

Flynn, who was in the Dominican Republic at the time, and K.T. McFarland, who was slated to become the Deputy National Security Advisor and was at the Mar-a-Lago resort in Florida with the President-Elect and other senior staff, talked by phone about what, if anything, Flynn should communicate to Kislyak about the sanctions.⁸² McFarland had spoken with incoming Administration officials about the sanctions and Russia's possible responses and thought she had mentioned in those conversations that Flynn was scheduled to speak with Kislyak.⁸³ Based on those conversations, McFarland informed Flynn that incoming Administration officials at Mar-a-Lago did not want Russia to escalate the situation.⁸⁴ At 4:43 p.m. that afternoon, McFarland sent an email to several officials about the sanctions and informed the group that "Gen [F]lynn is talking to russian ambassador this evening."⁸⁵

Approximately one hour later, McFarland met with the President-Elect and senior officials and briefed them on the sanctions and Russia's possible responses.⁸⁶ Incoming Chief of Staff Reince Priebus recalled that McFarland may have mentioned at the meeting that the sanctions situation could be "cooled down" and not escalated.⁸⁷ McFarland recalled that at the end of the meeting, someone may have mentioned to the President-Elect that Flynn was speaking to the Russian Ambassador that evening.⁸⁸ McFarland did not recall any response by the President-Elect.⁸⁹ Priebus recalled that the President-Elect viewed the sanctions as an attempt by the Obama Administration to embarrass him by delegitimizing his election.⁹⁰

Immediately after discussing the sanctions with McFarland on December 29, 2016, Flynn called Kislyak and requested that Russia respond to the sanctions only in a reciprocal manner, without escalating the situation.⁹¹ After the call, Flynn briefed McFarland on its substance.⁹² Flynn told McFarland that the Russian response to the sanctions was not going to be escalatory because Russia wanted a good relationship with the Trump Administration.⁹³ On December 30, 2016, Russian President Vladimir Putin announced that Russia would not take retaliatory measures

⁸² Statement of Offense at 2-3, *United States v. Michael T. Flynn*, 1:17-cr-232 (D.D.C. Dec. 1, 2017), Doc. 4 (*Flynn* Statement of Offense); Flynn 11/17/17 302, at 3-4; Flynn 11/20/17 302, at 3; McFarland 12/22/17 302, at 6-7.

⁸³ McFarland 12/22/17 302, at 4-7 (recalling discussions about this issue with Bannon and Priebus).

⁸⁴ *Flynn* Statement of Offense, at 3; Flynn 11/17/17 302, at 3-4; McFarland 12/22/17 302, at 6-7.

⁸⁵ 12/29/16 Email, McFarland to Flynn et al.

⁸⁶ McFarland 12/22/17 302, at 7.

⁸⁷ Priebus 1/18/18 302, at 3.

⁸⁸ McFarland 12/22/17 302, at 7. Priebus thought it was possible that McFarland had mentioned Flynn's scheduled call with Kislyak at this meeting, although he was not certain. Priebus 1/18/18 302, at 3.

⁸⁹ McFarland 12/22/17 302, at 7.

⁹⁰ Priebus 1/18/18 302, at 3.

⁹¹ *Flynn* Statement of Offense, at 3; Flynn 11/17/17 302, at 3-4.

⁹² *Flynn* Statement of Offense, at 3; McFarland 12/22/17 302, at 7-8; Flynn 11/17/17 302, at 4.

⁹³ McFarland 12/22/17 302, at 8.

in response to the sanctions at that time and would instead “plan . . . further steps to restore Russian-US relations based on the policies of the Trump Administration.”⁹⁴ Following that announcement, the President-Elect tweeted, “Great move on delay (by V. Putin) - I always knew he was very smart!”⁹⁵

On December 31, 2016, Kislyak called Flynn and told him that Flynn’s request had been received at the highest levels and Russia had chosen not to retaliate in response to the request.⁹⁶ Later that day, Flynn told McFarland about this follow-up conversation with Kislyak and Russia’s decision not to escalate the sanctions situation based on Flynn’s request.⁹⁷ McFarland recalled that Flynn thought his phone call had made a difference.⁹⁸ Flynn spoke with other incoming Administration officials that day, but does not recall whether they discussed the sanctions.⁹⁹

Flynn recalled discussing the sanctions issue with incoming Administration official Stephen Bannon the next day.¹⁰⁰ Flynn said that Bannon appeared to know about Flynn’s conversations with Kislyak, and he and Bannon agreed that they had “stopped the train on Russia’s response” to the sanctions.¹⁰¹ On January 3, 2017, Flynn saw the President-Elect in person and thought they discussed the Russian reaction to the sanctions, but Flynn did not have a specific recollection of telling the President-Elect about the substance of his calls with Kislyak.¹⁰²

Members of the intelligence community were surprised by Russia’s decision not to retaliate in response to the sanctions.¹⁰³ When analyzing Russia’s response, they became aware of Flynn’s discussion of sanctions with Kislyak.¹⁰⁴ Previously, the FBI had opened an investigation of Flynn based on his relationship with the Russian government.¹⁰⁵ Flynn’s contacts with Kislyak became a key component of that investigation.¹⁰⁶

⁹⁴ *Statement by the President of Russia*, President of Russia (Dec. 30, 2016) 12/30/16.

⁹⁵ @realDonaldTrump 12/30/16 (2:41 p.m. ET) Tweet.

⁹⁶ Flynn 1/19/18 302, at 3; *Flynn Statement of Offense*, at 3.

⁹⁷ Flynn 1/19/18 302, at 3; Flynn 11/17/17 302, at 6; McFarland 12/22/17 302, at 10; *Flynn Statement of Offense*, at 3.

⁹⁸ McFarland 12/22/17 302, at 10; *see* Flynn 1/19/18 302, at 4.

⁹⁹ Flynn 11/17/17 302, at 5-6.

¹⁰⁰ Flynn 1/19/18 302, at 4-5. Bannon recalled meeting with Flynn that day, but said he did not remember discussing sanctions with him. Bannon 2/12/18 302, at 9.

¹⁰¹ Flynn 11/21/17 302, at 1; Flynn 1/19/18 302, at 5.

¹⁰² Flynn 1/19/18 302, at 6; Flynn 11/17/17 302, at 6.

¹⁰³ McCord 7/17/17 302, at 2.

¹⁰⁴ McCord 7/17/17 302, at 2.

¹⁰⁵ McCord 7/17/17 302, at 2-3; Comey 11/15/17 302, at 5.

¹⁰⁶ McCord 7/17/17 302, at 2-3.

2. President-Elect Trump is Briefed on the Intelligence Community's Assessment of Russian Interference in the Election and Congress Opens Election-Interference Investigations

On January 6, 2017, as noted in Volume II, Section II.A.4, *supra*, intelligence officials briefed President-Elect Trump and the incoming Administration on the intelligence community's assessment that Russia had interfered in the 2016 presidential election.¹⁰⁷ When the briefing concluded, Comey spoke with the President-Elect privately to brief him on unverified, personally sensitive allegations compiled by Steele.¹⁰⁸ According to a memorandum Comey drafted immediately after their private discussion, the President-Elect began the meeting by telling Comey he had conducted himself honorably over the prior year and had a great reputation.¹⁰⁹ The President-Elect stated that he thought highly of Comey, looked forward to working with him, and hoped that he planned to stay on as FBI director.¹¹⁰ Comey responded that he intended to continue serving in that role.¹¹¹ Comey then briefed the President-Elect on the sensitive material in the Steele reporting.¹¹² Comey recalled that the President-Elect seemed defensive, so Comey decided

¹⁰⁷ *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 1-2).

¹⁰⁸ Comey 11/15/17 302, at 3; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 1-2).

¹⁰⁹ Comey 1/7/17 Memorandum, at 1. Comey began drafting the memorandum summarizing the meeting immediately after it occurred. Comey 11/15/17 302, at 4. He finished the memorandum that evening and finalized it the following morning. Comey 11/15/17 302, at 4.

¹¹⁰ Comey 1/7/17 Memorandum, at 1; Comey 11/15/17 302, at 3. Comey identified several other occasions in January 2017 when the President reiterated that he hoped Comey would stay on as FBI director. On January 11, President-Elect Trump called Comey to discuss the Steele reports and stated that he thought Comey was doing great and the President-Elect hoped he would remain in his position as FBI director. Comey 11/15/17 302, at 4; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (testimony of James B. Comey, former Director of the FBI), CQ Cong. Transcripts, at 90. ("[D]uring that call, he asked me again, 'Hope you're going to stay, you're doing a great job.' And I told him that I intended to."). On January 22, at a White House reception honoring law enforcement, the President greeted Comey and said he looked forward to working with him. *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (testimony of James B. Comey, former Director of the FBI), CQ Cong. Transcripts, at 22. And as discussed in greater detail in Volume II, Section II.D, *infra*, on January 27, the President invited Comey to dinner at the White House and said he was glad Comey wanted to stay on as FBI Director.

¹¹¹ Comey 1/7/17 Memorandum, at 1; Comey 11/15/17 302, at 3.

¹¹² Comey 1/7/17 Memorandum, at 1-2; Comey 11/15/17 302, at 3. Comey's briefing included the Steele reporting's unverified allegation that the Russians had compromising tapes of the President involving conduct when he was a private citizen during a 2013 trip to Moscow for the Miss Universe Pageant. During the 2016 presidential campaign, a similar claim may have reached candidate Trump. On October 30, 2016, Michael Cohen received a text from Russian businessman Giorgi Rtskhiladze that said, "Stopped flow of tapes from Russia but not sure if there's anything else. Just so you know . . ." 10/30/16 Text Message, Rtskhiladze to Cohen. Rtskhiladze said "tapes" referred to compromising tapes of Trump rumored to be held by persons associated with the Russian real estate conglomerate Crocus Group, which had helped host

to assure him that the FBI was not investigating him personally.¹¹³ Comey recalled he did not want the President-Elect to think of the conversation as a “J. Edgar Hoover move.”¹¹⁴

On January 10, 2017, the media reported that Comey had briefed the President-Elect on the Steele reporting,¹¹⁵ and BuzzFeed News published information compiled by Steele online, stating that the information included “specific, unverified, and potentially unverifiable allegations of contact between Trump aides and Russian operatives.”¹¹⁶ The next day, the President-Elect expressed concern to intelligence community leaders about the fact that the information had leaked and asked whether they could make public statements refuting the allegations in the Steele reports.¹¹⁷

In the following weeks, three Congressional committees opened investigations to examine Russia’s interference in the election and whether the Trump Campaign had colluded with Russia.¹¹⁸ On January 13, 2017, the Senate Select Committee on Intelligence (SSCI) announced that it would conduct a bipartisan inquiry into Russian interference in the election, including any “links between Russia and individuals associated with political campaigns.”¹¹⁹ On January 25, 2017, the House Permanent Select Committee on Intelligence (HPSCI) announced that it had been conducting an investigation into Russian election interference and possible coordination with the political campaigns.¹²⁰ And on February 2, 2017, the Senate Judiciary Committee announced that it too would investigate Russian efforts to intervene in the election.¹²¹

the 2013 Miss Universe Pageant in Russia. Rtskhiladze 4/4/18 302, at 12. Cohen said he spoke to Trump about the issue after receiving the texts from Rtskhiladze. Cohen 9/12/18 302, at 13. Rtskhiladze said he was told the tapes were fake, but he did not communicate that to Cohen. Rtskhiladze 5/10/18 302, at 7.

¹¹³ Comey 11/15/17 302, at 3-4; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 2).

¹¹⁴ Comey 11/15/17 302, at 3.

¹¹⁵ See, e.g., Evan Perez et al., *Intel chiefs presented Trump with claims of Russian efforts to compromise him*, CNN (Jan. 10, 2017; updated Jan. 12, 2017).

¹¹⁶ Ken Bensinger et al., *These Reports Allege Trump Has Deep Ties To Russia*, BuzzFeed News (Jan. 10, 2017).

¹¹⁷ See 1/11/17 Email, Clapper to Comey (“He asked if I could put out a statement. He would prefer of course that I say the documents are bogus, which, of course, I can’t do.”); 1/12/17 Email, Comey to Clapper (“He called me at 5 yesterday and we had a very similar conversation.”); Comey 11/15/17 302, at 4-5.

¹¹⁸ See *2016 Presidential Election Investigation Fast Facts*, CNN (first published Oct. 12, 2017; updated Mar. 1, 2019) (summarizing starting dates of Russia-related investigations).

¹¹⁹ *Joint Statement on Committee Inquiry into Russian Intelligence Activities*, SSCI (Jan. 13, 2017).

¹²⁰ *Joint Statement on Progress of Bipartisan HPSCI Inquiry into Russian Active Measures*, HPSCI (Jan. 25, 2017).

¹²¹ *Joint Statement from Senators Graham and Whitehouse on Investigation into Russian Influence on Democratic Nations’ Elections* (Feb. 2, 2017).

3. Flynn Makes False Statements About his Communications with Kislyak to Incoming Administration Officials, the Media, and the FBI

On January 12, 2017, a Washington Post columnist reported that Flynn and Kislyak communicated on the day the Obama Administration announced the Russia sanctions.¹²² The column questioned whether Flynn had said something to “undercut the U.S. sanctions” and whether Flynn’s communications had violated the letter or spirit of the Logan Act.¹²³

President-Elect Trump called Priebus after the story was published and expressed anger about it.¹²⁴ Priebus recalled that the President-Elect asked, “What the hell is this all about?”¹²⁵ Priebus called Flynn and told him that the President-Elect was angry about the reporting on Flynn’s conversations with Kislyak.¹²⁶ Flynn recalled that he felt a lot of pressure because Priebus had spoken to the “boss” and said Flynn needed to “kill the story.”¹²⁷ Flynn directed McFarland to call the Washington Post columnist and inform him that no discussion of sanctions had occurred.¹²⁸ McFarland recalled that Flynn said words to the effect of, “I want to kill the story.”¹²⁹ McFarland made the call as Flynn had requested although she knew she was providing false information, and the Washington Post updated the column to reflect that a “Trump official” had denied that Flynn and Kislyak discussed sanctions.¹³⁰

When Priebus and other incoming Administration officials questioned Flynn internally about the Washington Post column, Flynn maintained that he had not discussed sanctions with Kislyak.¹³¹ Flynn repeated that claim to Vice President-Elect Michael Pence and to incoming press secretary Sean Spicer.¹³² In subsequent media interviews in mid-January, Pence, Priebus, and

¹²² David Ignatius, *Why did Obama dawdle on Russia's hacking?*, Washington Post (Jan. 12, 2017).

¹²³ David Ignatius, *Why did Obama dawdle on Russia's hacking?*, Washington Post (Jan. 12, 2017). The Logan Act makes it a crime for “[a]ny citizen of the United States, wherever he may be” to “without authority of the United States, directly or indirectly commence[] or carr[y] on any correspondence or intercourse with any foreign government or any officer or agent thereof, in relation to any disputes or controversies with the United States, or to defeat the measures of the United States.” 18 U.S.C. § 953.

¹²⁴ Priebus 1/18/18 302, at 6.

¹²⁵ Priebus 1/18/18 302, at 6.

¹²⁶ Priebus 1/18/18 302, at 6.

¹²⁷ Flynn 11/21/17 302, at 1; Flynn 11/20/17 302, at 6.

¹²⁸ McFarland 12/22/17 302, at 12-13.

¹²⁹ McFarland 12/22/17 302, at 12.

¹³⁰ McFarland 12/22/17 302, at 12-13; McFarland 8/29/17 302, at 8; see David Ignatius, *Why did Obama dawdle on Russia's hacking?*, Washington Post (Jan. 12, 2017).

¹³¹ Flynn 11/17/17 302, at 1, 8; Flynn 1/19/18 302, at 7; Priebus 10/13/17 302, at 7-8; S. Miller 8/31/17 302, at 8-11.

¹³² Flynn 11/17/17 302, at 1, 8; Flynn 1/19/18 302, at 7; S. Miller 8/31/17 302, at 10-11.

Spicer denied that Flynn and Kislyak had discussed sanctions, basing those denials on their conversations with Flynn.¹³³

The public statements of incoming Administration officials denying that Flynn and Kislyak had discussed sanctions alarmed senior DOJ officials, who were aware that the statements were not true.¹³⁴ Those officials were concerned that Flynn had lied to his colleagues—who in turn had unwittingly misled the American public—creating a compromise situation for Flynn because the Department of Justice assessed that the Russian government could prove Flynn lied.¹³⁵ The FBI investigative team also believed that Flynn's calls with Kislyak and subsequent denials about discussing sanctions raised potential Logan Act issues and were relevant to the FBI's broader Russia investigation.¹³⁶

On January 20, 2017, President Trump was inaugurated and Flynn was sworn in as National Security Advisor. On January 23, 2017, Spicer delivered his first press briefing and stated that he had spoken with Flynn the night before, who confirmed that the calls with Kislyak were about topics unrelated to sanctions.¹³⁷ Spicer's statements added to the Department of Justice's concerns that Russia had leverage over Flynn based on his lies and could use that derogatory information to compromise him.¹³⁸

On January 24, 2017, Flynn agreed to be interviewed by agents from the FBI.¹³⁹ During the interview, which took place at the White House, Flynn falsely stated that he did not ask Kislyak to refrain from escalating the situation in response to the sanctions on Russia imposed by the Obama Administration.¹⁴⁰ Flynn also falsely stated that he did not remember a follow-up conversation in which Kislyak stated that Russia had chosen to moderate its response to those sanctions as a result of Flynn's request.¹⁴¹

¹³³ *Face the Nation Interview with Vice President-Elect Pence*, CBS (Jan. 15, 2017); Julie Hirschfield Davis et al., *Trump National Security Advisor Called Russian Envoy Day Before Sanctions Were Imposed*, Washington Post (Jan. 13, 2017); *Meet the Press Interview with Reince Priebus*, NBC (Jan. 15, 2017).

¹³⁴ Yates 8/15/17 302, at 2-3; McCord 7/17/17 302, at 3-4; McCabe 8/17/17 302, at 5 (DOJ officials were "really freaked out about it").

¹³⁵ Yates 8/15/17 302, at 3; McCord 7/17/17 302, at 4.

¹³⁶ McCord 7/17/17 302, at 4; McCabe 8/17/17 302, at 5-6.

¹³⁷ Sean Spicer, *White House Daily Briefing*, C-SPAN (Jan. 23, 2017).

¹³⁸ Yates 8/15/17 302, at 4; Axelrod 7/20/17 302, at 5.

¹³⁹ *Flynn Statement of Offense*, at 2.

¹⁴⁰ *Flynn Statement of Offense*, at 2.

¹⁴¹ *Flynn Statement of Offense*, at 2. On December 1, 2017, Flynn admitted to making these false statements and pleaded guilty to violating 18 U.S.C. § 1001, which makes it a crime to knowingly and willfully "make[] any materially false, fictitious, or fraudulent statement or representation" to federal law enforcement officials. See Volume I, Section IV.A.7, *supra*.

4. DOJ Officials Notify the White House of Their Concerns About Flynn

On January 26, 2017, Acting Attorney General Sally Yates contacted White House Counsel Donald McGahn and informed him that she needed to discuss a sensitive matter with him in person.¹⁴² Later that day, Yates and Mary McCord, a senior national security official at the Department of Justice, met at the White House with McGahn and White House Counsel's Office attorney James Burnham.¹⁴³ Yates said that the public statements made by the Vice President denying that Flynn and Kislyak discussed sanctions were not true and put Flynn in a potentially compromised position because the Russians would know he had lied.¹⁴⁴ Yates disclosed that Flynn had been interviewed by the FBI.¹⁴⁵ She declined to answer a specific question about how Flynn had performed during that interview,¹⁴⁶ but she indicated that Flynn's statements to the FBI were similar to the statements he had made to Pence and Spicer denying that he had discussed sanctions.¹⁴⁷ McGahn came away from the meeting with the impression that the FBI had not pinned Flynn down in lies,¹⁴⁸ but he asked John Eisenberg, who served as legal advisor to the National Security Council, to examine potential legal issues raised by Flynn's FBI interview and his contacts with Kislyak.¹⁴⁹

That afternoon, McGahn notified the President that Yates had come to the White House to discuss concerns about Flynn.¹⁵⁰ McGahn described what Yates had told him, and the President asked him to repeat it, so he did.¹⁵¹ McGahn recalled that when he described the FBI interview of Flynn, he said that Flynn did not disclose having discussed sanctions with Kislyak, but that there may not have been a clear violation of 18 U.S.C. § 1001.¹⁵² The President asked about Section 1001, and McGahn explained the law to him, and also explained the Logan Act.¹⁵³ The President

¹⁴² Yates 8/15/17 302, at 6.

¹⁴³ Yates 8/15/17 302, at 6; McCord 7/17/17 302, at 6; SCR015_000198 (2/15/17 Draft Memorandum to file from the Office of the Counsel to the President).

¹⁴⁴ Yates 8/15/17 302, at 6-8; McCord 7/17/17 302, at 6-7; Burnham 11/3/17 302, at 4; SCR015_000198 (2/15/17 Draft Memorandum to file from the Office of the Counsel to the President).

¹⁴⁵ McGahn 11/30/17 302, at 5; Yates 8/15/17 302, at 7; McCord 7/17/17 302, at 7; Burnham 11/3/17 302, at 4.

¹⁴⁶ Yates 8/15/17 302, at 7; McCord 7/17/17 302, at 7.

