested to the viewer that the Republicans felt that Mueller’s Report, as well as his testimony, hurt Donald Trump badly. Ironically, the instruction from the Department of Justice to Mueller to stay within the four corners of his Report gave Mueller “cover” to avoid answering hostile Republican questions.

Prior to the testimony, I heard a pundit indicate that the question was whether or not Mueller’s testimony would persuade any “objective viewer” as to whether or not Donald Trump had committed obstruction of justice. However, I am not sure how many “objective viewers” still remain as to whether there is evidence of obstruction. To me, the question is whether or not Mueller’s testimony will persuade any objective or undecided Democratic member of the House that their duty requires voting for impeachment, even if the Senate will ultimately vote not to convict.

For anyone who has read the book or even just seen the Mueller movie, there is ample evidence produced to sustain charges of obstruction of justice. When the blatant racism, xenophobia, and abuse of power by stonewalling Congress are factored in, it will be hard for many members of Congress to walk away from impeachment as a matter of conscience. Despite this emotional pull, now is the time for long-term strategy and not short-term tactics. The best strategy is based on maximum information.

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