

# HOW DON MCGAHN DISTRACTED THE NYTIMES FROM THE SUBPOENAS KNOWN TO BE PROBLEMATIC

The NYT just published a story that buried incredibly important details about the HPSCI subpoena in paragraphs 18 and 19.

In that case, the leak investigation appeared to have been primarily focused on Michael Bahar, then a staffer on the House Intelligence Committee. People close to Jeff Sessions and Rod J. Rosenstein, the top two Justice Department officials at the time, have said that neither knew that prosecutors had sought data about the accounts of lawmakers for that investigation.

It remains murky whether agents were pursuing a theory that Mr. Bahar had leaked on his own or whether they suspected him of talking to reporters with the approval of the lawmakers. Either way, it appears they were unable to prove their suspicions that he was the source of any unauthorized disclosures; the case has been closed and no charges were brought.

The details back a hypothesis that I and others have raised about the 2018 subpoena that obtained Adam Schiff's call records: that Schiff wasn't targeted at all, but instead someone else – here, Michael Bahar – was the target.

That means that the initial subpoena may have been more stupid – not adequately targeted given the scope of the investigation – than scandalous. It also means that the focus should remain on Bill Barr's renewed focus on those

records in 2020, particularly whether or not he used Schiff records that should have been sealed to investigate a key member of Congress.

But that's not how the NYT is spending its time. Instead, they are spending 17 paragraphs admitting that they have no idea whether a subpoena obtained by an EDVA grand jury for Don McGahn's records on February 23, 2018 is newsworthy or not.

They report that Apple got the subpoena for McGahn, implying but not reporting clearly that *all Apple provided* was subscriber information.

Apple told Donald F. McGahn II, the White House counsel to former President Donald J. Trump, last month that the Justice Department had subpoenaed information about an account that belonged to him in February 2018, and that the government barred the company from telling him at the time, according to two people briefed on the matter.

Mr. McGahn's wife received a similar notice from Apple, said one of the people, who spoke on the condition of anonymity to discuss a sensitive matter.

It is not clear what F.B.I. agents were scrutinizing, nor whether Mr. McGahn was their specific focus. In investigations, agents sometimes compile a large list of phone numbers and email addresses that were in contact with a subject, and seek to identify all those people by using subpoenas to communications companies for any account information like names, computer addresses and credit card numbers associated with them.

They assume, with no evidence, that the subpoena was obtained because McGahn was Trump's White House counsel.

Still, the disclosure that agents secretly collected data of a sitting

White House counsel is striking as it comes amid a political backlash to revelations about Trump-era seizures of data of reporters and Democrats in Congress for leak investigations. The president's top lawyer is also a chief point of contact between the White House and the Justice Department.

They then go tick off one after another possible explanation:

- The Manafort tax investigation, which was conducted in DC, and was completed in, and therefore would have been disclosed in, 2018
- A tirade Trump launched about McGahn involving a potential leak that would have been investigated in DC
- The totally unrelated HPSCI subpoena, which also was investigated in DC

They don't consider a much more likely explanation, especially since Mueller is known to have identified at least three SuperPACs that were coordinating with the Trump campaign, including at least two that were headquartered in VA, but did not pursue charges relating to potential illegal coordination himself. That possibility is that prosecutors were appropriately investigating why the former FEC chairman was letting Trump's 2016 campaign coordinate with so many supposedly independent PACs, particularly given his knowledge that Trump and Michael Cohen had been investigated for campaign finance laws in 2011, before then FEC Chair Don McGahn bailed them out for it. There's no evidence Mueller's investigators asked McGahn about this, even though Roger

Stone's coordination with Steve Bannon and Rick Gates was a subject of considerable interest to Mueller (in part because it implicated the Mercers).

That's just one possible explanation, but unlike all the speculation included in the NYT story not focusing on Barr's resuscitation of the HPSCI leak, might actually involve a grand jury in VA.

Until there's some sense of what this subpoena was, there's zero reason to assume it's newsworthy or in any way focused on something McGahn had done as White House Counsel.

One of the only pieces of genuine "news" that came out of McGahn's testimony the other day is he confessed to being a source for a story that was obviously sourced to someone close to him that nevertheless claimed he, personally, had not responded to requests for comment. "McGahn did not respond to requests for comment." The man knows how to make journalists run around like puppies chasing his shiny objects.

And what the NYT just did was take their focus away from subpoenas there's good reason to believe are newsworthy to instead speculate wildly about one that may not be.