¹⁴⁷ SCR015_000198 (2/15/17 Draft Memorandum to file from the Office of the Counsel to the President); Burnham 11/3/17 302, at 4.

¹⁴⁸ McGahn 11/30/17 302, at 5.

¹⁴⁹ SCR015_000198 (2/15/17 Draft Memorandum to file from the Office of the Counsel to the President); McGahn 11/30/17 302, at 6, 8.

¹⁵⁰ McGahn 11/30/17 302, at 6; SCR015_000278 (White House Counsel's Office Memorandum re: "Flynn Tick Tock") (on January 26, "McGahn IMMEDIATELY advises POTUS"); SCR015_000198 (2/15/17 Draft Memorandum to file from the Office of the Counsel to the President).

¹⁵¹ McGahn 11/30/17 302, at 6.

¹⁵² McGahn 11/30/17 302, at 7.

¹⁵³ McGahn 11/30/17 302, at 7.

instructed McGahn to work with Priebus and Bannon to look into the matter further and directed that they not discuss it with any other officials.¹⁵⁴ Priebus recalled that the President was angry with Flynn in light of what Yates had told the White House and said, "not again, this guy, this stuff."¹⁵⁵

That evening, the President dined with several senior advisors and asked the group what they thought about FBI Director Comey.¹⁵⁶ According to Director of National Intelligence Dan Coats, who was at the dinner, no one openly advocated terminating Comey but the consensus on him was not positive.¹⁵⁷ Coats told the group that he thought Comey was a good director.¹⁵⁸ Coats encouraged the President to meet Comey face-to-face and spend time with him before making a decision about whether to retain him.¹⁵⁹

5. McGahn has a Follow-Up Meeting About Flynn with Yates; President Trump has Dinner with FBI Director Comey

The next day, January 27, 2017, McGahn and Eisenberg discussed the results of Eisenberg's initial legal research into Flynn's conduct, and specifically whether Flynn may have violated the Espionage Act, the Logan Act, or 18 U.S.C. § 1001.¹⁶⁰ Based on his preliminary research, Eisenberg informed McGahn that there was a possibility that Flynn had violated 18 U.S.C. § 1001 and the Logan Act.¹⁶¹ Eisenberg noted that the United States had never successfully prosecuted an individual under the Logan Act and that Flynn could have possible defenses, and

¹⁵⁴ McGahn 11/30/17 302, at 7; SCR015_000198-99 (2/15/17 Draft Memorandum to file from the Office of the Counsel to the President).

¹⁵⁵ Priebus 10/13/17 302, at 8. Several witnesses said that the President was unhappy with Flynn for other reasons at this time. Bannon said that Flynn's standing with the President was not good by December 2016. Bannon 2/12/18 302, at 12. The President-Elect had concerns because President Obama had warned him about Flynn shortly after the election. Bannon 2/12/18 302, at 4-5; Hicks 12/8/17 302, at 7 (President Obama's comment sat with President-Elect Trump more than Hicks expected). Priebus said that the President had become unhappy with Flynn even before the story of his calls with Kislyak broke and had become so upset with Flynn that he would not look at him during intelligence briefings. Priebus 1/18/18 302, at 8. Hicks said that the President thought Flynn had bad judgment and was angered by tweets sent by Flynn and his son, and she described Flynn as "being on thin ice" by early February 2017. Hicks 12/8/17 302, at 7, 10.

¹⁵⁶ Coats 6/14/17 302, at 2.

¹⁵⁷ Coats 6/14/17 302, at 2.

¹⁵⁸ Coats 6/14/17 302, at 2.

¹⁵⁹ Coats 6/14/17 302, at 2.

¹⁶⁰ SCR015_000199 (2/15/17 Draft Memorandum to file from the Office of the Counsel to the President); McGahn 11/30/17 302, at 8.

¹⁶¹ SCR015_000199 (2/15/17 Draft Memorandum to file from the Office of the Counsel to the President); Eisenberg 11/29/17 302, at 9.

told McGahn that he believed it was unlikely that a prosecutor would pursue a Logan Act charge under the circumstances.¹⁶²

That same morning, McGahn asked Yates to return to the White House to discuss Flynn again.¹⁶³ In that second meeting, McGahn expressed doubts that the Department of Justice would bring a Logan Act prosecution against Flynn, but stated that the White House did not want to take action that would interfere with an ongoing FBI investigation of Flynn.¹⁶⁴ Yates responded that Department of Justice had notified the White House so that it could take action in response to the information provided.¹⁶⁵ McGahn ended the meeting by asking Yates for access to the underlying information the Department of Justice possessed pertaining to Flynn's discussions with Kislyak.¹⁶⁶

Also on January 27, the President called FBI Director Comey and invited him to dinner that evening.¹⁶⁷ Priebus recalled that before the dinner, he told the President something like, "don't talk about Russia, whatever you do," and the President promised he would not talk about Russia at the dinner.¹⁶⁸ McGahn had previously advised the President that he should not communicate directly with the Department of Justice to avoid the perception or reality of political interference in law enforcement.¹⁶⁹ When Bannon learned about the President's planned dinner with Comey, he suggested that he or Priebus also attend, but the President stated that he wanted to dine with Comey alone.¹⁷⁰ Comey said that when he arrived for the dinner that evening, he was surprised and concerned to see that no one else had been invited.¹⁷¹

¹⁶² SCR015_000199 (2/15/17 Draft Memorandum to file from the Office of the Counsel to the President); Eisenberg 11/29/17 302, at 9.

¹⁶³ SCR015_000199 (2/15/17 Draft Memorandum to file from the Office of the Counsel to the President); McGahn 11/30/17 302, at 8; Yates 8/15/17 302, at 8.

¹⁶⁴ Yates 8/15/17 302, at 9; McGahn 11/30/17 302, at 8.

¹⁶⁵ Yates 8/15/17 302, at 9; Burnham 11/3/17 302, at 5; see SCR015_00199 (2/15/17 Draft Memorandum to file from the Office of the Counsel to the President) ("Yates was unwilling to confirm or deny that there was an ongoing investigation but did indicate that the Department of Justice would not object to the White House taking action against Flynn.").

¹⁶⁶ Yates 9/15/17 302, at 9; Burnham 11/3/17 302, at 5. In accordance with McGahn's request, the Department of Justice made the underlying information available and Eisenberg viewed the information in early February. Eisenberg 11/29/17 302, at 5; FBI 2/7/17 Electronic Communication, at 1 (documenting 2/2/17 meeting with Eisenberg).

¹⁶⁷ Comey 11/15/17 302, at 6; SCR012b_000001 (President's Daily Diary, 1/27/17); *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 2-3).

¹⁶⁸ Priebus 10/13/17 302, at 17.

¹⁶⁹ See McGahn 11/30/17 302, at 9; Dhillon 11/21/17 302, at 2; Bannon 2/12/18 302, at 17.

¹⁷⁰ Bannon 2/12/18 302, at 17.

¹⁷¹ *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 3); see Comey 11/15/17 302, at 6.

Comey provided an account of the dinner in a contemporaneous memo, an interview with this Office, and congressional testimony. According to Comey's account of the dinner, the President repeatedly brought up Comey's future, asking whether he wanted to stay on as FBI director.¹⁷² Because the President had previously said he wanted Comey to stay on as FBI director, Comey interpreted the President's comments as an effort to create a patronage relationship by having Comey ask for his job.¹⁷³ The President also brought up the Steele reporting that Comey had raised in the January 6, 2017 briefing and stated that he was thinking about ordering the FBI to investigate the allegations to prove they were false.¹⁷⁴ Comey responded that the President should think carefully about issuing such an order because it could create a narrative that the FBI was investigating him personally, which was incorrect.¹⁷⁵ Later in the dinner, the President brought up Flynn and said, "the guy has serious judgment issues."¹⁷⁶ Comey did not comment on Flynn and the President did not acknowledge any FBI interest in or contact with Flynn.¹⁷⁷

According to Comey's account, at one point during the dinner the President stated, "I need loyalty, I expect loyalty."¹⁷⁸ Comey did not respond and the conversation moved on to other topics, but the President returned to the subject of Comey's job at the end of the dinner and repeated, "I need loyalty."¹⁷⁹ Comey responded, "You will always get honesty from me."¹⁸⁰ The

¹⁷² Comey 11/15/17 302, at 7; Comey 1/28/17 Memorandum, at 1, 3; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 3).

¹⁷³ Comey 11/15/17 302, at 7; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 3).

¹⁷⁴ Comey 1/28/17 Memorandum, at 3; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 4).

¹⁷⁵ Comey 1/28/17 Memorandum, at 3; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 4).

¹⁷⁶ Comey 1/28/17 Memorandum, at 4; Comey 11/15/17 302, at 7.

¹⁷⁷ Comey 1/28/17 Memorandum, at 4; Comey 11/15/17 302, at 7.

¹⁷⁸ Comey 1/28/18 Memorandum, at 2; Comey 11/15/17 302, at 7; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 3).

¹⁷⁹ Comey 1/28/17 Memorandum, at 3; Comey 11/15/17 302, at 7; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 3-4).

¹⁸⁰ Comey 1/28/17 Memorandum, at 3; Comey 11/15/17 302, at 7; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 4).

President said, "That's what I want, honest loyalty."¹⁸¹ Comey said, "You will get that from me."¹⁸²

After Comey's account of the dinner became public, the President and his advisors disputed that he had asked for Comey's loyalty.¹⁸³ The President also indicated that he had not invited Comey to dinner, telling a reporter that he thought Comey had "asked for the dinner" because "he wanted to stay on."¹⁸⁴ But substantial evidence corroborates Comey's account of the dinner invitation and the request for loyalty. The President's Daily Diary confirms that the President "extend[ed] a dinner invitation" to Comey on January 27.¹⁸⁵ With respect to the substance of the dinner conversation, Comey documented the President's request for loyalty in a memorandum he began drafting the night of the dinner;¹⁸⁶ senior FBI officials recall that Comey told them about the loyalty request shortly after the dinner occurred;¹⁸⁷ and Comey described the request while

¹⁸¹ Comey 1/28/17 Memorandum, at 3; Comey 11/15/17 302, at 7; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 4).

¹⁸² Comey 1/28/17 Memorandum, at 3; Comey 11/15/17 302, at 7; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 4).

¹⁸³ See, e.g., Michael S. Schmidt, *In a Private Dinner, Trump Demanded Loyalty. Comey Demurred.*, New York Times (May 11, 2017) (quoting Sarah Sanders as saying, "[The President] would never even suggest the expectation of personal loyalty"); Ali Vitali, *Trump Never Asked for Comey's Loyalty, President's Personal Lawyer Says*, NBC (June 8, 2017) (quoting the President's personal counsel as saying, "The president also never told Mr. Comey, 'I need loyalty, I expect loyalty,' in form or substance."); Remarks by President Trump in Press Conference, White House (June 9, 2017) ("I hardly know the man. I'm not going to say 'I want you to pledge allegiance.' Who would do that? Who would ask a man to pledge allegiance under oath?"). In a private conversation with Spicer, the President stated that he had never asked for Comey's loyalty, but added that if he had asked for loyalty, "Who cares?" Spicer 10/16/17 302, at 4. The President also told McGahn that he never said what Comey said he had. McGahn 12/12/17 302, at 17.

¹⁸⁴ *Interview of Donald J. Trump*, NBC (May 11, 2017).

¹⁸⁵ SCR012b_000001 (President's Daily Diary, 1/27/17) (reflecting that the President called Comey in the morning on January 27 and "[t]he purpose of the call was to extend a dinner invitation"). In addition, two witnesses corroborate Comey's account that the President reached out to schedule the dinner, without Comey having asked for it. Priebus 10/13/17 302, at 17 (the President asked to schedule the January 27 dinner because he did not know much about Comey and intended to ask him whether he wanted to stay on as FBI Director); Rybicki 11/21/18 302, at 3 (recalling that Comey told him about the President's dinner invitation on the day of the dinner).

¹⁸⁶ Comey 11/15/17 302, at 8; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 4).

¹⁸⁷ McCabe 8/17/17 302, at 9-10; Rybicki 11/21/18 302, at 3. After leaving the White House, Comey called Deputy Director of the FBI Andrew McCabe, summarized what he and the President had discussed, including the President's request for loyalty, and expressed shock over the President's request. McCabe 8/17/17 302, at 9. Comey also convened a meeting with his senior leadership team to discuss what the President had asked of him during the dinner and whether he had handled the request for loyalty properly. McCabe 8/17/17 302, at 10; Rybicki 11/21/18 302, at 3. In addition, Comey distributed his

under oath in congressional proceedings and in a subsequent interview with investigators subject to penalties for lying under 18 U.S.C. § 1001. Comey's memory of the details of the dinner, including that the President requested loyalty, has remained consistent throughout.¹⁸⁸

6. Flynn's Resignation

On February 2, 2017, Eisenberg reviewed the underlying information relating to Flynn's calls with Kislyak.¹⁸⁹ Eisenberg recalled that he prepared a memorandum about criminal statutes that could apply to Flynn's conduct, but he did not believe the White House had enough information to make a definitive recommendation to the President.¹⁹⁰ Eisenberg and McGahn discussed that Eisenberg's review of the underlying information confirmed his preliminary conclusion that Flynn was unlikely to be prosecuted for violating the Logan Act.¹⁹¹ Because White House officials were uncertain what Flynn had told the FBI, however, they could not assess his exposure to prosecution for violating 18 U.S.C. § 1001.¹⁹²

The week of February 6, Flynn had a one-on-one conversation with the President in the Oval Office about the negative media coverage of his contacts with Kislyak.¹⁹³ Flynn recalled that the President was upset and asked him for information on the conversations.¹⁹⁴ Flynn listed the specific dates on which he remembered speaking with Kislyak, but the President corrected one of the dates he listed.¹⁹⁵ The President asked Flynn what he and Kislyak discussed and Flynn responded that he might have talked about sanctions.¹⁹⁶

memorandum documenting the dinner to his senior leadership team, and McCabe confirmed that the memorandum captured what Comey said on the telephone call immediately following the dinner. McCabe 8/17/17 302, at 9-10.

¹⁸⁸ There also is evidence that corroborates other aspects of the memoranda Comey wrote documenting his interactions with the President. For example, Comey recalled, and his memoranda reflect, that he told the President in his January 6, 2017 meeting, and on phone calls on March 30 and April 11, 2017, that the FBI was not investigating the President personally. On May 8, 2017, during White House discussions about firing Comey, the President told Rosenstein and others that Comey had told him three times that he was not under investigation, including once in person and twice on the phone. Gauhar-000058 (Gauhar 5/16/17 Notes).

¹⁸⁹ Eisenberg 11/29/17 302, at 5; FBI 2/7/17 Electronic Communication, at 1 (documenting 2/2/17 meeting with Eisenberg).

¹⁹⁰ Eisenberg 11/29/17 302, at 6.

¹⁹¹ Eisenberg 11/29/17 302, at 9; SCR015_000200 (2/15/17 Draft Memorandum to file from the Office of the Counsel to the President).

¹⁹² Eisenberg 11/29/17 302, at 9.

¹⁹³ Flynn 11/21/17 302, at 2.

¹⁹⁴ Flynn 11/21/17 302, at 2.

¹⁹⁵ Flynn 11/21/17 302, at 2.

¹⁹⁶ Flynn 11/21/17 302, at 2-3.

On February 9, 2017, the Washington Post reported that Flynn discussed sanctions with Kislyak the month before the President took office.¹⁹⁷ After the publication of that story, Vice President Pence learned of the Department of Justice's notification to the White House about the content of Flynn's calls.¹⁹⁸ He and other advisors then sought access to and reviewed the underlying information about Flynn's contacts with Kislyak.¹⁹⁹ FBI Deputy Director Andrew McCabe, who provided the White House officials access to the information and was present when they reviewed it, recalled the officials asking him whether Flynn's conduct violated the Logan Act.²⁰⁰ McCabe responded that he did not know, but the FBI was investigating the matter because it was a possibility.²⁰¹ Based on the evidence of Flynn's contacts with Kislyak, McGahn and Priebus concluded that Flynn could not have forgotten the details of the discussions of sanctions and had instead been lying about what he discussed with Kislyak.²⁰² Flynn had also told White House officials that the FBI had told him that the FBI was closing out its investigation of him,²⁰³ but Eisenberg did not believe him.²⁰⁴ After reviewing the materials and speaking with Flynn, McGahn and Priebus concluded that Flynn should be terminated and recommended that course of action to the President.²⁰⁵

That weekend, Flynn accompanied the President to Mar-a-Lago.²⁰⁶ Flynn recalled that on February 12, 2017, on the return flight to D.C. on Air Force One, the President asked him whether he had lied to the Vice President.²⁰⁷ Flynn responded that he may have forgotten details of his calls, but he did not think he lied.²⁰⁸ The President responded, "Okay. That's fine. I got it."²⁰⁹

¹⁹⁷ Greg Miller et al., *National security adviser Flynn discussed sanctions with Russian ambassador, despite denials, officials say*, Washington Post (Feb. 9, 2017).

¹⁹⁸ SCR015_000202 (2/15/17 Draft Memorandum to file from the Office of the Counsel to the President); McGahn 11/30/17 302, at 12.

¹⁹⁹ SCR015_000202 (2/15/17 Draft Memorandum to file from the Office of the Counsel to the President); McCabe 8/17/17 302, at 11-13; Priebus 10/13/17 302, at 10; McGahn 11/30/17 302, at 12.

²⁰⁰ McCabe 8/17/17 302, at 13.

²⁰¹ McCabe 8/17/17 302, at 13.

²⁰² McGahn 11/30/17 302, at 12; Priebus 1/18/18 302, at 8; Priebus 10/13/17 302, at 10; SCR015_000202 (2/15/17 Draft Memorandum to file from the Office of the Counsel to the President).

²⁰³ McGahn 11/30/17 302, at 11; Eisenberg 11/29/17 302, at 9; Priebus 10/13/17 302, at 11.

²⁰⁴ Eisenberg 11/29/17 302, at 9.

²⁰⁵ SCR015_000202 (2/15/17 Draft Memorandum to file from the Office of the Counsel to the President); Priebus 10/13/17 302, at 10; McGahn 11/30/17 302, at 12.

²⁰⁶ Flynn 11/17/17 302, at 8.

²⁰⁷ Flynn 1/19/18 302, at 9; Flynn 11/17/17 302, at 8.

²⁰⁸ Flynn 11/17/17 302, at 8; Flynn 1/19/18 302, at 9.

²⁰⁹ Flynn 1/19/18 302, at 9.

On February 13, 2017, Priebus told Flynn he had to resign.²¹⁰ Flynn said he wanted to say goodbye to the President, so Priebus brought him to the Oval Office.²¹¹ Priebus recalled that the President hugged Flynn, shook his hand, and said, "We'll give you a good recommendation. You're a good guy. We'll take care of you."²¹²

Talking points on the resignation prepared by the White House Counsel's Office and distributed to the White House communications team stated that McGahn had advised the President that Flynn was unlikely to be prosecuted, and the President had determined that the issue with Flynn was one of trust.²¹³ Spicer told the press the next day that Flynn was forced to resign "not based on a legal issue, but based on a trust issue, [where] a level of trust between the President and General Flynn had eroded to the point where [the President] felt he had to make a change."²¹⁴

7. The President Discusses Flynn with FBI Director Comey

On February 14, 2017, the day after Flynn's resignation, the President had lunch at the White House with New Jersey Governor Chris Christie.²¹⁵ According to Christie, at one point during the lunch the President said, "Now that we fired Flynn, the Russia thing is over."²¹⁶ Christie laughed and responded, "No way."²¹⁷ He said, "this Russia thing is far from over" and "[w]e'll be here on Valentine's Day 2018 talking about this."²¹⁸ The President said, "[w]hat do you mean? Flynn met with the Russians. That was the problem. I fired Flynn. It's over."²¹⁹ Christie recalled responding that based on his experience both as a prosecutor and as someone who had been investigated, firing Flynn would not end the investigation.²²⁰ Christie said there was no way to make an investigation shorter, but a lot of ways to make it longer.²²¹ The President asked Christie what he meant, and Christie told the President not to talk about the investigation even if he was

²¹⁰ Priebus 1/18/18 302, at 9.

²¹¹ Priebus 1/18/18 302, at 9; Flynn 11/17/17 302, at 10.

²¹² Priebus 1/18/18 302, at 9; Flynn 11/17/17 302, at 10.

²¹³ SCR004_00600 (2/16/17 Email, Burnham to Donaldson).

²¹⁴ Sean Spicer, *White House Daily Briefing*, C-SPAN (Feb. 14, 2017). After Flynn pleaded guilty to violating 18 U.S.C. § 1001 in December 2017, the President tweeted, "I had to fire General Flynn because he lied to the Vice President and the FBI." @realDonaldTrump 12/2/17 (12:14 p.m. ET) Tweet. The next day, the President's personal counsel told the press that he had drafted the tweet. Maegan Vazquez et al., *Trump's lawyer says he was behind President's tweet about firing Flynn*, CNN (Dec. 3, 2017).

²¹⁵ Christie 2/13/19 302, at 2-3; SCR012b_000022 (President's Daily Diary, 2/14/17).

²¹⁶ Christie 2/13/19 302, at 3.

²¹⁷ Christie 2/13/19 302, at 3.

²¹⁸ Christie 2/13/19 302, at 3. Christie said he thought when the President said "the Russia thing" he was referring to not just the investigations but also press coverage about Russia. Christie thought the more important thing was that there was an investigation. Christie 2/13/19 302, at 4.

²¹⁹ Christie 2/13/19 302, at 3.

²²⁰ Christie 2/13/19 302, at 3.

²²¹ Christie 2/13/19 302, at 3.

frustrated at times.²²² Christie also told the President that he would never be able to get rid of Flynn, “like gum on the bottom of your shoe.”²²³

Towards the end of the lunch, the President brought up Comey and asked if Christie was still friendly with him.²²⁴ Christie said he was.²²⁵ The President told Christie to call Comey and tell him that the President “really like[s] him. Tell him he’s part of the team.”²²⁶ At the end of the lunch, the President repeated his request that Christie reach out to Comey.²²⁷ Christie had no intention of complying with the President’s request that he contact Comey.²²⁸ He thought the President’s request was “nonsensical” and Christie did not want to put Comey in the position of having to receive such a phone call.²²⁹ Christie thought it would have been uncomfortable to pass on that message.²³⁰

At 4 p.m. that afternoon, the President met with Comey, Sessions, and other officials for a homeland security briefing.²³¹ At the end of the briefing, the President dismissed the other attendees and stated that he wanted to speak to Comey alone.²³² Sessions and senior advisor to the President Jared Kushner remained in the Oval Office as other participants left, but the President

²²² Christie 2/13/19 302, at 3-4.

²²³ Christie 2/13/19 302, at 3. Christie also recalled that during the lunch, Flynn called Kushner, who was at the lunch, and complained about what Spicer had said about Flynn in his press briefing that day. Kushner told Flynn words to the effect of, “You know the President respects you. The President cares about you. I’ll get the President to send out a positive tweet about you later.” Kushner looked at the President when he mentioned the tweet, and the President nodded his assent. Christie 2/13/19 302, at 3. Flynn recalled getting upset at Spicer’s comments in the press conference and calling Kushner to say he did not appreciate the comments. Flynn 1/19/18 302, at 9.

²²⁴ Christie 2/13/19 302, at 4.

²²⁵ Christie 2/13/19 302, at 4.

²²⁶ Christie 2/13/19 302, at 4-5.

²²⁷ Christie 2/13/19 302, at 5.

²²⁸ Christie 2/13/19 302, at 5.

²²⁹ Christie 2/13/19 302, at 5.

²³⁰ Christie 2/13/19 302, at 5.

²³¹ SCR012b_000022 (President’s Daily Diary, 2/14/17); Comey 11/15/17 302, at 9.

²³² Comey 11/15/17 302, at 10; 2/14/17 Comey Memorandum, at 1; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 4); Priebus 10/13/17 302, at 18 (confirming that everyone was shooed out “like Comey said” in his June testimony).

excused them, repeating that he wanted to speak only with Comey.²³³ At some point after others had left the Oval Office, Priebus opened the door, but the President sent him away.²³⁴

According to Comey's account of the meeting, once they were alone, the President began the conversation by saying, "I want to talk about Mike Flynn."²³⁵ The President stated that Flynn had not done anything wrong in speaking with the Russians, but had to be terminated because he had misled the Vice President.²³⁶ The conversation turned to the topic of leaks of classified information, but the President returned to Flynn, saying "he is a good guy and has been through a lot."²³⁷ The President stated, "I hope you can see your way clear to letting this go, to letting Flynn go. He is a good guy. I hope you can let this go."²³⁸ Comey agreed that Flynn "is a good guy," but did not commit to ending the investigation of Flynn.²³⁹ Comey testified under oath that he took the President's statement "as a direction" because of the President's position and the circumstances of the one-on-one meeting.²⁴⁰

²³³ Comey 11/15/17 302, at 10; Comey 2/14/17 Memorandum, at 1; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 4). Sessions recalled that the President asked to speak to Comey alone and that Sessions was one of the last to leave the room; he described Comey's testimony about the events leading up to the private meeting with the President as "pretty accurate." Sessions 1/17/18 302, at 6. Kushner had no recollection of whether the President asked Comey to stay behind. Kushner 4/11/18 302, at 24.

²³⁴ Comey 2/14/17 Memorandum, at 2; Priebus 10/13/17 302, at 18.

²³⁵ Comey 11/15/17 302, at 10; Comey 2/14/17 Memorandum, at 1; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 4).

²³⁶ Comey 2/14/17 Memorandum, at 1; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 5).

²³⁷ Comey 11/15/17 302, at 10; Comey 2/14/17 Memorandum, at 2; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 5).

²³⁸ *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 5); Comey 2/14/17 Memorandum, at 2. Comey said he was highly confident that the words in quotations in his Memorandum documenting this meeting were the exact words used by the President. He said he knew from the outset of the meeting that he was about to have a conversation of consequence, and he remembered the words used by the President and wrote them down soon after the meeting. Comey 11/15/17 302, at 10-11.

²³⁹ Comey 11/15/17 302, at 10; Comey 2/14/17 Memorandum, at 2.

²⁴⁰ *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (CQ Cong. Transcripts, at 31) (testimony of James B. Comey, former Director of the FBI). Comey further stated, "I mean, this is the president of the United States, with me alone, saying, 'I hope' this. I took it as, this is what he wants me to do." *Id.*; see also Comey 11/15/17 302, at 10 (Comey took the statement as an order to shut down the Flynn investigation).

Shortly after meeting with the President, Comey began drafting a memorandum documenting their conversation.²⁴¹ Comey also met with his senior leadership team to discuss the President's request, and they agreed not to inform FBI officials working on the Flynn case of the President's statements so the officials would not be influenced by the request.²⁴² Comey also asked for a meeting with Sessions and requested that Sessions not leave Comey alone with the President again.²⁴³

8. The Media Raises Questions About the President's Delay in Terminating Flynn

After Flynn was forced to resign, the press raised questions about why the President waited more than two weeks after the DOJ notification to remove Flynn and whether the President had known about Flynn's contacts with Kislyak before the DOJ notification.²⁴⁴ The press also continued to raise questions about connections between Russia and the President's campaign.²⁴⁵ On February 15, 2017, the President told reporters, "General Flynn is a wonderful man. I think he's been treated very, very unfairly by the media."²⁴⁶ On February 16, 2017, the President held

²⁴¹ Comey 11/15/17 302, at 11; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the record of James B. Comey, former Director of the FBI, at 5).

²⁴² Comey 11/15/17 302, at 11; Rybicki 6/9/17 302, at 4; Rybicki 6/22/17 302, at 1; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the record of James B. Comey, former Director of the FBI, at 5-6).

²⁴³ Comey 11/15/17 302, at 11; Rybicki 6/9/17 302, at 4-5; Rybicki 6/22/17 302, at 1-2; Sessions 1/17/18 302, at 6 (confirming that later in the week following Comey's one-on-one meeting with the President in the Oval Office, Comey told the Attorney General that he did not want to be alone with the President); Hunt 2/1/18 302, at 6 (within days of the February 14 Oval Office meeting, Comey told Sessions he did not think it was appropriate for the FBI Director to meet alone with the President); Rybicki 11/21/18 302, at 4 (Rybicki helped to schedule the meeting with Sessions because Comey wanted to talk about his concerns about meeting with the President alone); *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the record of James B. Comey, former Director of the FBI, at 6).

²⁴⁴ See, e.g., Sean Spicer, *White House Daily Briefing*, C-SPAN (Feb. 14, 2017) (questions from the press included, "if [the President] was notified 17 days ago that Flynn had misled the Vice President, other officials here, and that he was a potential threat to blackmail by the Russians, why would he be kept on for almost three weeks?" and "Did the President instruct [Flynn] to talk about sanctions with the [Russian ambassador]?"). Priebus recalled that the President initially equivocated on whether to fire Flynn because it would generate negative press to lose his National Security Advisor so early in his term. Priebus 1/18/18 302, at 8.

²⁴⁵ E.g., Sean Sullivan et al., *Senators from both parties pledge to deepen probe of Russia and the 2016 election*, Washington Post (Feb. 14, 2017); Aaron Blake, *5 times Donald Trump's team denied contact with Russia*, Washington Post (Feb. 15, 2017); Oren Dorell, *Donald Trump's ties to Russia go back 30 years*, USA Today (Feb. 15, 2017); Pamela Brown et al., *Trump aides were in constant touch with senior Russian officials during campaign*, CNN (Feb. 15, 2017); Austin Wright, *Comey briefs senators amid furor over Trump-Russia ties*, Politico (Feb. 17, 2017); Megan Twohey & Scott Shane, *A Back-Channel Plan for Ukraine and Russia*, *Courtesy of Trump Associates*, New York Times (Feb. 19, 2017).

²⁴⁶ Remarks by President Trump and Prime Minister Netanyahu of Israel in Joint Press Conference, White House (Feb. 15, 2017).

a press conference and said that he removed Flynn because Flynn “didn’t tell the Vice President of the United States the facts, and then he didn’t remember. And that just wasn’t acceptable to me.”²⁴⁷ The President said he did not direct Flynn to discuss sanctions with Kislyak, but “it certainly would have been okay with me if he did. I would have directed him to do it if I thought he wasn’t doing it. I didn’t direct him, but I would have directed him because that’s his job.”²⁴⁸ In listing the reasons for terminating Flynn, the President did not say that Flynn had lied to him.²⁴⁹ The President also denied having any connection to Russia, stating, “I have nothing to do with Russia. I told you, I have no deals there. I have no anything.”²⁵⁰ The President also said he “had nothing to do with” WikiLeaks’s publication of information hacked from the Clinton campaign.²⁵¹

9. The President Attempts to Have K.T. McFarland Create a Witness Statement Denying that he Directed Flynn’s Discussions with Kislyak

On February 22, 2017, Priebus and Bannon told McFarland that the President wanted her to resign as Deputy National Security Advisor, but they suggested to her that the Administration could make her the ambassador to Singapore.²⁵² The next day, the President asked Priebus to have McFarland draft an internal email that would confirm that the President did not direct Flynn to call the Russian Ambassador about sanctions.²⁵³ Priebus said he told the President he would only direct McFarland to write such a letter if she were comfortable with it.²⁵⁴ Priebus called McFarland into his office to convey the President’s request that she memorialize in writing that the President did not direct Flynn to talk to Kislyak.²⁵⁵ McFarland told Priebus she did not know whether the President had directed Flynn to talk to Kislyak about sanctions, and she declined to say yes or no

²⁴⁷ Remarks by President Trump in Press Conference, White House (Feb. 16, 2017).

²⁴⁸ Remarks by President Trump in Press Conference, White House (Feb. 16, 2017). The President also said that Flynn’s conduct “wasn’t wrong – what he did in terms of the information he saw.” The President said that Flynn was just “doing the job,” and “if anything, he did something right.”

²⁴⁹ Remarks by President Trump in Press Conference, White House (Feb. 16, 2017); Priebus 1/18/18 302, at 9.

²⁵⁰ Remarks by President Trump in Press Conference, White House (Feb. 16, 2017).

²⁵¹ Remarks by President Trump in Press Conference, White House (Feb. 16, 2017).

²⁵² KTMF_00000047 (McFarland 2/26/17 Memorandum for the Record); McFarland 12/22/17 302, at 16-17.

²⁵³ See Priebus 1/18/18 302, at 11; see also KTMF_00000048 (McFarland 2/26/17 Memorandum for the Record); McFarland 12/22/17 302, at 17.

²⁵⁴ Priebus 1/18/18 302, at 11.

²⁵⁵ KTMF_00000048 (McFarland 2/26/17 Memorandum for the Record); McFarland 12/22/17 302, at 17.

to the request.²⁵⁶ Priebus understood that McFarland was not comfortable with the President's request, and he recommended that she talk to attorneys in the White House Counsel's Office.²⁵⁷

McFarland then reached out to Eisenberg.²⁵⁸ McFarland told him that she had been fired from her job as Deputy National Security Advisor and offered the ambassadorship in Singapore but that the President and Priebus wanted a letter from her denying that the President directed Flynn to discuss sanctions with Kislyak.²⁵⁹ Eisenberg advised McFarland not to write the requested letter.²⁶⁰ As documented by McFarland in a contemporaneous "Memorandum for the Record" that she wrote because she was concerned by the President's request: "Eisenberg . . . thought the requested email and letter would be a bad idea – from my side because the email would be awkward. Why would I be emailing Priebus to make a statement for the record? But it would also be a bad idea for the President because it looked as if my ambassadorial appointment was in some way a quid pro quo."²⁶¹ Later that evening, Priebus stopped by McFarland's office and told her not to write the email and to forget he even mentioned it.²⁶²

Around the same time, the President asked Priebus to reach out to Flynn and let him know that the President still cared about him.²⁶³ Priebus called Flynn and said that he was checking in and that Flynn was an American hero.²⁶⁴ Priebus thought the President did not want Flynn saying bad things about him.²⁶⁵

On March 31, 2017, following news that Flynn had offered to testify before the FBI and congressional investigators in exchange for immunity, the President tweeted, "Mike Flynn should ask for immunity in that this is a witch hunt (excuse for big election loss), by media & Dems, of

²⁵⁶ KTMF_00000047 (McFarland 2/26/17 Memorandum for the Record) ("I said I did not know whether he did or didn't, but was in Maralago the week between Christmas and New Year's (while Flynn was on vacation in Carribean) and I was not aware of any Flynn-Trump, or Trump-Russian phone calls"); McFarland 12/22/17 302, at 17.

²⁵⁷ Priebus 1/18/18 302, at 11.

²⁵⁸ McFarland 12/22/17 302, at 17.

²⁵⁹ McFarland 12/22/17 302, at 17.

²⁶⁰ KTMF_00000048 (McFarland 2/26/17 Memorandum for the Record); McFarland 12/22/17 302, at 17.

²⁶¹ KTMF_00000048 (McFarland 2/26/17 Memorandum for the Record); *see* McFarland 12/22/17 302, at 17.

²⁶² McFarland 12/22/17 302, at 17; KTMF_00000048 (McFarland 2/26/17 Memorandum for the Record).

²⁶³ Priebus 1/18/18 302, at 9.

²⁶⁴ Priebus 1/18/18 302, at 9; Flynn 1/19/18 302, at 9.

²⁶⁵ Priebus 1/18/18 302, at 9-10.

historic proportion!”²⁶⁶ In late March or early April, the President asked McFarland to pass a message to Flynn telling him the President felt bad for him and that he should stay strong.²⁶⁷

Analysis

In analyzing the President’s conduct related to the Flynn investigation, the following evidence is relevant to the elements of obstruction of justice:

a. Obstructive act. According to Comey’s account of his February 14, 2017 meeting in the Oval Office, the President told him, “I hope you can see your way clear to letting this go, to letting Flynn go. . . . I hope you can let this go.” In analyzing whether these statements constitute an obstructive act, a threshold question is whether Comey’s account of the interaction is accurate, and, if so, whether the President’s statements had the tendency to impede the administration of justice by shutting down an inquiry that could result in a grand jury investigation and a criminal charge.

After Comey’s account of the President’s request to “let[] Flynn go” became public, the President publicly disputed several aspects of the story. The President told the New York Times that he did not “shoo other people out of the room” when he talked to Comey and that he did not remember having a one-on-one conversation with Comey.²⁶⁸ The President also publicly denied that he had asked Comey to “let[] Flynn go” or otherwise communicated that Comey should drop the investigation of Flynn.²⁶⁹ In private, the President denied aspects of Comey’s account to White House advisors, but acknowledged to Priebus that he brought Flynn up in the meeting with Comey and stated that Flynn was a good guy.²⁷⁰ Despite those denials, substantial evidence corroborates Comey’s account.

²⁶⁶ @realDonaldTrump 3/31/17 (7:04 a.m. ET) Tweet; see Shane Harris at al., *Mike Flynn Offers to Testify in Exchange for Immunity*, Wall Street Journal (Mar. 30, 2017).

²⁶⁷ McFarland 12/22/17 302, at 18.

²⁶⁸ *Excerpts From The Times’s Interview With Trump*, New York Times (July 19, 2017). Hicks recalled that the President told her he had never asked Comey to stay behind in his office. Hicks 12/8/17 302, at 12.

²⁶⁹ In a statement on May 16, 2017, the White House said: “While the President has repeatedly expressed his view that General Flynn is a decent man who served and protected our country, the President has never asked Mr. Comey or anyone else to end any investigation, including any investigation involving General Flynn. . . . This is not a truthful or accurate portrayal of the conversation between the President and Mr. Comey.” See Michael S. Schmidt, *Comey Memorandum Says Trump Asked Him to End Flynn Investigation*, New York Times (May 16, 2017) (quoting White House statement); @realDonaldTrump 12/3/17 (6:15 a.m. ET) Tweet (“I never asked Comey to stop investigating Flynn. Just more Fake News covering another Comey lie!”).

²⁷⁰ Priebus recalled that the President acknowledged telling Comey that Flynn was a good guy and he hoped “everything worked out for him.” Priebus 10/13/17 302, at 19. McGahn recalled that the President denied saying to Comey that he hoped Comey would let Flynn go, but added that he was “allowed to hope.” The President told McGahn he did not think he had crossed any lines. McGahn 12/14/17 302, at 8.

First, Comey wrote a detailed memorandum of his encounter with the President on the same day it occurred. Comey also told senior FBI officials about the meeting with the President that day, and their recollections of what Comey told them at the time are consistent with Comey's account.²⁷¹

Second, Comey provided testimony about the President's request that he "let[] Flynn go" under oath in congressional proceedings and in interviews with federal investigators subject to penalties for lying under 18 U.S.C. § 1001. Comey's recollections of the encounter have remained consistent over time.

Third, the objective, corroborated circumstances of how the one-on-one meeting came to occur support Comey's description of the event. Comey recalled that the President cleared the room to speak with Comey alone after a homeland security briefing in the Oval Office, that Kushner and Sessions lingered and had to be shooed out by the President, and that Priebus briefly opened the door during the meeting, prompting the President to wave him away. While the President has publicly denied those details, other Administration officials who were present have confirmed Comey's account of how he ended up in a one-on-one meeting with the President.²⁷² And the President acknowledged to Priebus and McGahn that he in fact spoke to Comey about Flynn in their one-on-one meeting.

Fourth, the President's decision to clear the room and, in particular, to exclude the Attorney General from the meeting signals that the President wanted to be alone with Comey, which is consistent with the delivery of a message of the type that Comey recalls, rather than a more innocuous conversation that could have occurred in the presence of the Attorney General.

Finally, Comey's reaction to the President's statements is consistent with the President having asked him to "let[] Flynn go." Comey met with the FBI leadership team, which agreed to keep the President's statements closely held and not to inform the team working on the Flynn investigation so that they would not be influenced by the President's request. Comey also promptly met with the Attorney General to ask him not to be left alone with the President again, an account verified by Sessions, FBI Chief of Staff James Rybicki, and Jody Hunt, who was then the Attorney General's chief of staff.

A second question is whether the President's statements, which were not phrased as a direct order to Comey, could impede or interfere with the FBI's investigation of Flynn. While the President said he "hope[d]" Comey could "let[] Flynn go," rather than affirmatively directing him to do so, the circumstances of the conversation show that the President was asking Comey to close the FBI's investigation into Flynn. First, the President arranged the meeting with Comey so that they would be alone and purposely excluded the Attorney General, which suggests that the President meant to make a request to Comey that he did not want anyone else to hear. Second, because the President is the head of the Executive Branch, when he says that he "hopes" a subordinate will do something, it is reasonable to expect that the subordinate will do what the President wants. Indeed, the President repeated a version of "let this go" three times, and Comey

²⁷¹ Rybicki 11/21/18 302, at 4; McCabe 8/17/17 302, at 13-14.

²⁷² See Priebus 10/13/17 302, at 18; Sessions 1/17/18 302, at 6.

testified that he understood the President's statements as a directive, which is corroborated by the way Comey reacted at the time.

b. Nexus to a proceeding. To establish a nexus to a proceeding, it would be necessary to show that the President could reasonably foresee and actually contemplated that the investigation of Flynn was likely to lead to a grand jury investigation or prosecution.

At the time of the President's one-on-one meeting with Comey, no grand jury subpoenas had been issued as part of the FBI's investigation into Flynn. But Flynn's lies to the FBI violated federal criminal law, **Grand Jury**, and resulted in Flynn's prosecution for violating 18 U.S.C. § 1001. By the time the President spoke to Comey about Flynn, DOJ officials had informed McGahn, who informed the President, that Flynn's statements to senior White House officials about his contacts with Kislyak were not true and that Flynn had told the same version of events to the FBI. McGahn also informed the President that Flynn's conduct could violate 18 U.S.C. § 1001. After the Vice President and senior White House officials reviewed the underlying information about Flynn's calls on February 10, 2017, they believed that Flynn could not have forgotten his conversations with Kislyak and concluded that he had been lying. In addition, the President's instruction to the FBI Director to "let[] Flynn go" suggests his awareness that Flynn could face criminal exposure for his conduct and was at risk of prosecution.

c. Intent. As part of our investigation, we examined whether the President had a personal stake in the outcome of an investigation into Flynn—for example, whether the President was aware of Flynn's communications with Kislyak close in time to when they occurred, such that the President knew that Flynn had lied to senior White House officials and that those lies had been passed on to the public. Some evidence suggests that the President knew about the existence and content of Flynn's calls when they occurred, but the evidence is inconclusive and could not be relied upon to establish the President's knowledge. In advance of Flynn's initial call with Kislyak, the President attended a meeting where the sanctions were discussed and an advisor may have mentioned that Flynn was scheduled to talk to Kislyak. Flynn told McFarland about the substance of his calls with Kislyak and said they may have made a difference in Russia's response, and Flynn recalled talking to Bannon in early January 2017 about how they had successfully "stopped the train on Russia's response" to the sanctions. It would have been reasonable for Flynn to have wanted the President to know of his communications with Kislyak because Kislyak told Flynn his request had been received at the highest levels in Russia and that Russia had chosen not to retaliate in response to the request, and the President was pleased by the Russian response, calling it a "[g]reat move." And the President never said publicly or internally that Flynn had lied to him about the calls with Kislyak.

But McFarland did not recall providing the President-Elect with Flynn's read-out of his calls with Kislyak, and Flynn does not have a specific recollection of telling the President-Elect directly about the calls. Bannon also said he did not recall hearing about the calls from Flynn. And in February 2017, the President asked Flynn what was discussed on the calls and whether he had lied to the Vice President, suggesting that he did not already know. Our investigation accordingly did not produce evidence that established that the President knew about Flynn's discussions of sanctions before the Department of Justice notified the White House of those discussions in late January 2017. The evidence also does not establish that Flynn otherwise

possessed information damaging to the President that would give the President a personal incentive to end the FBI's inquiry into Flynn's conduct.

Evidence does establish that the President connected the Flynn investigation to the FBI's broader Russia investigation and that he believed, as he told Christie, that terminating Flynn would end "the whole Russia thing." Flynn's firing occurred at a time when the media and Congress were raising questions about Russia's interference in the election and whether members of the President's campaign had colluded with Russia. Multiple witnesses recalled that the President viewed the Russia investigations as a challenge to the legitimacy of his election. The President paid careful attention to negative coverage of Flynn and reacted with annoyance and anger when the story broke disclosing that Flynn had discussed sanctions with Kislyak. Just hours before meeting one-on-one with Comey, the President told Christie that firing Flynn would put an end to the Russia inquiries. And after Christie pushed back, telling the President that firing Flynn would not end the Russia investigation, the President asked Christie to reach out to Comey and convey that the President liked him and he was part of "the team." That afternoon, the President cleared the room and asked Comey to "let[] Flynn go."

We also sought evidence relevant to assessing whether the President's direction to Comey was motivated by sympathy towards Flynn. In public statements the President repeatedly described Flynn as a good person who had been harmed by the Russia investigation, and the President directed advisors to reach out to Flynn to tell him the President "care[d]" about him and felt bad for him. At the same time, multiple senior advisors, including Bannon, Priebus, and Hicks, said that the President had become unhappy with Flynn well before Flynn was forced to resign and that the President was frequently irritated with Flynn. Priebus said he believed the President's initial reluctance to fire Flynn stemmed not from personal regard, but from concern about the negative press that would be generated by firing the National Security Advisor so early in the Administration. And Priebus indicated that the President's post-firing expressions of support for Flynn were motivated by the President's desire to keep Flynn from saying negative things about him.

The way in which the President communicated the request to Comey also is relevant to understanding the President's intent. When the President first learned about the FBI investigation into Flynn, he told McGahn, Bannon, and Priebus not to discuss the matter with anyone else in the White House. The next day, the President invited Comey for a one-on-one dinner against the advice of an aide who recommended that other White House officials also attend. At the dinner, the President asked Comey for "loyalty" and, at a different point in the conversation, mentioned that Flynn had judgment issues. When the President met with Comey the day after Flynn's termination—shortly after being told by Christie that firing Flynn would not end the Russia investigation—the President cleared the room, even excluding the Attorney General, so that he could again speak to Comey alone. The President's decision to meet one-on-one with Comey contravened the advice of the White House Counsel that the President should not communicate directly with the Department of Justice to avoid any appearance of interfering in law enforcement activities. And the President later denied that he cleared the room and asked Comey to "let[] Flynn go"—a denial that would have been unnecessary if he believed his request was a proper exercise of prosecutorial discretion.

Finally, the President's effort to have McFarland write an internal email denying that the President had directed Flynn to discuss sanctions with Kislyak highlights the President's concern about being associated with Flynn's conduct. The evidence does not establish that the President was trying to have McFarland lie. The President's request, however, was sufficiently irregular that McFarland—who did not know the full extent of Flynn's communications with the President and thus could not make the representation the President wanted—felt the need to draft an internal memorandum documenting the President's request, and Eisenberg was concerned that the request would look like a quid pro quo in exchange for an ambassadorship.

C. The President's Reaction to Public Confirmation of the FBI's Russia Investigation

Overview

In early March 2017, the President learned that Sessions was considering recusing from the Russia investigation and tried to prevent the recusal. After Sessions announced his recusal on March 2, the President expressed anger at Sessions for the decision and then privately asked Sessions to "unrecuse." On March 20, 2017, Comey publicly disclosed the existence of the FBI's Russia investigation. In the days that followed, the President contacted Comey and other intelligence agency leaders and asked them to push back publicly on the suggestion that the President had any connection to the Russian election-interference effort in order to "lift the cloud" of the ongoing investigation.

Evidence

1. Attorney General Sessions Recuses From the Russia Investigation

In late February 2017, the Department of Justice began an internal analysis of whether Sessions should recuse from the Russia investigation based on his role in the 2016 Trump Campaign.²⁷³ On March 1, 2017, the press reported that, in his January confirmation hearing to become Attorney General, Senator Sessions had not disclosed two meetings he had with Russian Ambassador Kislyak before the presidential election, leading to congressional calls for Sessions to recuse or for a special counsel to investigate Russia's interference in the presidential election.²⁷⁴

Also on March 1, the President called Comey and said he wanted to check in and see how Comey was doing.²⁷⁵ According to an email Comey sent to his chief of staff after the call, the President "talked about Sessions a bit," said that he had heard Comey was "doing great," and said that he hoped Comey would come by to say hello when he was at the White House.²⁷⁶ Comey

²⁷³ Sessions 1/17/18 302, at 1; Hunt 2/1/18 302, at 3.

²⁷⁴ E.g., Adam Entous et al., *Sessions met with Russian envoy twice last year, encounters he later did not disclose*, Washington Post (Mar. 1, 2017).

²⁷⁵ 3/1/17 Email, Comey to Rybicki; SCR012b_000030 (President's Daily Diary, 3/1/17, reflecting call with Comey at 11:55 am.)

²⁷⁶ 3/1/17 Email, Comey to Rybicki; see *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (CQ Cong. Transcripts, at 86) (testimony

interpreted the call as an effort by the President to “pull [him] in,” but he did not perceive the call as an attempt by the President to find out what Comey was doing with the Flynn investigation.²⁷⁷

The next morning, the President called McGahn and urged him to contact Sessions to tell him not to recuse himself from the Russia investigation.²⁷⁸ McGahn understood the President to be concerned that a recusal would make Sessions look guilty for omitting details in his confirmation hearing; leave the President unprotected from an investigation that could hobble the presidency and derail his policy objectives; and detract from favorable press coverage of a Presidential Address to Congress the President had delivered earlier in the week.²⁷⁹ McGahn reached out to Sessions and reported that the President was not happy about the possibility of recusal.²⁸⁰ Sessions replied that he intended to follow the rules on recusal.²⁸¹ McGahn reported back to the President about the call with Sessions, and the President reiterated that he did not want Sessions to recuse.²⁸² Throughout the day, McGahn continued trying on behalf of the President to avert Sessions’s recusal by speaking to Sessions’s personal counsel, Sessions’s chief of staff, and Senate Majority Leader Mitch McConnell, and by contacting Sessions himself two more times.²⁸³ Sessions recalled that other White House advisors also called him that day to argue against his recusal.²⁸⁴

That afternoon, Sessions announced his decision to recuse “from any existing or future investigations of any matters related in any way to the campaigns for President of the United States.”²⁸⁵ Sessions believed the decision to recuse was not a close call, given the applicable

of James B. Comey, former Director of the FBI) (“[H]e called me one day. . . . [H]e just called to check in and tell me I was doing an awesome job, and wanted to see how I was doing.”).

²⁷⁷ Comey 11/15/17 302, at 17-18.

²⁷⁸ McGahn 11/30/17 302, at 16.

²⁷⁹ McGahn 11/30/17 302, at 16-17; *see* SC_AD_00123 (Donaldson 3/2/17 Notes) (“Just in the middle of another Russia Fiasco.”).

²⁸⁰ Sessions 1/17/18 302, at 3.

²⁸¹ McGahn 11/30/17 302, at 17.

²⁸² McGahn 11/30/17 302, at 17.

²⁸³ McGahn 11/30/17 302, at 18-19; Sessions 1/17/18 302, at 3; Hunt 2/1/18 302, at 4; Donaldson 11/6/17 302, at 8-10; *see* Hunt-000017; SC_AD_00121 (Donaldson 3/2/17 Notes).

²⁸⁴ Sessions 1/17/18 302, at 3.

²⁸⁵ Attorney General Sessions Statement on Recusal, Department of Justice Press Release (Mar. 2, 2017) (“During the course of the last several weeks, I have met with the relevant senior career Department officials to discuss whether I should recuse myself from any matters arising from the campaigns for President of the United States. Having concluded those meetings today, I have decided to recuse myself from any existing or future investigations of any matters related in any way to the campaigns for President of the United States.”). At the time of Sessions’s recusal, Dana Boente, then the Acting Deputy Attorney General and U.S. Attorney for the Eastern District of Virginia, became the Acting Attorney General for campaign-related matters pursuant to an executive order specifying the order of succession at the Department of Justice. *Id.* (“Consistent with the succession order for the Department of Justice, . . . Dana Boente shall act as and perform the functions of the Attorney General with respect to any matters from

language in the Code of Federal Regulations (CFR), which Sessions considered to be clear and decisive.²⁸⁶ Sessions thought that any argument that the CFR did not apply to him was “very thin.”²⁸⁷ Sessions got the impression, based on calls he received from White House officials, that the President was very upset with him and did not think he had done his duty as Attorney General.²⁸⁸

Shortly after Sessions announced his recusal, the White House Counsel's Office directed that Sessions should not be contacted about the matter.²⁸⁹ Internal White House Counsel's Office notes from March 2, 2017, state “No contact w/Sessions” and “No comms / Serious concerns about obstruction.”²⁹⁰

On March 3, the day after Sessions's recusal, McGahn was called into the Oval Office.²⁹¹ Other advisors were there, including Priebus and Bannon.²⁹² The President opened the conversation by saying, “I don't have a lawyer.”²⁹³ The President expressed anger at McGahn about the recusal and brought up Roy Cohn, stating that he wished Cohn was his attorney.²⁹⁴ McGahn interpreted this comment as directed at him, suggesting that Cohn would fight for the

which I have recused myself to the extent they exist.”); see Exec. Order No. 13775, 82 Fed. Reg. 10697 (Feb. 14, 2017).

²⁸⁶ Sessions 1/17/18 302, at 1-2. 28 C.F.R. § 45.2 provides that “no employee shall participate in a criminal investigation or prosecution if he has a personal or political relationship with . . . [a]ny person or organization substantially involved in the conduct that is the subject of the investigation or prosecution,” and defines “political relationship” as “a close identification with an elected official, a candidate (whether or not successful) for elective, public office, a political party, or a campaign organization, arising from service as a principal adviser thereto or a principal official thereof.”

²⁸⁷ Sessions 1/17/18 302, at 2.

²⁸⁸ Sessions 1/17/18 302, at 3.

²⁸⁹ Donaldson 11/6/17 302, at 11; SC_AD_00123 (Donaldson 3/2/17 Notes). It is not clear whether the President was aware of the White House Counsel's Office direction not to contact Sessions about his recusal.

²⁹⁰ SC_AD_00123 (Donaldson 3/2/17 Notes). McGahn said he believed the note “No comms / Serious concerns about obstruction” may have referred to concerns McGahn had about the press team saying “crazy things” and trying to spin Sessions's recusal in a way that would raise concerns about obstruction. McGahn 11/30/17 302, at 19. Donaldson recalled that “No comms” referred to the order that no one should contact Sessions. Donaldson 11/6/17 302, at 11.

²⁹¹ McGahn 12/12/17 302, at 2.

²⁹² McGahn 12/12/17 302, at 2.

²⁹³ McGahn 12/12/17 302, at 2.

²⁹⁴ McGahn 12/12/17 302, at 2. Cohn had previously served as a lawyer for the President during his career as a private businessman. Priebus recalled that when the President talked about Cohn, he said Cohn would win cases for him that had no chance, and that Cohn had done incredible things for him. Priebus 4/3/18 302, at 5. Bannon recalled the President describing Cohn as a winner and a fixer, someone who got things done. Bannon 2/14/18 302, at 6.

President whereas McGahn would not.²⁹⁵ The President wanted McGahn to talk to Sessions about the recusal, but McGahn told the President that DOJ ethics officials had weighed in on Sessions's decision to recuse.²⁹⁶ The President then brought up former Attorneys General Robert Kennedy and Eric Holder and said that they had protected their presidents.²⁹⁷ The President also pushed back on the DOJ contacts policy, and said words to the effect of, "You're telling me that Bobby and Jack didn't talk about investigations? Or Obama didn't tell Eric Holder who to investigate?"²⁹⁸ Bannon recalled that the President was as mad as Bannon had ever seen him and that he screamed at McGahn about how weak Sessions was.²⁹⁹ Bannon recalled telling the President that Sessions's recusal was not a surprise and that before the inauguration they had discussed that Sessions would have to recuse from campaign-related investigations because of his work on the Trump Campaign.³⁰⁰

That weekend, Sessions and McGahn flew to Mar-a-Lago to meet with the President.³⁰¹ Sessions recalled that the President pulled him aside to speak to him alone and suggested that Sessions should "unrecuse" from the Russia investigation.³⁰² The President contrasted Sessions with Attorneys General Holder and Kennedy, who had developed a strategy to help their presidents where Sessions had not.³⁰³ Sessions said he had the impression that the President feared that the investigation could spin out of control and disrupt his ability to govern, which Sessions could have helped avert if he were still overseeing it.³⁰⁴

On March 5, 2017, the White House Counsel's Office was informed that the FBI was asking for transition-period records relating to Flynn—indicating that the FBI was still actively investigating him.³⁰⁵ On March 6, the President told advisors he wanted to call the Acting Attorney

²⁹⁵ McGahn 12/12/17 302, at 2.

²⁹⁶ McGahn 12/12/17 302, at 2.

²⁹⁷ McGahn 12/12/17 302, at 3. Bannon said the President saw Robert Kennedy and Eric Holder as Attorneys General who protected the presidents they served. The President thought Holder always stood up for President Obama and even took a contempt charge for him, and Robert Kennedy always had his brother's back. Bannon 2/14/18 302, at 5. Priebus recalled that the President said he had been told his entire life he needed to have a great lawyer, a "bulldog," and added that Holder had been willing to take a contempt-of-Congress charge for President Obama. Priebus 4/3/18 302, at 5.

²⁹⁸ McGahn 12/12/17 302, at 3.

²⁹⁹ Bannon 2/14/18 302, at 5.

³⁰⁰ Bannon 2/14/18 302, at 5.

³⁰¹ Sessions 1/17/18 302, at 3; Hunt 2/1/18 302, at 5; McGahn 12/12/17 302, at 3.

³⁰² Sessions 1/17/18 302, at 3-4.

³⁰³ Sessions 1/17/18 302, at 3-4.

³⁰⁴ Sessions 1/17/18 302, at 3-4. Hicks recalled that after Sessions recused, the President was angry and scolded Sessions in her presence, but she could not remember exactly when that conversation occurred. Hicks 12/8/17 302, at 13.

³⁰⁵ SC_AD_000137 (Donaldson 3/5/17 Notes); *see* Donaldson 11/6/17 302, at 13.

General to find out whether the White House or the President was being investigated, although it is not clear whether the President knew at that time of the FBI's recent request concerning Flynn.³⁰⁶

2. FBI Director Comey Publicly Confirms the Existence of the Russia Investigation in Testimony Before HPSCI

On March 9, 2017, Comey briefed the "Gang of Eight" congressional leaders about the FBI's investigation of Russian interference, including an identification of the principal U.S. subjects of the investigation.³⁰⁷ Although it is unclear whether the President knew of that briefing at the time, notes taken by Annie Donaldson, then McGahn's chief of staff, on March 12, 2017, state, "POTUS in panic/chaos . . . Need binders to put in front of POTUS. (1) All things related to Russia."³⁰⁸ The week after Comey's briefing, the White House Counsel's Office was in contact with SSCI Chairman Senator Richard Burr about the Russia investigations and appears to have received information about the status of the FBI investigation.³⁰⁹

On March 20, 2017, Comey was scheduled to testify before HPSCI.³¹⁰ In advance of Comey's testimony, congressional officials made clear that they wanted Comey to provide information about the ongoing FBI investigation.³¹¹ Dana Boente, who at that time was the Acting Attorney General for the Russia investigation, authorized Comey to confirm the existence of the Russia investigation and agreed that Comey should decline to comment on whether any particular individuals, including the President, were being investigated.³¹²

³⁰⁶ Donaldson 11/6/17 302, at 14; see SC_AD_000168 (Donaldson 3/6/17 Notes) ("POTUS wants to call Dana [then the Acting Attorney General for campaign-related investigations] / Is investigation / No / We know something on Flynn / GSA got contacted by FBI / There's something hot").

³⁰⁷ Comey 11/15/17 302, at 13-14; SNS-Classified-0000140-44 (3/8/17 Email, Gauhar to Page et al.).

³⁰⁸ SC_AD_00188 (Donaldson 3/12/18 Notes). Donaldson said she was not part of the conversation that led to these notes, and must have been told about it from others. Donaldson 11/6/17 302, at 13.

³⁰⁹ Donaldson 11/6/17 302, at 14-15. On March 16, 2017, the White House Counsel's Office was briefed by Senator Burr on the existence of "4-5 targets." Donaldson 11/6/17 302, at 15. The "targets" were identified in notes taken by Donaldson as "Flynn (FBI was in—wrapping up)→DOJ looking for phone records"; "Comey→Manafort (Ukr + Russia, not campaign)"; **HOM** "Carter Page (\$ game)"; and "Greek Guy" (potentially referring to George Papadopoulos, later charged with violating 18 U.S.C. § 1001 for lying to the FBI). SC_AD_00198 (Donaldson 3/16/17 Notes). Donaldson and McGahn both said they believed these were targets of SSCI. Donaldson 11/6/17 302, at 15; McGahn 12/12/17 302, at 4. But SSCI does not formally investigate individuals as "targets"; the notes on their face reference the FBI, the Department of Justice, and Comey; and the notes track the background materials prepared by the FBI for Comey's briefing to the Gang of 8 on March 9. See SNS-Classified-0000140-44 (3/8/17 Email, Gauhar to Page et al.); see also Donaldson 11/6/17 302, at 15 (Donaldson could not rule out that Burr had told McGahn those individuals were the FBI's targets).

³¹⁰ *Hearing on Russian Election Tampering Before the House Permanent Select Intelligence Committee*, 115th Cong. (Mar. 20, 2017).

³¹¹ Comey 11/15/17 302, at 16; McCabe 8/17/17, at 15; McGahn 12/14/17 302, at 1.

³¹² Boente 1/31/18 302, at 5; Comey 11/15/17 302, at 16-17.

In his opening remarks at the HPSCI hearing, which were drafted in consultation with the Department of Justice, Comey stated that he had “been authorized by the Department of Justice to confirm that the FBI, as part of [its] counterintelligence mission, is investigating the Russian government’s efforts to interfere in the 2016 presidential election and that includes investigating the nature of any links between individuals associated with the Trump campaign and the Russian government and whether there was any coordination between the campaign and Russia’s efforts. As with any counterintelligence investigation, this will also include an assessment of whether any crimes were committed.”³¹³ Comey added that he would not comment further on what the FBI was “doing and whose conduct [it] [was] examining” because the investigation was ongoing and classified—but he observed that he had “taken the extraordinary step in consultation with the Department of Justice of briefing this Congress’s leaders . . . in a classified setting in detail about the investigation.”³¹⁴ Comey was specifically asked whether President Trump was “under investigation during the campaign” or “under investigation now.”³¹⁵ Comey declined to answer, stating, “Please don’t over interpret what I’ve said as—as the chair and ranking know, we have briefed him in great detail on the subjects of the investigation and what we’re doing, but I’m not gonna answer about anybody in this forum.”³¹⁶ Comey was also asked whether the FBI was investigating the information contained in the Steele reporting, and he declined to answer.³¹⁷

According to McGahn and Donaldson, the President had expressed frustration with Comey before his March 20 testimony, and the testimony made matters worse.³¹⁸ The President had previously criticized Comey for too frequently making headlines and for not attending intelligence briefings at the White House, and the President suspected Comey of leaking certain information to the media.³¹⁹ McGahn said the President thought Comey was acting like “his own branch of government.”³²⁰

³¹³ *Hearing on Russian Election Tampering Before the House Permanent Select Intelligence Committee*, 115th Cong. (Mar. 20, 2017) (CQ Cong. Transcripts, at 11) (testimony by FBI Director James B. Comey); Comey 11/15/17 302, at 17; Boente 1/31/18 302, at 5 (confirming that the Department of Justice authorized Comey’s remarks).

³¹⁴ *Hearing on Russian Election Tampering Before the House Permanent Select Intelligence Committee*, 115th Cong. (Mar. 20, 2017) (CQ Cong. Transcripts, at 11) (testimony by FBI Director James B. Comey).

³¹⁵ *Hearing on Russian Election Tampering Before the House Permanent Select Intelligence Committee*, 115th Cong. (Mar. 20, 2017) (CQ Cong. Transcripts, at 130) (question by Rep. Swalwell).

³¹⁶ *Hearing on Russian Election Tampering Before the House Permanent Select Intelligence Committee*, 115th Cong. (Mar. 20, 2017) (CQ Cong. Transcripts, at 130) (testimony by FBI Director James B. Comey).

³¹⁷ *Hearing on Russian Election Tampering Before the House Permanent Select Intelligence Committee*, 115th Cong. (Mar. 20, 2017) (CQ Cong. Transcripts, at 143) (testimony by FBI Director James B. Comey).

³¹⁸ Donaldson 11/6/17 302, at 21; McGahn 12/12/17 302, at 7.

³¹⁹ Donaldson 11/6/17 302, at 21; McGahn 12/12/17 302, at 6-9.

³²⁰ McGahn 12/12/17 302, at 7.

Press reports following Comey's March 20 testimony suggested that the FBI was investigating the President, contrary to what Comey had told the President at the end of the January 6, 2017 intelligence assessment briefing.³²¹ McGahn, Donaldson, and senior advisor Stephen Miller recalled that the President was upset with Comey's testimony and the press coverage that followed because of the suggestion that the President was under investigation.³²² Notes from the White House Counsel's Office dated March 21, 2017, indicate that the President was "beside himself" over Comey's testimony.³²³ The President called McGahn repeatedly that day to ask him to intervene with the Department of Justice, and, according to the notes, the President was "getting hotter and hotter, get rid?"³²⁴ Officials in the White House Counsel's Office became so concerned that the President would fire Comey that they began drafting a memorandum that examined whether the President needed cause to terminate the FBI director.³²⁵

At the President's urging, McGahn contacted Boente several times on March 21, 2017, to seek Boente's assistance in having Comey or the Department of Justice correct the misperception that the President was under investigation.³²⁶ Boente did not specifically recall the conversations, although he did remember one conversation with McGahn around this time where McGahn asked if there was a way to speed up or end the Russia investigation as quickly as possible.³²⁷ Boente said McGahn told him the President was under a cloud and it made it hard for him to govern.³²⁸ Boente recalled telling McGahn that there was no good way to shorten the investigation and attempting to do so could erode confidence in the investigation's conclusions.³²⁹ Boente said McGahn agreed and dropped the issue.³³⁰ The President also sought to speak with Boente directly, but McGahn told the President that Boente did not want to talk to the President about the request

³²¹ E.g., Matt Apuzzo et al., *F.B.I. Is Investigating Trump's Russia Ties, Comey Confirms*, New York Times (Mar. 20, 2017); Andy Greenberg, *The FBI Has Been Investigating Trump's Russia Ties Since July*, Wired (Mar. 20, 2017); Julie Borger & Spencer Ackerman, *Trump-Russia collusion is being investigated by FBI, Comey confirms*, Guardian (Mar. 20, 2017); see Comey 1/6/17 Memorandum, at 2.

³²² Donaldson 11/6/17 302, at 16-17; S. Miller 10/31/17 302, at 4; McGahn 12/12/17 302, at 5-7.

³²³ SC_AD_00213 (Donaldson 3/21/17 Notes). The notes from that day also indicate that the President referred to the "Comey bombshell" which "made [him] look like a fool." SC_AD_00206 (Donaldson 3/21/17 Notes).

³²⁴ SC_AD_00210 (Donaldson 3/21/17 Notes).

³²⁵ SCR016_000002-05 (White House Counsel's Office Memorandum). White House Counsel's Office attorney Uttam Dhillon did not recall a triggering event causing the White House Counsel's Office to begin this research. Dhillon 11/21/17 302, at 5. Metadata from the document, which was provided by the White House, establishes that it was created on March 21, 2017.

³²⁶ Donaldson 11/6/17 302, at 16-21; McGahn 12/12/17 302, at 5-7.

³²⁷ Boente 1/31/18 302, at 5.

³²⁸ Boente 1/31/18 302, at 5.

³²⁹ Boente 1/31/18 302, at 5.

³³⁰ Boente 1/31/18 302, at 5.

to intervene with Comey.³³¹ McGahn recalled Boente telling him in calls that day that he did not think it was sustainable for Comey to stay on as FBI director for the next four years, which McGahn said he conveyed to the President.³³² Boente did not recall discussing with McGahn or anyone else the idea that Comey should not continue as FBI director.³³³

3. The President Asks Intelligence Community Leaders to Make Public Statements that he had No Connection to Russia

In the weeks following Comey's March 20, 2017 testimony, the President repeatedly asked intelligence community officials to push back publicly on any suggestion that the President had a connection to the Russian election-interference effort.

On March 22, 2017, the President asked Director of National Intelligence Daniel Coats and CIA Director Michael Pompeo to stay behind in the Oval Office after a Presidential Daily Briefing.³³⁴ According to Coats, the President asked them whether they could say publicly that no link existed between him and Russia.³³⁵ Coats responded that the Office of the Director of National Intelligence (ODNI) has nothing to do with investigations and it was not his role to make a public statement on the Russia investigation.³³⁶ Pompeo had no recollection of being asked to stay behind after the March 22 briefing, but he recalled that the President regularly urged officials to get the word out that he had not done anything wrong related to Russia.³³⁷

Coats told this Office that the President never asked him to speak to Comey about the FBI investigation.³³⁸ Some ODNI staffers, however, had a different recollection of how Coats described the meeting immediately after it occurred. According to senior ODNI official Michael Dempsey, Coats said after the meeting that the President had brought up the Russia investigation and asked him to contact Comey to see if there was a way to get past the investigation, get it over with, end it, or words to that effect.³³⁹ Dempsey said that Coats described the President's comments as falling "somewhere between musing about hating the investigation" and wanting Coats to "do something to stop it."³⁴⁰ Dempsey said Coats made it clear that he would not get involved with an ongoing FBI investigation.³⁴¹ Edward Gistaro, another ODNI official, recalled

³³¹ SC_AD_00210 (Donaldson 3/21/17 Notes); McGahn 12/12/17 302, at 7; Donaldson 11/6/17 302, at 19.

³³² McGahn 12/12/17 302, at 7; Burnham 11/03/17 302, at 11.

³³³ Boente 1/31/18 302, at 3.

³³⁴ Coats 6/14/17 302, at 3; Culver 6/14/17 302, at 2.

³³⁵ Coats 6/14/17 302, at 3.

³³⁶ Coats 6/14/17 302, at 3.

³³⁷ Pompeo 6/28/17 302, at 1-3.

³³⁸ Coats 6/14/17 302, at 3.

³³⁹ Dempsey 6/14/17 302, at 2.

³⁴⁰ Dempsey 6/14/17 302, at 2-3.

³⁴¹ Dempsey 6/14/17 302, at 3.

that right after Coats's meeting with the President, on the walk from the Oval Office back to the Eisenhower Executive Office Building, Coats said that the President had kept him behind to ask him what he could do to "help with the investigation."³⁴² Another ODNI staffer who had been waiting for Coats outside the Oval Office talked to Gistaro a few minutes later and recalled Gistaro reporting that Coats was upset because the President had asked him to contact Comey to convince him there was nothing to the Russia investigation.³⁴³

On Saturday, March 25, 2017, three days after the meeting in the Oval Office, the President called Coats and again complained about the Russia investigations, saying words to the effect of, "I can't do anything with Russia, there's things I'd like to do with Russia, with trade, with ISIS, they're all over me with this."³⁴⁴ Coats told the President that the investigations were going to go on and the best thing to do was to let them run their course.³⁴⁵ Coats later testified in a congressional hearing that he had "never felt pressure to intervene or interfere in any way and shape—with shaping intelligence in a political way, or in relationship . . . to an ongoing investigation."³⁴⁶

On March 26, 2017, the day after the President called Coats, the President called NSA Director Admiral Michael Rogers.³⁴⁷ The President expressed frustration with the Russia investigation, saying that it made relations with the Russians difficult.³⁴⁸ The President told Rogers "the thing with the Russians [wa]s messing up" his ability to get things done with Russia.³⁴⁹ The President also said that the news stories linking him with Russia were not true and asked Rogers if he could do anything to refute the stories.³⁵⁰ Deputy Director of the NSA Richard Ledgett, who was present for the call, said it was the most unusual thing he had experienced in 40 years of government service.³⁵¹ After the call concluded, Ledgett prepared a memorandum that he and Rogers both signed documenting the content of the conversation and the President's request, and they placed the memorandum in a safe.³⁵² But Rogers did not perceive the President's request to be an order, and the President did not ask Rogers to push back on the Russia

³⁴² Gistaro 6/14/17 302, at 2.

³⁴³ Culver 6/14/17 302, at 2-3.

³⁴⁴ Coats 6/14/17 302, at 4.

³⁴⁵ Coats 6/14/17 302, at 4; Dempsey 6/14/17 302, at 3 (Coats relayed that the President had asked several times what Coats could do to help "get [the investigation] done," and Coats had repeatedly told the President that fastest way to "get it done" was to let it run its course).

³⁴⁶ *Hearing on Foreign Intelligence Surveillance Act Before the Senate Select Intelligence Committee*, 115th Cong. (June 7, 2017) (CQ Cong. Transcripts, at 25) (testimony by Daniel Coats, Director of National Intelligence).

³⁴⁷ Rogers 6/12/17 302, at 3-4.

³⁴⁸ Rogers 6/12/17 302, at 4.

³⁴⁹ Ledgett 6/13/17 302, at 1-2; see Rogers 6/12/17 302, at 4.

³⁵⁰ Rogers 6/12/17 302, at 4-5; Ledgett 6/13/17 302, at 2.

³⁵¹ Ledgett 6/13/17 302, at 2.

³⁵² Ledgett 6/13/17 302, at 2-3; Rogers 6/12/17 302, at 4.

investigation itself.³⁵³ Rogers later testified in a congressional hearing that as NSA Director he had “never been directed to do anything [he] believe[d] to be illegal, immoral, unethical or inappropriate” and did “not recall ever feeling pressured to do so.”³⁵⁴

In addition to the specific comments made to Coats, Pompeo, and Rogers, the President spoke on other occasions in the presence of intelligence community officials about the Russia investigation and stated that it interfered with his ability to conduct foreign relations.³⁵⁵ On at least two occasions, the President began Presidential Daily Briefings by stating that there was no collusion with Russia and he hoped a press statement to that effect could be issued.³⁵⁶ Pompeo recalled that the President vented about the investigation on multiple occasions, complaining that there was no evidence against him and that nobody would publicly defend him.³⁵⁷ Rogers recalled a private conversation with the President in which he “vent[ed]” about the investigation, said he had done nothing wrong, and said something like the “Russia thing has got to go away.”³⁵⁸ Coats recalled the President bringing up the Russia investigation several times, and Coats said he finally told the President that Coats’s job was to provide intelligence and not get involved in investigations.³⁵⁹

4. The President Asks Comey to “Lift the Cloud” Created by the Russia Investigation

On the morning of March 30, 2017, the President reached out to Comey directly about the Russia investigation.³⁶⁰ According to Comey’s contemporaneous record of the conversation, the President said “he was trying to run the country and the cloud of this Russia business was making

³⁵³ Rogers 6/12/17 302, at 5; Ledgett 6/13/17 302, at 2.

³⁵⁴ *Hearing on Foreign Intelligence Surveillance Act Before the Senate Select Intelligence Committee*, 115th Cong. (June 7, 2017) (CQ Cong. Transcripts, at 20) (testimony by Admiral Michael Rogers, Director of the National Security Agency).

³⁵⁵ Gistaro 6/14/17 302, at 1, 3; Pompeo 6/28/17 302, at 2-3.

³⁵⁶ Gistaro 6/14/17 302, at 1.

³⁵⁷ Pompeo 6/28/17 302, at 2.

³⁵⁸ Rogers 6/12/17 302, at 6.

³⁵⁹ Coats 6/14/17 302, at 3-4.

³⁶⁰ SCR012b_000044 (President’s Daily Diary, 3/30/17, reflecting call to Comey from 8:14 - 8:24 a.m.); Comey 3/30/17 Memorandum, at 1 (“The President called me on my CMS phone at 8:13 am today . . . The call lasted 11 minutes (about 10 minutes when he was connected).”; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 6).

that difficult.”³⁶¹ The President asked Comey what could be done to “lift the cloud.”³⁶² Comey explained “that we were running it down as quickly as possible and that there would be great benefit, if we didn’t find anything, to our Good Housekeeping seal of approval, but we had to do our work.”³⁶³ Comey also told the President that congressional leaders were aware that the FBI was not investigating the President personally.³⁶⁴ The President said several times, “We need to get that fact out.”³⁶⁵ The President commented that if there was “some satellite” (which Comey took to mean an associate of the President’s or the campaign) that did something, “it would be good to find that out” but that he himself had not done anything wrong and he hoped Comey “would find a way to get out that we weren’t investigating him.”³⁶⁶ After the call ended, Comey called Boente and told him about the conversation, asked for guidance on how to respond, and said he was uncomfortable with direct contact from the President about the investigation.³⁶⁷

On the morning of April 11, 2017, the President called Comey again.³⁶⁸ According to Comey’s contemporaneous record of the conversation, the President said he was “following up to see if [Comey] did what [the President] had asked last time—getting out that he personally is not under investigation.”³⁶⁹ Comey responded that he had passed the request to Boente but not heard back, and he informed the President that the traditional channel for such a request would be to

³⁶¹ Comey 3/30/17 Memorandum, at 1. Comey subsequently testified before Congress about this conversation and described it to our Office; his recollections were consistent with his memorandum. *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 6); Comey 11/15/17 302, at 18.

³⁶² Comey 3/30/17 Memorandum, at 1; Comey 11/15/17 302, at 18.

³⁶³ Comey 3/30/17 Memorandum, at 1; Comey 11/15/17 302, at 18.

³⁶⁴ Comey 3/30/17 Memorandum, at 1; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 6).

³⁶⁵ Comey 3/30/17 Memorandum, at 1; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 6).

³⁶⁶ Comey 3/30/17 Memorandum, at 1; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 6-7).

³⁶⁷ Comey 3/30/17 Memorandum, at 2; Boente 1/31/18 302, at 6-7; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 7).

³⁶⁸ SCR012b_000053 (President’s Daily Diary, 4/11/17, reflecting call to Comey from 8:27 – 8:31 a.m.); Comey 4/11/17 Memorandum, at 1 (“I returned the president’s call this morning at 8:26 am EDT. We spoke for about four minutes.”).

³⁶⁹ Comey 4/11/17 Memorandum, at 1. Comey subsequently testified before Congress about this conversation and his recollections were consistent with his memo. *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 7).

have the White House Counsel contact DOJ leadership.³⁷⁰ The President said he would take that step.³⁷¹ The President then added, "Because I have been very loyal to you, very loyal, we had that thing, you know."³⁷² In a televised interview that was taped early that afternoon, the President was asked if it was too late for him to ask Comey to step down; the President responded, "No, it's not too late, but you know, I have confidence in him. We'll see what happens. You know, it's going to be interesting."³⁷³ After the interview, Hicks told the President she thought the President's comment about Comey should be removed from the broadcast of the interview, but the President wanted to keep it in, which Hicks thought was unusual.³⁷⁴

Later that day, the President told senior advisors, including McGahn and Priebus, that he had reached out to Comey twice in recent weeks.³⁷⁵ The President acknowledged that McGahn would not approve of the outreach to Comey because McGahn had previously cautioned the President that he should not talk to Comey directly to prevent any perception that the White House was interfering with investigations.³⁷⁶ The President told McGahn that Comey had indicated the FBI could make a public statement that the President was not under investigation if the Department of Justice approved that action.³⁷⁷ After speaking with the President, McGahn followed up with Boente to relay the President's understanding that the FBI could make a public announcement if the Department of Justice cleared it.³⁷⁸ McGahn recalled that Boente said Comey had told him there was nothing obstructive about the calls from the President, but they made Comey uncomfortable.³⁷⁹ According to McGahn, Boente responded that he did not want to issue a statement about the President not being under investigation because of the potential political ramifications and did not want to order Comey to do it because that action could prompt the

³⁷⁰ Comey 4/11/17 Memorandum, at 1.

³⁷¹ Comey 4/11/17 Memorandum, at 1.

³⁷² Comey 4/11/17 Memorandum, at 1. In a footnote to this statement in his memorandum, Comey wrote, "His use of these words did not fit with the flow of the call, which at that point had moved away from any request of me, but I have recorded it here as it happened."

³⁷³ Maria Bartiromo, *Interview with President Trump*, Fox Business Network (Apr. 12, 2017); SCR012b_000054 (President's Daily Diary, 4/11/17, reflecting Bartiromo interview from 12:30 - 12:55 p.m.).

³⁷⁴ Hicks 12/8/17 302, at 13.

³⁷⁵ Priebus 10/13/17 302, at 23; McGahn 12/12/17 302, at 9.

³⁷⁶ Priebus 10/13/17 302, at 23; McGahn 12/12/17 302, at 9; *see* McGahn 11/30/17 302, at 9; Dhillon 11/21/17 302, at 2 (stating that White House Counsel attorneys had advised the President not to contact the FBI Director directly because it could create a perception he was interfering with investigations). Later in April, the President told other attorneys in the White House Counsel's Office that he had called Comey even though he knew they had advised against direct contact. Dhillon 11/21/17 302, at 2 (recalling that the President said, "I know you told me not to, but I called Comey anyway.").

³⁷⁷ McGahn 12/12/17 302, at 9.

³⁷⁸ McGahn 12/12/17 302, at 9.

³⁷⁹ McGahn 12/12/17 302, at 9; *see* Boente 1/31/18 302, at 6 (recalling that Comey told him after the March 30, 2017 call that it was not obstructive).

appointment of a Special Counsel.³⁸⁰ Boente did not recall that aspect of his conversation with McGahn, but did recall telling McGahn that the direct outreaches from the President to Comey were a problem.³⁸¹ Boente recalled that McGahn agreed and said he would do what he could to address that issue.³⁸²

Analysis

In analyzing the President's reaction to Sessions's recusal and the requests he made to Coats, Pompeo, Rogers, and Comey, the following evidence is relevant to the elements of obstruction of justice:

a. Obstructive act. The evidence shows that, after Comey's March 20, 2017 testimony, the President repeatedly reached out to intelligence agency leaders to discuss the FBI's investigation. But witnesses had different recollections of the precise content of those outreaches. Some ODNI officials recalled that Coats told them immediately after the March 22 Oval Office meeting that the President asked Coats to intervene with Comey and "stop" the investigation. But the first-hand witnesses to the encounter remember the conversation differently. Pompeo had no memory of the specific meeting, but generally recalled the President urging officials to get the word out that the President had not done anything wrong related to Russia. Coats recalled that the President asked that Coats state publicly that no link existed between the President and Russia, but did not ask him to speak with Comey or to help end the investigation. The other outreaches by the President during this period were similar in nature. The President asked Rogers if he could do anything to refute the stories linking the President to Russia, and the President asked Comey to make a public statement that would "lift the cloud" of the ongoing investigation by making clear that the President was not personally under investigation. These requests, while significant enough that Rogers thought it important to document the encounter in a written memorandum, were not interpreted by the officials who received them as directives to improperly interfere with the investigation.

b. Nexus to a proceeding. At the time of the President's outreaches to leaders of the intelligence agencies in late March and early April 2017, the FBI's Russia investigation did not yet involve grand jury proceedings. The outreaches, however, came after and were in response to Comey's March 20, 2017 announcement that the FBI, as a part of its counterintelligence mission, was conducting an investigation into Russian interference in the 2016 presidential election. Comey testified that the investigation included any links or coordination with Trump campaign officials and would "include an assessment of whether any crimes were committed."

c. Intent. As described above, the evidence does not establish that the President asked or directed intelligence agency leaders to stop or interfere with the FBI's Russia investigation—and the President affirmatively told Comey that if "some satellite" was involved in Russian election interference "it would be good to find that out." But the President's intent in trying to prevent Sessions's recusal, and in reaching out to Coats, Pompeo, Rogers, and Comey following

³⁸⁰ McGahn 12/12/17 302, at 9-10.

³⁸¹ Boente 1/31/18 302, at 7; McGahn 12/12/17 302, at 9.

³⁸² Boente 1/31/18 302, at 7.

Comey's public announcement of the FBI's Russia investigation, is nevertheless relevant to understanding what motivated the President's other actions towards the investigation.

The evidence shows that the President was focused on the Russia investigation's implications for his presidency—and, specifically, on dispelling any suggestion that he was under investigation or had links to Russia. In early March, the President attempted to prevent Sessions's recusal, even after being told that Sessions was following DOJ conflict-of-interest rules. After Sessions recused, the White House Counsel's Office tried to cut off further contact with Sessions about the matter, although it is not clear whether that direction was conveyed to the President. The President continued to raise the issue of Sessions's recusal and, when he had the opportunity, he pulled Sessions aside and urged him to unrecuse. The President also told advisors that he wanted an Attorney General who would protect him, the way he perceived Robert Kennedy and Eric Holder to have protected their presidents. The President made statements about being able to direct the course of criminal investigations, saying words to the effect of, "You're telling me that Bobby and Jack didn't talk about investigations? Or Obama didn't tell Eric Holder who to investigate?"

After Comey publicly confirmed the existence of the FBI's Russia investigation on March 20, 2017, the President was "beside himself" and expressed anger that Comey did not issue a statement correcting any misperception that the President himself was under investigation. The President sought to speak with Acting Attorney General Boente directly and told McGahn to contact Boente to request that Comey make a clarifying statement. The President then asked other intelligence community leaders to make public statements to refute the suggestion that the President had links to Russia, but the leaders told him they could not publicly comment on the investigation. On March 30 and April 11, against the advice of White House advisors who had informed him that any direct contact with the FBI could be perceived as improper interference in an ongoing investigation, the President made personal outreaches to Comey asking him to "lift the cloud" of the Russia investigation by making public the fact that the President was not personally under investigation.

Evidence indicates that the President was angered by both the existence of the Russia investigation and the public reporting that he was under investigation, which he knew was not true based on Comey's representations. The President complained to advisors that if people thought Russia helped him with the election, it would detract from what he had accomplished.

Other evidence indicates that the President was concerned about the impact of the Russia investigation on his ability to govern. The President complained that the perception that he was under investigation was hurting his ability to conduct foreign relations, particularly with Russia. The President told Coats he "can't do anything with Russia," he told Rogers that "the thing with the Russians" was interfering with his ability to conduct foreign affairs, and he told Comey that "he was trying to run the country and the cloud of this Russia business was making that difficult."

D. Events Leading Up To and Surrounding the Termination of FBI Director Comey

Overview

Comey was scheduled to testify before Congress on May 3, 2017. Leading up to that testimony, the President continued to tell advisors that he wanted Comey to make public that the President was not under investigation. At the hearing, Comey declined to answer questions about the scope or subjects of the Russia investigation and did not state publicly that the President was not under investigation. Two days later, on May 5, 2017, the President told close aides he was going to fire Comey, and on May 9, he did so, using his official termination letter to make public that Comey had on three occasions informed the President that he was not under investigation. The President decided to fire Comey before receiving advice or a recommendation from the Department of Justice, but he approved an initial public account of the termination that attributed it to a recommendation from the Department of Justice based on Comey's handling of the Clinton email investigation. After Deputy Attorney General Rod Rosenstein resisted attributing the firing to his recommendation, the President acknowledged that he intended to fire Comey regardless of the DOJ recommendation and was thinking of the Russia investigation when he made the decision. The President also told the Russian Foreign Minister, "I just fired the head of the F.B.I. He was crazy, a real nut job. I faced great pressure because of Russia. That's taken off. . . . I'm not under investigation."

Evidence

1. Comey Testifies Before the Senate Judiciary Committee and Declines to Answer Questions About Whether the President is Under Investigation

On May 3, 2017, Comey was scheduled to testify at an FBI oversight hearing before the Senate Judiciary Committee.³⁸³ McGahn recalled that in the week leading up to the hearing, the President said that it would be the last straw if Comey did not take the opportunity to set the record straight by publicly announcing that the President was not under investigation.³⁸⁴ The President had previously told McGahn that the perception that the President was under investigation was hurting his ability to carry out his presidential duties and deal with foreign leaders.³⁸⁵ At the hearing, Comey declined to answer questions about the status of the Russia investigation, stating "[t]he Department of Justice ha[d] authorized [him] to confirm that [the Russia investigation] exists," but that he was "not going to say another word about it" until the investigation was completed.³⁸⁶ Comey also declined to answer questions about whether investigators had "ruled

³⁸³ *Hearing on Oversight of the FBI before the Senate Judiciary Committee*, 115th Cong. (May 3, 2017).

³⁸⁴ McGahn 12/12/17 302, at 10-11.

³⁸⁵ McGahn 12/12/17 302, at 7, 10-11 (McGahn believed that two foreign leaders had expressed sympathy to the President for being under investigation); SC_AD_00265 (Donaldson 4/11/17 Notes) ("P Called Comey – Day we told him not to? 'You are not under investigation' NK/China/Sapping Credibility").

³⁸⁶ *Hearing on FBI Oversight Before the Senate Judiciary Committee*, 115th Cong. (CQ Cong. Transcripts, at 70) (May 3, 2017) (testimony by FBI Director James Comey). Comey repeated this point

out anyone in the Trump campaign as potentially a target of th[e] criminal investigation,” including whether the FBI had “ruled out the president of the United States.”³⁸⁷

Comey was also asked at the hearing about his decision to announce 11 days before the presidential election that the FBI was reopening the Clinton email investigation.³⁸⁸ Comey stated that it made him “mildly nauseous to think that we might have had some impact on the election,” but added that “even in hindsight” he “would make the same decision.”³⁸⁹ He later repeated that he had no regrets about how he had handled the email investigation and believed he had “done the right thing at each turn.”³⁹⁰

In the afternoon following Comey’s testimony, the President met with McGahn, Sessions, and Sessions’s Chief of Staff Jody Hunt.³⁹¹ At that meeting, the President asked McGahn how Comey had done in his testimony and McGahn relayed that Comey had declined to answer questions about whether the President was under investigation.³⁹² The President became very upset and directed his anger at Sessions.³⁹³ According to notes written by Hunt, the President said, “This is terrible Jeff. It’s all because you recused. AG is supposed to be most important appointment. Kennedy appointed his brother. Obama appointed Holder. I appointed you and you recused yourself. You left me on an island. I can’t do anything.”³⁹⁴ The President said that the recusal was unfair and that it was interfering with his ability to govern and undermining his authority with foreign leaders.³⁹⁵ Sessions responded that he had had no choice but to recuse, and it was a mandatory rather than discretionary decision.³⁹⁶ Hunt recalled that Sessions also stated at

several times during his testimony. *See id.* at 26 (explaining that he was “not going to say another peep about [the investigation] until we’re done”); *id.* at 90 (stating that he would not provide any updates about the status of investigation “before the matter is concluded”).

³⁸⁷ *Hearing on FBI Oversight Before the Senate Judiciary Committee*, 115th Cong. (May 3, 2017) (CQ Cong. Transcripts, at 87-88) (questions by Sen. Blumenthal and testimony by FBI Director James B. Comey).

³⁸⁸ *Hearing on FBI Oversight Before the Senate Judiciary Committee*, 115th Cong. (May 3, 2017) (CQ Cong. Transcripts, at 15) (question by Sen. Feinstein).

³⁸⁹ *Hearing on FBI Oversight Before the Senate Judiciary Committee*, 115th Cong. (May 3, 2017) (CQ Cong. Transcripts, at 17) (testimony by FBI Director James B. Comey).

³⁹⁰ *Hearing on FBI Oversight Before the Senate Judiciary Committee*, 115th Cong. (May 3, 2017) (CQ Cong. Transcripts, at 92) (testimony by FBI Director James B. Comey).

³⁹¹ Sessions 1/17/18 302, at 8; Hunt 2/1/18 302, at 8.

³⁹² Sessions 1/17/18 302, at 8; Hunt-000021 (Hunt 5/3/17 Notes); McGahn 3/8/18 302, at 6.

³⁹³ Sessions 1/17/18 302, at 8-9.

³⁹⁴ Hunt-000021 (Hunt 5/3/17 Notes). Hunt said that he wrote down notes describing this meeting and others with the President after the events occurred. Hunt 2/1/17 302, at 2.

³⁹⁵ Hunt-000021-22 (Hunt 5/3/17 Notes) (“I have foreign leaders saying they are sorry I am being investigated.”); Sessions 1/17/18 302, at 8 (Sessions recalled that a Chinese leader had said to the President that he was sorry the President was under investigation, which the President interpreted as undermining his authority); Hunt 2/1/18 302, at 8.

³⁹⁶ Sessions 1/17/18 302, at 8; Hunt-000022 (Hunt 5/3/17 Notes).

some point during the conversation that a new start at the FBI would be appropriate and the President should consider replacing Comey as FBI director.³⁹⁷ According to Sessions, when the meeting concluded, it was clear that the President was unhappy with Comey, but Sessions did not think the President had made the decision to terminate Comey.³⁹⁸

Bannon recalled that the President brought Comey up with him at least eight times on May 3 and May 4, 2017.³⁹⁹ According to Bannon, the President said the same thing each time: "He told me three times I'm not under investigation. He's a showboater. He's a grandstander. I don't know any Russians. There was no collusion."⁴⁰⁰ Bannon told the President that he could not fire Comey because "that ship had sailed."⁴⁰¹ Bannon also told the President that firing Comey was not going to stop the investigation, cautioning him that he could fire the FBI director but could not fire the FBI.⁴⁰²

2. The President Makes the Decision to Terminate Comey

The weekend following Comey's May 3, 2017 testimony, the President traveled to his resort in Bedminster, New Jersey.⁴⁰³ At a dinner on Friday, May 5, attended by the President and various advisors and family members, including Jared Kushner and senior advisor Stephen Miller, the President stated that he wanted to remove Comey and had ideas for a letter that would be used to make the announcement.⁴⁰⁴ The President dictated arguments and specific language for the letter, and Miller took notes.⁴⁰⁵ As reflected in the notes, the President told Miller that the letter should start, "While I greatly appreciate you informing me that I am not under investigation concerning what I have often stated is a fabricated story on a Trump-Russia relationship – pertaining to the 2016 presidential election, please be informed that I, and I believe the American public – including Ds and Rs – have lost faith in you as Director of the FBI."⁴⁰⁶ Following the dinner, Miller prepared a termination letter based on those notes and research he conducted to support the President's arguments.⁴⁰⁷ Over the weekend, the President provided several rounds of

³⁹⁷ Hunt-000022 (Hunt 5/3/17 Notes).

³⁹⁸ Sessions 1/17/18 302, at 9.

³⁹⁹ Bannon 2/12/18 302, at 20.

⁴⁰⁰ Bannon 2/12/18 302, at 20.

⁴⁰¹ Bannon 2/12/18 302, at 20.

⁴⁰² Bannon 2/12/18 302, at 20-21; see Priebus 10/13/17 302, at 28.

⁴⁰³ S. Miller 10/31/17 302, at 4-5; SCR025_000019 (President's Daily Diary, 5/4/17).

⁴⁰⁴ S. Miller 10/31/17 302, at 5.

⁴⁰⁵ S. Miller 10/31/17 302, at 5-6.

⁴⁰⁶ S. Miller 5/5/17 Notes, at 1; see S. Miller 10/31/17 302, at 8.

⁴⁰⁷ S. Miller 10/31/17 302, at 6.

edits on the draft letter.⁴⁰⁸ Miller said the President was adamant that he not tell anyone at the White House what they were preparing because the President was worried about leaks.⁴⁰⁹

In his discussions with Miller, the President made clear that he wanted the letter to open with a reference to him not being under investigation.⁴¹⁰ Miller said he believed that fact was important to the President to show that Comey was not being terminated based on any such investigation.⁴¹¹ According to Miller, the President wanted to establish as a factual matter that Comey had been under a "review period" and did not have assurance from the President that he would be permitted to keep his job.⁴¹²

The final version of the termination letter prepared by Miller and the President began in a way that closely tracked what the President had dictated to Miller at the May 5 dinner: "Dear Director Comey, While I greatly appreciate your informing me, on three separate occasions, that I am not under investigation concerning the fabricated and politically-motivated allegations of a Trump-Russia relationship with respect to the 2016 Presidential Election, please be informed that I, along with members of both political parties and, most importantly, the American Public, have lost faith in you as the Director of the FBI and you are hereby terminated."⁴¹³ The four-page letter went on to critique Comey's judgment and conduct, including his May 3 testimony before the Senate Judiciary Committee, his handling of the Clinton email investigation, and his failure to hold leakers accountable.⁴¹⁴ The letter stated that Comey had "asked [the President] at dinner shortly after inauguration to let [Comey] stay on in the Director's role, and [the President] said that [he] would consider it," but the President had "concluded that [he] ha[d] no alternative but to find new leadership for the Bureau – a leader that restores confidence and trust."⁴¹⁵

In the morning of Monday, May 8, 2017, the President met in the Oval Office with senior advisors, including McGahn, Priebus, and Miller, and informed them he had decided to terminate Comey.⁴¹⁶ The President read aloud the first paragraphs of the termination letter he wrote with

⁴⁰⁸ S. Miller 10/31/17 302, at 6-8.

⁴⁰⁹ S. Miller 10/31/17 302, at 7. Miller said he did not want Priebus to be blindsided, so on Sunday night he called Priebus to tell him that the President had been thinking about the "Comey situation" and there would be an important discussion on Monday. S. Miller 10/31/17 302, at 7.

⁴¹⁰ S. Miller 10/31/17 302, at 8.

⁴¹¹ S. Miller 10/31/17 302, at 8.

⁴¹² S. Miller 10/31/17 302, at 10.

⁴¹³ SCR013c_000003-06 (Draft Termination Letter to FBI Director Comey).

⁴¹⁴ SCR013c_000003-06 (Draft Termination Letter to FBI Director Comey). Kushner said that the termination letter reflected the reasons the President wanted to fire Comey and was the truest representation of what the President had said during the May 5 dinner. Kushner 4/11/18 302, at 25.

⁴¹⁵ SCR013c_000003 (Draft Termination Letter to FBI Director Comey).

⁴¹⁶ McGahn 12/12/17 302, at 11; Priebus 10/13/17 302, at 24; S. Miller 10/31/17 302, at 11; Dhillon 11/21/17 302, at 6; Eisenberg 11/29/17 302, at 13.

Miller and conveyed that the decision had been made and was not up for discussion.⁴¹⁷ The President told the group that Miller had researched the issue and determined the President had the authority to terminate Comey without cause.⁴¹⁸ In an effort to slow down the decision-making process, McGahn told the President that DOJ leadership was currently discussing Comey's status and suggested that White House Counsel's Office attorneys should talk with Sessions and Rod Rosenstein, who had recently been confirmed as the Deputy Attorney General.⁴¹⁹ McGahn said that previously scheduled meetings with Sessions and Rosenstein that day would be an opportunity to find out what they thought about firing Comey.⁴²⁰

At noon, Sessions, Rosenstein, and Hunt met with McGahn and White House Counsel's Office attorney Uttam Dhillon at the White House.⁴²¹ McGahn said that the President had decided to fire Comey and asked for Sessions's and Rosenstein's views.⁴²² Sessions and Rosenstein criticized Comey and did not raise concerns about replacing him.⁴²³ McGahn and Dhillon said the fact that neither Sessions nor Rosenstein objected to replacing Comey gave them peace of mind that the President's decision to fire Comey was not an attempt to obstruct justice.⁴²⁴ An Oval Office meeting was scheduled later that day so that Sessions and Rosenstein could discuss the issue with the President.⁴²⁵

At around 5 p.m., the President and several White House officials met with Sessions and Rosenstein to discuss Comey.⁴²⁶ The President told the group that he had watched Comey's May

⁴¹⁷ S. Miller 10/31/17 302, at 11 (observing that the President started the meeting by saying, "I'm going to read you a letter. Don't talk me out of this. I've made my decision."); Dhillon 11/21/17 302, at 6 (the President announced in an irreversible way that he was firing Comey); Eisenberg 11/29/17 302, at 13 (the President did not leave whether or not to fire Comey up for discussion); Priebus 10/13/17 302, at 25; McGahn 12/12/17 302, at 11-12.

⁴¹⁸ Dhillon 302 11/21/17, at 6; Eisenberg 11/29/17 302, at 13; McGahn 12/12/17 302, at 11.

⁴¹⁹ McGahn 12/12/17 302, at 12, 13; S. Miller 10/31/17 302, at 11; Dhillon 11/21/17 302, at 7. Because of the Attorney General's recusal, Rosenstein became the Acting Attorney General for the Russia investigation upon his confirmation as Deputy Attorney General. *See* 28 U.S.C. § 508(a) ("In case of a vacancy in the office of Attorney General, or of his absence or disability, the Deputy Attorney General may exercise all the duties of that office").

⁴²⁰ McGahn 12/12/17 302, at 12.

⁴²¹ Dhillon 11/21/17 302, at 7; McGahn 12/12/17 302, at 13; Gauhar-000056 (Gauhar 5/16/17 Notes); *see* Gauhar-000056-72 (2/11/19 Memorandum to File attaching Gauhar handwritten notes) ("Ms. Gauhar determined that she likely recorded all these notes during one or more meetings on Tuesday, May 16, 2017.").

⁴²² McGahn 12/12/17 302, at 13; *see* Gauhar-000056 (Gauhar 5/16/17 Notes).

⁴²³ Dhillon 11/21/17 302, at 7-9; Sessions 1/17/18 302, at 9; McGahn 12/12/17 302, at 13.

⁴²⁴ McGahn 12/12/17 302, at 13; Dhillon 11/21/17 302, at 9.

⁴²⁵ Hunt-000026 (Hunt 5/8/17 Notes); *see* Gauhar-000057 (Gauhar 5/16/17 Notes).

⁴²⁶ Rosenstein 5/23/17 302, at 2; McGahn 12/12/17 302, at 14; *see* Gauhar-000057 (Gauhar 5/16/17 Notes).

3 testimony over the weekend and thought that something was “not right” with Comey.⁴²⁷ The President said that Comey should be removed and asked Sessions and Rosenstein for their views.⁴²⁸ Hunt, who was in the room, recalled that Sessions responded that he had previously recommended that Comey be replaced.⁴²⁹ McGahn and Dhillon said Rosenstein described his concerns about Comey’s handling of the Clinton email investigation.⁴³⁰

The President then distributed copies of the termination letter he had drafted with Miller, and the discussion turned to the mechanics of how to fire Comey and whether the President’s letter should be used.⁴³¹ McGahn and Dhillon urged the President to permit Comey to resign, but the President was adamant that he be fired.⁴³² The group discussed the possibility that Rosenstein and Sessions could provide a recommendation in writing that Comey should be removed.⁴³³ The President agreed and told Rosenstein to draft a memorandum, but said he wanted to receive it first thing the next morning.⁴³⁴ Hunt’s notes reflect that the President told Rosenstein to include in his recommendation the fact that Comey had refused to confirm that the President was not personally under investigation.⁴³⁵ According to notes taken by a senior DOJ official of Rosenstein’s description of his meeting with the President, the President said, “Put the Russia stuff in the memo.”⁴³⁶ Rosenstein responded that the Russia investigation was not the basis of his recommendation, so he did not think Russia should be mentioned.⁴³⁷ The President told Rosenstein he would appreciate it if Rosenstein put it in his letter anyway.⁴³⁸ When Rosenstein

⁴²⁷ Hunt-000026-27 (Hunt 5/8/17 Notes).

⁴²⁸ Sessions 1/17/18 302, at 10; *see* Gauhar-000058 (Gauhar 5/16/17 Notes) (“POTUS to AG: What is your rec?”).

⁴²⁹ Hunt-000027 (Hunt 5/8/17 Notes).

⁴³⁰ McGahn 12/12/17 302, at 14; Dhillon 11/21/17 302, at 7.

⁴³¹ Hunt-000028 (Hunt 5/8/17 Notes).

⁴³² McGahn 12/12/17 302, at 13.

⁴³³ Hunt-000028-29 (Hunt 5/8/17 Notes).

⁴³⁴ McCabe 9/26/17 302, at 13; Rosenstein 5/23/17 302, at 2; *see* Gauhar-000059 (Gauhar 5/16/17 Notes) (“POTUS tells DAG to write a memo”).

⁴³⁵ Hunt-000028-29 (Hunt 5/8/17 Notes) (“POTUS asked if Rod’s recommendation would include the fact that although Comey talks about the investigation he refuses to say that the President is not under investigation. . . . So it would be good if your recommendation would make mention of the fact that Comey refuses to say public[ly] what he said privately 3 times.”).

⁴³⁶ Gauhar-000059 (Gauhar 5/16/17 Notes).

⁴³⁷ Sessions 1/17/18 302 at 10; McCabe 9/26/17 302, at 13; *see* Gauhar-000059 (Gauhar 5/16/17 Notes).

⁴³⁸ Gauhar-000059 (Gauhar 5/16/17 Notes); McCabe 5/16/17 Memorandum 1; McCabe 9/26/17 302, at 13.

left the meeting, he knew that Comey would be terminated, and he told DOJ colleagues that his own reasons for replacing Comey were “not [the President’s] reasons.”⁴³⁹

On May 9, Hunt delivered to the White House a letter from Sessions recommending Comey’s removal and a memorandum from Rosenstein, addressed to the Attorney General, titled “Restoring Public Confidence in the FBI.”⁴⁴⁰ McGahn recalled that the President liked the DOJ letters and agreed that they should provide the foundation for a new cover letter from the President accepting the recommendation to terminate Comey.⁴⁴¹ Notes taken by Donaldson on May 9 reflected the view of the White House Counsel’s Office that the President’s original termination letter should “[n]ot [see the] light of day” and that it would be better to offer “[n]o other rationales” for the firing than what was in Rosenstein’s and Sessions’s memoranda.⁴⁴² The President asked Miller to draft a new termination letter and directed Miller to say in the letter that Comey had informed the President three times that he was not under investigation.⁴⁴³ McGahn, Priebus, and Dhillon objected to including that language, but the President insisted that it be included.⁴⁴⁴ McGahn, Priebus, and others perceived that language to be the most important part of the letter to

⁴³⁹ Rosenstein 5/23/17 302, at 2; Gauhar-000059 (Gauhar 5/16/17 Notes) (“DAG reasons not their reasons [POTUS]”); Gauhar-000060 (Gauhar 5/16/17 Notes) (“1st draft had a recommendation. Took it out b/c knew decision had already been made.”).

⁴⁴⁰ Rosenstein 5/23/17 302, at 4; McGahn 12/12/17 302, at 15; 5/9/17 Letter, Sessions to President Trump (“Based on my evaluation, and for the reasons expressed by the Deputy Attorney General in the attached memorandum, I have concluded that a fresh start is needed at the leadership of the FBI.”); 5/9/17 Memorandum, Rosenstein to Sessions (concluding with, “The way the Director handled the conclusion of the email investigation was wrong. As a result, the FBI is unlikely to regain public and congressional trust until it has a Director who understands the gravity of the mistakes and pledges never to repeat them. Having refused to admit his errors, the Director cannot be expected to implement the necessary corrective actions.”).

⁴⁴¹ S. Miller 10/31/17 302, at 12; McGahn 12/12/17 302, at 15; Hunt-000031 (Hunt 5/9/17 Notes).

⁴⁴² SC_AD_00342 (Donaldson 5/9/17 Notes). Donaldson also wrote “[i]s this the beginning of the end?” because she was worried that the decision to terminate Comey and the manner in which it was carried out would be the end of the presidency. Donaldson 11/6/17 302, at 25.

⁴⁴³ S. Miller 10/31/17 302, at 12; McGahn 12/12/17 302, at 15; Hunt-000032 (Hunt 5/9/17 Notes).

⁴⁴⁴ McGahn 12/12/17 302, at 15; S. Miller 10/31/17 302, at 12; Dhillon 11/21/17 302, at 8, 10; Priebus 10/13/17 302, at 27; Hunt 2/1/18 302, at 14-15; Hunt-000032 (Hunt 5/9/17 Notes).

the President.⁴⁴⁵ Dhillon made a final pitch to the President that Comey should be permitted to resign, but the President refused.⁴⁴⁶

Around the time the President's letter was finalized, Priebus summoned Spicer and the press team to the Oval Office, where they were told that Comey had been terminated for the reasons stated in the letters by Rosenstein and Sessions.⁴⁴⁷ To announce Comey's termination, the White House released a statement, which Priebus thought had been dictated by the President.⁴⁴⁸ In full, the statement read: "Today, President Donald J. Trump informed FBI Director James Comey that he has been terminated and removed from office. President Trump acted based on the clear recommendations of both Deputy Attorney General Rod Rosenstein and Attorney General Jeff Sessions."⁴⁴⁹

That evening, FBI Deputy Director Andrew McCabe was summoned to meet with the President at the White House.⁴⁵⁰ The President told McCabe that he had fired Comey because of the decisions Comey had made in the Clinton email investigation and for many other reasons.⁴⁵¹ The President asked McCabe if he was aware that Comey had told the President three times that he was not under investigation.⁴⁵² The President also asked McCabe whether many people in the FBI disliked Comey and whether McCabe was part of the "resistance" that had disagreed with Comey's decisions in the Clinton investigation.⁴⁵³ McCabe told the President that he knew Comey had told the President he was not under investigation, that most people in the FBI felt positively about Comey, and that McCabe worked "very closely" with Comey and was part of all the decisions that had been made in the Clinton investigation.⁴⁵⁴

⁴⁴⁵ Dhillon 11/21/17 302, at 10; Eisenberg 11/29/17 302, at 15 (providing the view that the President's desire to include the language about not being under investigation was the "driving animus of the whole thing"); Burnham 11/3/17 302, at 16 (Burnham knew the only line the President cared about was the line that said Comey advised the President on three separate occasions that the President was not under investigation). According to Hunt's notes, the reference to Comey's statement would indicate that "notwithstanding" Comey's having informed the President that he was not under investigation, the President was terminating Comey. Hunt-000032 (Hunt 5/9/17 Notes). McGahn said he believed the President wanted the language included so that people would not think that the President had terminated Comey because the President was under investigation. McGahn 12/12/17 302, at 15.

⁴⁴⁶ McGahn 12/12/17 302, at 15; Donaldson 11/6/17 302, at 25; see SC_AD_00342 (Donaldson 5/9/17 Notes) ("Resign vs. Removal. – POTUS/removal.").

⁴⁴⁷ Spicer 10/16/17 302, at 9; McGahn 12/12/17 302, at 16.

⁴⁴⁸ Priebus 10/13/17 302, at 28.

⁴⁴⁹ *Statement of the Press Secretary*, The White House, Office of the Press Secretary (May 9, 2017).

⁴⁵⁰ McCabe 9/26/17 302, at 4; SCR025_000044 (President's Daily Diary, 5/9/17); McCabe 5/10/17 Memorandum, at 1.

⁴⁵¹ McCabe 9/26/17 302, at 5; McCabe 5/10/17 Memorandum, at 1.

⁴⁵² McCabe 9/26/17 302, at 5; McCabe 5/10/17 Memorandum, at 1-2.

⁴⁵³ McCabe 9/26/17 302, at 5; McCabe 5/10/17 Memorandum, at 1-2.

⁴⁵⁴ McCabe 9/26/17 302, at 5; McCabe 5/10/17 Memorandum, at 1-2.

Later that evening, the President told his communications team he was unhappy with the press coverage of Comey's termination and ordered them to go out and defend him.⁴⁵⁵ The President also called Chris Christie and, according to Christie, said he was getting "killed" in the press over Comey's termination.⁴⁵⁶ The President asked what he should do.⁴⁵⁷ Christie asked, "Did you fire [Comey] because of what Rod wrote in the memo?", and the President responded, "Yes."⁴⁵⁸ Christie said that the President should "get Rod out there" and have him defend the decision.⁴⁵⁹ The President told Christie that this was a "good idea" and said he was going to call Rosenstein right away.⁴⁶⁰

That night, the White House Press Office called the Department of Justice and said the White House wanted to put out a statement saying that it was Rosenstein's idea to fire Comey.⁴⁶¹ Rosenstein told other DOJ officials that he would not participate in putting out a "false story."⁴⁶² The President then called Rosenstein directly and said he was watching Fox News, that the coverage had been great, and that he wanted Rosenstein to do a press conference.⁴⁶³ Rosenstein responded that this was not a good idea because if the press asked him, he would tell the truth that Comey's firing was not his idea.⁴⁶⁴ Sessions also informed the White House Counsel's Office that evening that Rosenstein was upset that his memorandum was being portrayed as the reason for Comey's termination.⁴⁶⁵

In an unplanned press conference late in the evening of May 9, 2017, Spicer told reporters, "It was all [Rosenstein]. No one from the White House. It was a DOJ decision."⁴⁶⁶ That evening and the next morning, White House officials and spokespeople continued to maintain that the

⁴⁵⁵ Spicer 10/16/17 302, at 11; Hicks 12/8/17, at 18; Sanders 7/3/18 302, at 2.

⁴⁵⁶ Christie 2/13/19 302, at 6.

⁴⁵⁷ Christie 2/13/19 302, at 6.

⁴⁵⁸ Christie 2/13/19 302, at 6.

⁴⁵⁹ Christie 2/13/19 302, at 6.

⁴⁶⁰ Christie 2/13/19 302, at 6.

⁴⁶¹ Gauhar-000071 (Gauhar 5/16/17 Notes); Page Memorandum, at 3 (recording events of 5/16/17); McCabe 9/26/17 302, at 14.

⁴⁶² Rosenstein 5/23/17 302, at 4-5; Gauhar-000059 (Gauhar 5/16/17 Notes).

⁴⁶³ Rosenstein 5/23/17 302, at 4-5; Gauhar-000071 (Gauhar 5/16/17 Notes).

⁴⁶⁴ Gauhar-000071 (Gauhar 5/16/17 Notes). DOJ notes from the week of Comey's firing indicate that Priebus was "screaming" at the DOJ public affairs office trying to get Rosenstein to do a press conference, and the DOJ public affairs office told Priebus that Rosenstein had told the President he was not doing it. Gauhar-000071-72 (Gauhar 5/16/17 Notes).

⁴⁶⁵ McGahn 12/12/17 302, at 16-17; Donaldson 11/6/17 302, at 26-27; Dhillon 11/21/17 302, at 11.

⁴⁶⁶ Jenna Johnson, *After Trump fired Comey, White House staff scrambled to explain why*, Washington Post (May 10, 2017) (quoting Spicer).

President's decision to terminate Comey was driven by the recommendations the President received from Rosenstein and Sessions.⁴⁶⁷

In the morning on May 10, 2017, President Trump met with Russian Foreign Minister Sergey Lavrov and Russian Ambassador Sergey Kislyak in the Oval Office.⁴⁶⁸ The media subsequently reported that during the May 10 meeting the President brought up his decision the prior day to terminate Comey, telling Lavrov and Kislyak: "I just fired the head of the F.B.I. He was crazy, a real nut job. I faced great pressure because of Russia. That's taken off. . . . I'm not under investigation."⁴⁶⁹ The President never denied making those statements, and the White House did not dispute the account, instead issuing a statement that said: "By grandstanding and politicizing the investigation into Russia's actions, James Comey created unnecessary pressure on our ability to engage and negotiate with Russia. The investigation would have always continued, and obviously, the termination of Comey would not have ended it. Once again, the real story is that our national security has been undermined by the leaking of private and highly classified information."⁴⁷⁰ Hicks said that when she told the President about the reports on his meeting with Lavrov, he did not look concerned and said of Comey, "he *is* crazy."⁴⁷¹ When McGahn asked the President about his comments to Lavrov, the President said it was good that Comey was fired because that took the pressure off by making it clear that he was not under investigation so he could get more work done.⁴⁷²

That same morning, on May 10, 2017, the President called McCabe.⁴⁷³ According to a memorandum McCabe wrote following the call, the President asked McCabe to come over to the White House to discuss whether the President should visit FBI headquarters and make a speech to

⁴⁶⁷ See, e.g., Sarah Sanders, *White House Daily Briefing*, C-SPAN (May 10, 2017); SCR013_001088 (5/10/17 Email, Hemming to Cheung et al.) (internal White House email describing comments on the Comey termination by Vice President Pence).

⁴⁶⁸ SCR08_000353 (5/9/17 White House Document, "Working Visit with Foreign Minister Sergey Lavrov of Russia"); SCR08_001274 (5/10/17 Email, Ciaramella to Kelly et al.). The meeting had been planned on May 2, 2017, during a telephone call between the President and Russian President Vladimir Putin, and the meeting date was confirmed on May 5, 2017, the same day the President dictated ideas for the Comey termination letter to Stephen Miller. SCR08_001274 (5/10/17 Email, Ciaramella to Kelly et al.).

⁴⁶⁹ Matt Apuzzo et al., *Trump Told Russians That Firing "Nut Job" Comey Eased Pressure From Investigation*, New York Times (May 19, 2017).

⁴⁷⁰ SCR08_002117 (5/19/17 Email, Walters to Farhi (CBS News)); see Spicer 10/16/17 302, at 13 (noting he would have been told to "clean it up" if the reporting on the meeting with the Russian Foreign Minister was inaccurate, but he was never told to correct the reporting); Hicks 12/8/17 302, at 19 (recalling that the President never denied making the statements attributed to him in the Lavrov meeting and that the President had said similar things about Comey in an off-the-record meeting with reporters on May 18, 2017, calling Comey a "nut job" and "crazy").

⁴⁷¹ Hicks 12/8/17 302, at 19.

⁴⁷² McGahn 12/12/17 302, at 18.

⁴⁷³ SCR025_000046 (President's Daily Diary, 5/10/17); McCabe 5/10/17 Memorandum, at 1.

employees.⁴⁷⁴ The President said he had received “hundreds” of messages from FBI employees indicating their support for terminating Comey.⁴⁷⁵ The President also told McCabe that Comey should not have been permitted to travel back to Washington, D.C. on the FBI’s airplane after he had been terminated and that he did not want Comey “in the building again,” even to collect his belongings.⁴⁷⁶ When McCabe met with the President that afternoon, the President, without prompting, told McCabe that people in the FBI loved the President, estimated that at least 80% of the FBI had voted for him, and asked McCabe who he had voted for in the 2016 presidential election.⁴⁷⁷

In the afternoon of May 10, 2017, deputy press secretary Sarah Sanders spoke to the President about his decision to fire Comey and then spoke to reporters in a televised press conference.⁴⁷⁸ Sanders told reporters that the President, the Department of Justice, and bipartisan members of Congress had lost confidence in Comey, “[a]nd most importantly, the rank and file of the FBI had lost confidence in their director. Accordingly, the President accepted the recommendation of his Deputy Attorney General to remove James Comey from his position.”⁴⁷⁹ In response to questions from reporters, Sanders said that Rosenstein decided “on his own” to review Comey’s performance and that Rosenstein decided “on his own” to come to the President on Monday, May 8 to express his concerns about Comey. When a reporter indicated that the “vast majority” of FBI agents supported Comey, Sanders said, “Look, we’ve heard from countless members of the FBI that say very different things.”⁴⁸⁰ Following the press conference, Sanders spoke to the President, who told her she did a good job and did not point out any inaccuracies in her comments.⁴⁸¹ Sanders told this Office that her reference to hearing from “countless members of the FBI” was a “slip of the tongue.”⁴⁸² She also recalled that her statement in a separate press interview that rank-and-file FBI agents had lost confidence in Comey was a comment she made “in the heat of the moment” that was not founded on anything.⁴⁸³

Also on May 10, 2017, Sessions and Rosenstein each spoke to McGahn and expressed concern that the White House was creating a narrative that Rosenstein had initiated the decision to

⁴⁷⁴ McCabe 5/10/17 Memorandum, at 1.

⁴⁷⁵ McCabe 5/10/17 Memorandum, at 1.

⁴⁷⁶ McCabe 5/10/17 Memorandum, at 1; Rybicki 6/13/17 302, at 2. Comey had been visiting the FBI’s Los Angeles office when he found out he had been terminated. Comey 11/15/17 302, at 22.

⁴⁷⁷ McCabe 5/10/17 Memorandum, at 1-2. McCabe’s memorandum documenting his meeting with the President is consistent with notes taken by the White House Counsel’s Office. See SC_AD_00347 (Donaldson 5/10/17 Notes).

⁴⁷⁸ Sanders 7/3/18 302, at 4; Sarah Sanders, *White House Daily Briefing*, C-SPAN (May 10, 2017).

⁴⁷⁹ Sarah Sanders, *White House Daily Briefing*, C-SPAN (May 10, 2017); Sanders 7/3/18 302, at 4.

⁴⁸⁰ Sarah Sanders, *White House Daily Briefing*, C-SPAN (May 10, 2017).

⁴⁸¹ Sanders 7/3/18 302, at 4.

⁴⁸² Sanders 7/3/18 302, at 4.

⁴⁸³ Sanders 7/3/18 302, at 3.

fire Comey.⁴⁸⁴ The White House Counsel's Office agreed that it was factually wrong to say that the Department of Justice had initiated Comey's termination,⁴⁸⁵ and McGahn asked attorneys in the White House Counsel's Office to work with the press office to correct the narrative.⁴⁸⁶

The next day, on May 11, 2017, the President participated in an interview with Lester Holt. The President told White House Counsel's Office attorneys in advance of the interview that the communications team could not get the story right, so he was going on Lester Holt to say what really happened.⁴⁸⁷ During the interview, the President stated that he had made the decision to fire Comey before the President met with Rosenstein and Sessions. The President told Holt, "I was going to fire regardless of recommendation . . . [Rosenstein] made a recommendation. But regardless of recommendation, I was going to fire Comey knowing there was no good time to do it."⁴⁸⁸ The President continued, "And in fact, when I decided to just do it, I said to myself—I said, you know, this Russia thing with Trump and Russia is a made-up story. It's an excuse by the Democrats for having lost an election that they should've won."⁴⁸⁹

In response to a question about whether he was angry with Comey about the Russia investigation, the President said, "As far as I'm concerned, I want that thing to be absolutely done properly."⁴⁹⁰ The President added that he realized his termination of Comey "probably maybe will confuse people" with the result that it "might even lengthen out the investigation," but he "ha[d] to do the right thing for the American people" and Comey was "the wrong man for that position."⁴⁹¹ The President described Comey as "a showboat" and "a grandstander," said that "[t]he FBI has been in turmoil," and said he wanted "to have a really competent, capable director."⁴⁹² The President affirmed that he expected the new FBI director to continue the Russia investigation.⁴⁹³

On the evening of May 11, 2017, following the Lester Holt interview, the President tweeted, "Russia must be laughing up their sleeves watching as the U.S. tears itself apart over a Democrat EXCUSE for losing the election."⁴⁹⁴ The same day, the media reported that the President had demanded that Comey pledge his loyalty to the President in a private dinner shortly

⁴⁸⁴ McGahn 12/12/17 302, at 16-17; Donaldson 11/6/17 302, at 26; *see* Dhillon 11/21/17 302, at 11.

⁴⁸⁵ Donaldson 11/6/17 302, at 27.

⁴⁸⁶ McGahn 12/12/17 302, at 17.

⁴⁸⁷ Dhillon 11/21/17 302, at 11.

⁴⁸⁸ *Interview with President Donald Trump*, NBC (May 11, 2017) Transcript, at 2.

⁴⁸⁹ *Interview with President Donald Trump*, NBC (May 11, 2017) Transcript, at 2.

⁴⁹⁰ *Interview with President Donald Trump*, NBC (May 11, 2017) Transcript, at 3.

⁴⁹¹ *Interview with President Donald Trump*, NBC (May 11, 2017) Transcript, at 3.

⁴⁹² *Interview with President Donald Trump*, NBC (May 11, 2017) Transcript, at 1, 5.

⁴⁹³ *Interview with President Donald Trump*, NBC (May 11, 2017) Transcript, at 7.

⁴⁹⁴ @realDonaldTrump 5/11/17 (4:34 p.m. ET) Tweet.

after being sworn in.⁴⁹⁵ Late in the morning of May 12, 2017, the President tweeted, “Again, the story that there was collusion between the Russians & Trump campaign was fabricated by Dems as an excuse for losing the election.”⁴⁹⁶ The President also tweeted, “James Comey better hope that there are no ‘tapes’ of our conversations before he starts leaking to the press!” and “When James Clapper himself, and virtually everyone else with knowledge of the witch hunt, says there is no collusion, when does it end?”⁴⁹⁷

Analysis

In analyzing the President’s decision to fire Comey, the following evidence is relevant to the elements of obstruction of justice:

a. Obstructive act. The act of firing Comey removed the individual overseeing the FBI’s Russia investigation. The President knew that Comey was personally involved in the investigation based on Comey’s briefing of the Gang of Eight, Comey’s March 20, 2017 public testimony about the investigation, and the President’s one-on-one conversations with Comey.

Firing Comey would qualify as an obstructive act if it had the natural and probable effect of interfering with or impeding the investigation—for example, if the termination would have the effect of delaying or disrupting the investigation or providing the President with the opportunity to appoint a director who would take a different approach to the investigation that the President perceived as more protective of his personal interests. Relevant circumstances bearing on that issue include whether the President’s actions had the potential to discourage a successor director or other law enforcement officials in their conduct of the Russia investigation. The President fired Comey abruptly without offering him an opportunity to resign, banned him from the FBI building, and criticized him publicly, calling him a “showboat” and claiming that the FBI was “in turmoil” under his leadership. And the President followed the termination with public statements that were highly critical of the investigation; for example, three days after firing Comey, the President referred to the investigation as a “witch hunt” and asked, “when does it end?” Those actions had the potential to affect a successor director’s conduct of the investigation.

The anticipated effect of removing the FBI director, however, would not necessarily be to prevent or impede the FBI from continuing its investigation. As a general matter, FBI investigations run under the operational direction of FBI personnel levels below the FBI director. Bannon made a similar point when he told the President that he could fire the FBI director, but could not fire the FBI. The White House issued a press statement the day after Comey was fired that said, “The investigation would have always continued, and obviously, the termination of Comey would not have ended it.” In addition, in his May 11 interview with Lester Holt, the President stated that he understood when he made the decision to fire Comey that the action might prolong the investigation. And the President chose McCabe to serve as interim director, even

⁴⁹⁵ Michael S. Schmidt, *In a Private Dinner, Trump Demanded Loyalty. Comey Demurred.*, New York Times (May 11, 2017).

⁴⁹⁶ @realDonaldTrump 5/12/17 (7:51 a.m. ET) Tweet.

⁴⁹⁷ @realDonaldTrump 5/12/17 (8:26 a.m. ET) Tweet; @realDonaldTrump 5/12/17 (8:54 a.m. ET) Tweet.

though McCabe told the President he had worked “very closely” with Comey and was part of all the decisions made in the Clinton investigation.

b. Nexus to a proceeding. The nexus element would be satisfied by evidence showing that a grand jury proceeding or criminal prosecution arising from an FBI investigation was objectively foreseeable and actually contemplated by the President when he terminated Comey.

Several facts would be relevant to such a showing. At the time the President fired Comey, a grand jury had not begun to hear evidence related to the Russia investigation and no grand jury subpoenas had been issued. On March 20, 2017, however, Comey had announced that the FBI was investigating Russia’s interference in the election, including “an assessment of whether any crimes were committed.” It was widely known that the FBI, as part of the Russia investigation, was investigating the hacking of the DNC’s computers—a clear criminal offense.

In addition, at the time the President fired Comey, evidence indicates the President knew that Flynn was still under criminal investigation and could potentially be prosecuted, despite the President’s February 14, 2017 request that Comey “let[] Flynn go.” On March 5, 2017, the White House Counsel’s Office was informed that the FBI was asking for transition-period records relating to Flynn—indicating that the FBI was still actively investigating him. The same day, the President told advisors he wanted to call Dana Boente, then the Acting Attorney General for the Russia investigation, to find out whether the White House or the President was being investigated. On March 31, 2017, the President signaled his awareness that Flynn remained in legal jeopardy by tweeting that “Mike Flynn should ask for immunity” before he agreed to provide testimony to the FBI or Congress. And in late March or early April, the President asked McFarland to pass a message to Flynn telling him that the President felt bad for him and that he should stay strong, further demonstrating the President’s awareness of Flynn’s criminal exposure.

c. Intent. Substantial evidence indicates that the catalyst for the President’s decision to fire Comey was Comey’s unwillingness to publicly state that the President was not personally under investigation, despite the President’s repeated requests that Comey make such an announcement. In the week leading up to Comey’s May 3, 2017 Senate Judiciary Committee testimony, the President told McGahn that it would be the last straw if Comey did not set the record straight and publicly announce that the President was not under investigation. But during his May 3 testimony, Comey refused to answer questions about whether the President was being investigated. Comey’s refusal angered the President, who criticized Sessions for leaving him isolated and exposed, saying “You left me on an island.” Two days later, the President told advisors he had decided to fire Comey and dictated a letter to Stephen Miller that began with a reference to the fact that the President was not being investigated: “While I greatly appreciate you informing me that I am not under investigation concerning what I have often stated is a fabricated story on a Trump-Russia relationship” The President later asked Rosenstein to include “Russia” in his memorandum and to say that Comey had told the President that he was not under investigation. And the President’s final termination letter included a sentence, at the President’s insistence and against McGahn’s advice, stating that Comey had told the President on three separate occasions that he was not under investigation.

The President’s other stated rationales for why he fired Comey are not similarly supported by the evidence. The termination letter the President and Stephen Miller prepared in Bedminster

cited Comey's handling of the Clinton email investigation, and the President told McCabe he fired Comey for that reason. But the facts surrounding Comey's handling of the Clinton email investigation were well known to the President at the time he assumed office, and the President had made it clear to both Comey and the President's senior staff in early 2017 that he wanted Comey to stay on as director. And Rosenstein articulated his criticism of Comey's handling of the Clinton investigation after the President had already decided to fire Comey. The President's draft termination letter also stated that morale in the FBI was at an all-time low and Sanders told the press after Comey's termination that the White House had heard from "countless" FBI agents who had lost confidence in Comey. But the evidence does not support those claims. The President told Comey at their January 27 dinner that "the people of the FBI really like [him]," no evidence suggests that the President heard otherwise before deciding to terminate Comey, and Sanders acknowledged to investigators that her comments were not founded on anything.

We also considered why it was important to the President that Comey announce publicly that he was not under investigation. Some evidence indicates that the President believed that the erroneous perception he was under investigation harmed his ability to manage domestic and foreign affairs, particularly in dealings with Russia. The President told Comey that the "cloud" of "this Russia business" was making it difficult to run the country. The President told Sessions and McGahn that foreign leaders had expressed sympathy to him for being under investigation and that the perception he was under investigation was hurting his ability to address foreign relations issues. The President complained to Rogers that "the thing with the Russians [was] messing up" his ability to get things done with Russia, and told Coats, "I can't do anything with Russia, there's things I'd like to do with Russia, with trade, with ISIS, they're all over me with this." The President also may have viewed Comey as insubordinate for his failure to make clear in the May 3 testimony that the President was not under investigation.

Other evidence, however, indicates that the President wanted to protect himself from an investigation into his campaign. The day after learning about the FBI's interview of Flynn, the President had a one-on-one dinner with Comey, against the advice of senior aides, and told Comey he needed Comey's "loyalty." When the President later asked Comey for a second time to make public that he was not under investigation, he brought up loyalty again, saying "Because I have been very loyal to you, very loyal, we had that thing, you know." After the President learned of Sessions's recusal from the Russia investigation, the President was furious and said he wanted an Attorney General who would protect him the way he perceived Robert Kennedy and Eric Holder to have protected their presidents. The President also said he wanted to be able to tell his Attorney General "who to investigate."

In addition, the President had a motive to put the FBI's Russia investigation behind him. The evidence does not establish that the termination of Comey was designed to cover up a conspiracy between the Trump Campaign and Russia: As described in Volume I, the evidence uncovered in the investigation did not establish that the President or those close to him were involved in the charged Russian computer-hacking or active-measure conspiracies, or that the President otherwise had an unlawful relationship with any Russian official. But the evidence does indicate that a thorough FBI investigation would uncover facts about the campaign and the President personally that the President could have understood to be crimes or that would give rise to personal and political concerns. Although the President publicly stated during and after the election that he had no connection to Russia, the Trump Organization, through Michael Cohen,

was pursuing the proposed Trump Tower Moscow project through June 2016 and candidate Trump was repeatedly briefed on the progress of those efforts.⁴⁹⁸ In addition, some witnesses said that Trump was aware that **Harm to Ongoing Matter**

at a time when public reports stated that Russian intelligence officials were behind the hacks, and that Trump privately sought information about future WikiLeaks releases.⁴⁹⁹ More broadly, multiple witnesses described the President's preoccupation with press coverage of the Russia investigation and his persistent concern that it raised questions about the legitimacy of his election.⁵⁰⁰

Finally, the President and White House aides initially advanced a pretextual reason to the press and the public for Comey's termination. In the immediate aftermath of the firing, the President dictated a press statement suggesting that he had acted based on the DOJ recommendations, and White House press officials repeated that story. But the President had decided to fire Comey before the White House solicited those recommendations. Although the President ultimately acknowledged that he was going to fire Comey regardless of the Department of Justice's recommendations, he did so only after DOJ officials made clear to him that they would resist the White House's suggestion that they had prompted the process that led to Comey's termination. The initial reliance on a pretextual justification could support an inference that the President had concerns about providing the real reason for the firing, although the evidence does not resolve whether those concerns were personal, political, or both.

E. The President's Efforts to Remove the Special Counsel

Overview

The Acting Attorney General appointed a Special Counsel on May 17, 2017, prompting the President to state that it was the end of his presidency and that Attorney General Sessions had failed to protect him and should resign. Sessions submitted his resignation, which the President ultimately did not accept. The President told senior advisors that the Special Counsel had conflicts of interest, but they responded that those claims were "ridiculous" and posed no obstacle to the Special Counsel's service. Department of Justice ethics officials similarly cleared the Special Counsel's service. On June 14, 2017, the press reported that the President was being personally investigated for obstruction of justice and the President responded with a series of tweets

⁴⁹⁸ See Volume II, Section II.K.1, *infra*.

⁴⁹⁹ See Volume I, Section III.D.1, *supra*.

⁵⁰⁰ In addition to whether the President had a motive related to Russia-related matters that an FBI investigation could uncover, we considered whether the President's intent in firing Comey was connected to other conduct that could come to light as a result of the FBI's Russian-interference investigation. In particular, Michael Cohen was a potential subject of investigation because of his pursuit of the Trump Tower Moscow project and involvement in other activities. And facts uncovered in the Russia investigation, which our Office referred to the U.S. Attorney's Office for the Southern District of New York, ultimately led to the conviction of Cohen in the Southern District of New York for campaign-finance offenses related to payments he said he made at the direction of the President. See Volume II, Section II.K.5, *infra*. The investigation, however, did not establish that when the President fired Comey, he was considering the possibility that the FBI's investigation would uncover these payments or that the President's intent in firing Comey was otherwise connected to a concern about these matters coming to light.

criticizing the Special Counsel's investigation. That weekend, the President called McGahn and directed him to have the Special Counsel removed because of asserted conflicts of interest. McGahn did not carry out the instruction for fear of being seen as triggering another Saturday Night Massacre and instead prepared to resign. McGahn ultimately did not quit and the President did not follow up with McGahn on his request to have the Special Counsel removed.

Evidence

1. The Appointment of the Special Counsel and the President's Reaction

On May 17, 2017, Acting Attorney General Rosenstein appointed Robert S. Mueller, III as Special Counsel and authorized him to conduct the Russia investigation and matters that arose from the investigation.⁵⁰¹ The President learned of the Special Counsel's appointment from Sessions, who was with the President, Hunt, and McGahn conducting interviews for a new FBI Director.⁵⁰² Sessions stepped out of the Oval Office to take a call from Rosenstein, who told him about the Special Counsel appointment, and Sessions then returned to inform the President of the news.⁵⁰³ According to notes written by Hunt, when Sessions told the President that a Special Counsel had been appointed, the President slumped back in his chair and said, "Oh my God. This is terrible. This is the end of my Presidency. I'm fucked."⁵⁰⁴ The President became angry and lambasted the Attorney General for his decision to recuse from the investigation, stating, "How could you let this happen, Jeff?"⁵⁰⁵ The President said the position of Attorney General was his most important appointment and that Sessions had "let [him] down," contrasting him to Eric Holder and Robert Kennedy.⁵⁰⁶ Sessions recalled that the President said to him, "you were supposed to protect me," or words to that effect.⁵⁰⁷ The President returned to the consequences of the appointment and said, "Everyone tells me if you get one of these independent counsels it ruins your presidency. It takes years and years and I won't be able to do anything. This is the worst thing that ever happened to me."⁵⁰⁸

⁵⁰¹ Office of the Deputy Attorney General, Order No. 3915-2017, *Appointment of Special Counsel to Investigate Russian Interference with the 2016 Presidential Election and Related Matters* (May 17, 2017).

⁵⁰² Sessions 1/17/18 302, at 13; Hunt 2/1/18 302, at 18; McGahn 12/14/17 302, at 4; Hunt-000039 (Hunt 5/17/17 Notes).

⁵⁰³ Sessions 1/17/18 302, at 13; Hunt 2/1/18 302, at 18; McGahn 12/14/17 302, at 4; Hunt-000039 (Hunt 5/17/17 Notes).

⁵⁰⁴ Hunt-000039 (Hunt 5/17/17 Notes).

⁵⁰⁵ Hunt-000039 (Hunt 5/17/17 Notes); Sessions 1/17/18 302, at 13-14.

⁵⁰⁶ Hunt-000040; *see* Sessions 1/17/18 302, at 14.

⁵⁰⁷ Sessions 1/17/18 302, at 14.

⁵⁰⁸ Hunt-000040 (Hunt 5/17/17 Notes); *see* Sessions 1/17/18 302, at 14. Early the next morning, the President tweeted, "This is the single greatest witch hunt of a politician in American history!" @realDonaldTrump 5/18/17 (7:52 a.m. ET) Tweet.

The President then told Sessions he should resign as Attorney General.⁵⁰⁹ Sessions agreed to submit his resignation and left the Oval Office.⁵¹⁰ Hicks saw the President shortly after Sessions departed and described the President as being extremely upset by the Special Counsel's appointment.⁵¹¹ Hicks said that she had only seen the President like that one other time, when the Access Hollywood tape came out during the campaign.⁵¹²

The next day, May 18, 2017, FBI agents delivered to McGahn a preservation notice that discussed an investigation related to Comey's termination and directed the White House to preserve all relevant documents.⁵¹³ When he received the letter, McGahn issued a document hold to White House staff and instructed them not to send out any burn bags over the weekend while he sorted things out.⁵¹⁴

Also on May 18, Sessions finalized a resignation letter that stated, "Pursuant to our conversation of yesterday, and at your request, I hereby offer my resignation."⁵¹⁵ Sessions, accompanied by Hunt, brought the letter to the White House and handed it to the President.⁵¹⁶ The President put the resignation letter in his pocket and asked Sessions several times whether he wanted to continue serving as Attorney General.⁵¹⁷ Sessions ultimately told the President he wanted to stay, but it was up to the President.⁵¹⁸ The President said he wanted Sessions to stay.⁵¹⁹ At the conclusion of the meeting, the President shook Sessions's hand but did not return the resignation letter.⁵²⁰

When Priebus and Bannon learned that the President was holding onto Sessions's resignation letter, they became concerned that it could be used to influence the Department of Justice.⁵²¹ Priebus told Sessions it was not good for the President to have the letter because it

⁵⁰⁹ Hunt-000041 (Hunt 5/17/17 Notes); Sessions 1/17/18 302, at 14.

⁵¹⁰ Hunt-000041 (Hunt 5/17/17 Notes); Sessions 1/17/18 302, at 14.

⁵¹¹ Hicks 12/8/17 302, at 21.

⁵¹² Hicks 12/8/17 302, at 21. The Access Hollywood tape was released on October 7, 2016, as discussed in Volume I, Section III.D.1, *supra*.

⁵¹³ McGahn 12/14/17 302, at 9; SCR015_000175-82 (Undated Draft Memoranda to White House Staff).

⁵¹⁴ McGahn 12/14/17 302, at 9; SCR015_000175-82 (Undated Draft Memoranda to White House Staff). The White House Counsel's Office had previously issued a document hold on February 27, 2017, SCR015_000171 (2/17/17 Memorandum from McGahn to Executive Office of the President Staff).

⁵¹⁵ Hunt-000047 (Hunt 5/18/17 Notes); 5/18/17 Letter, Sessions to President Trump (resigning as Attorney General).

⁵¹⁶ Hunt-000047-49 (Hunt 5/18/17 Notes); Sessions 1/17/18 302, at 14.

⁵¹⁷ Hunt-000047-49 (Hunt 5/18/17 Notes); Sessions 1/17/18 302, at 14.

⁵¹⁸ Hunt-000048-49 (Hunt 5/18/17 Notes); Sessions 1/17/18 302, at 14.

⁵¹⁹ Sessions 1/17/18 302, at 14.

⁵²⁰ Hunt-000049 (Hunt 5/18/17 Notes).

⁵²¹ Hunt-000050-51 (Hunt 5/18/17 Notes).

would function as a kind of “shock collar” that the President could use any time he wanted; Priebus said the President had “DOJ by the throat.”⁵²² Priebus and Bannon told Sessions they would attempt to get the letter back from the President with a notation that he was not accepting Sessions’s resignation.⁵²³

On May 19, 2017, the President left for a trip to the Middle East.⁵²⁴ Hicks recalled that on the President’s flight from Saudi Arabia to Tel Aviv, the President pulled Sessions’s resignation letter from his pocket, showed it to a group of senior advisors, and asked them what he should do about it.⁵²⁵ During the trip, Priebus asked about the resignation letter so he could return it to Sessions, but the President told him that the letter was back at the White House, somewhere in the residence.⁵²⁶ It was not until May 30, three days after the President returned from the trip, that the President returned the letter to Sessions with a notation saying, “Not accepted.”⁵²⁷

2. The President Asserts that the Special Counsel has Conflicts of Interest

In the days following the Special Counsel’s appointment, the President repeatedly told advisors, including Priebus, Bannon, and McGahn, that Special Counsel Mueller had conflicts of interest.⁵²⁸ The President cited as conflicts that Mueller had interviewed for the FBI Director position shortly before being appointed as Special Counsel, that he had worked for a law firm that represented people affiliated with the President, and that Mueller had disputed certain fees relating to his membership in a Trump golf course in Northern Virginia.⁵²⁹ The President’s advisors pushed

⁵²² Hunt-000050 (Hunt 5/18/17 Notes); Priebus 10/13/17 302, at 21; Hunt 2/1/18 302, at 21.

⁵²³ Hunt-000051 (Hunt 5/18/17 Notes).

⁵²⁴ SCR026_000110 (President’s Daily Diary, 5/19/17).

⁵²⁵ Hicks 12/8/17 302, at 22.

⁵²⁶ Priebus 10/13/17 302, at 21. Hunt’s notes state that when Priebus returned from the trip, Priebus told Hunt that the President was supposed to have given him the letter, but when he asked for it, the President “slapped the desk” and said he had forgotten it back at the hotel. Hunt-000052 (Hunt Notes, undated).

⁵²⁷ Hunt-000052-53 (Hunt 5/30/17 Notes); 5/18/17 Letter, Sessions to President Trump (resignation letter). Robert Porter, who was the White House Staff Secretary at the time, said that in the days after the President returned from the Middle East trip, the President took Sessions’s letter out of a drawer in the Oval Office and showed it to Porter. Porter 4/13/18 302, at 8. **Personal Privacy**

⁵²⁸ Priebus 1/18/18 302, at 12; Bannon 2/14/18 302, at 10; McGahn 3/8/18 302, at 1; McGahn 12/14/17 302, at 10; Bannon 10/26/18 302, at 12.

⁵²⁹ Priebus 1/18/18 302, at 12; Bannon 2/14/18 302, at 10. In October 2011, Mueller resigned his family’s membership from Trump National Golf Club in Sterling, Virginia, in a letter that noted that “we live in the District and find that we are unable to make full use of the Club” and that inquired “whether we would be entitled to a refund of a portion of our initial membership fee,” which was paid in 1994. 10/12/11 Letter, Muellers to Trump National Golf Club. About two weeks later, the controller of the club responded that the Muellers’ resignation would be effective October 31, 2011, and that they would be “placed on a waitlist to be refunded on a first resigned / first refunded basis” in accordance with the club’s legal

back on his assertion of conflicts, telling the President they did not count as true conflicts.⁵³⁰ Bannon recalled telling the President that the purported conflicts were “ridiculous” and that none of them was real or could come close to justifying precluding Mueller from serving as Special Counsel.⁵³¹ As for Mueller’s interview for FBI Director, Bannon recalled that the White House had invited Mueller to speak to the President to offer a perspective on the institution of the FBI.⁵³² Bannon said that, although the White House thought about beseeching Mueller to become Director again, he did not come in looking for the job.⁵³³ Bannon also told the President that the law firm position did not amount to a conflict in the legal community.⁵³⁴ And Bannon told the President that the golf course dispute did not rise to the level of a conflict and claiming one was “ridiculous and petty.”⁵³⁵ The President did not respond when Bannon pushed back on the stated conflicts of interest.⁵³⁶

On May 23, 2017, the Department of Justice announced that ethics officials had determined that the Special Counsel’s prior law firm position did not bar his service, generating media reports that Mueller had been cleared to serve.⁵³⁷ McGahn recalled that around the same time, the President complained about the asserted conflicts and prodded McGahn to reach out to Rosenstein about the issue.⁵³⁸ McGahn said he responded that he could not make such a call and that the President should instead consult his personal lawyer because it was not a White House issue.⁵³⁹ Contemporaneous notes of a May 23, 2017 conversation between McGahn and the President reflect that McGahn told the President that he would not call Rosenstein and that he would suggest that the President not make such a call either.⁵⁴⁰ McGahn advised that the President could discuss the issue with his personal attorney but it would “look like still trying to meddle in [the] investigation” and “knocking out Mueller” would be “[a]nother fact used to claim obst[ruction] of

documents. 10/27/11 Letter, Muellers to Trump National Golf Club. The Muellers have not had further contact with the club.

⁵³⁰ Priebus 4/3/18 302, at 3; Bannon 10/26/18 302, at 13 (confirming that he, Priebus, and McGahn pushed back on the asserted conflicts).

⁵³¹ Bannon 10/26/18 302, at 12-13.

⁵³² Bannon 10/26/18 302, at 12.

⁵³³ Bannon 10/26/18 302, at 12.

⁵³⁴ Bannon 10/26/18 302, at 12.

⁵³⁵ Bannon 10/26/18 302, at 13.

⁵³⁶ Bannon 10/26/18 302, at 12.

⁵³⁷ Matt Zapposky & Matea Gold, *Justice Department ethics experts clear Mueller to lead Russia probe*, Washington Post (May 23, 2017).

⁵³⁸ McGahn 3/8/18 302, at 1; McGahn 12/14/17 302, at 10; Priebus 1/18/18 302, at 12.

⁵³⁹ McGahn 3/8/18 302, at 1. McGahn and Donaldson said that after the appointment of the Special Counsel, they considered themselves potential fact witnesses and accordingly told the President that inquiries related to the investigation should be brought to his personal counsel. McGahn 12/14/17 302, at 7; Donaldson 4/2/18 302, at 5.

⁵⁴⁰ SC_AD_00361 (Donaldson 5/31/17 Notes).

just[ice].”⁵⁴¹ McGahn told the President that his “biggest exposure” was not his act of firing Comey but his “other contacts” and “calls,” and his “ask re: Flynn.”⁵⁴² By the time McGahn provided this advice to the President, there had been widespread reporting on the President’s request for Comey’s loyalty, which the President publicly denied; his request that Comey “let[] Flynn go,” which the President also denied; and the President’s statement to the Russian Foreign Minister that the termination of Comey had relieved “great pressure” related to Russia, which the President did not deny.⁵⁴³

On June 8, 2017, Comey testified before Congress about his interactions with the President before his termination, including the request for loyalty, the request that Comey “let[] Flynn go,” and the request that Comey “lift the cloud” over the presidency caused by the ongoing investigation.⁵⁴⁴ Comey’s testimony led to a series of news reports about whether the President had obstructed justice.⁵⁴⁵ On June 9, 2017, the Special Counsel’s Office informed the White House Counsel’s Office that investigators intended to interview intelligence community officials who had allegedly been asked by the President to push back against the Russia investigation.⁵⁴⁶

On Monday, June 12, 2017, Christopher Ruddy, the chief executive of Newsmax Media and a longtime friend of the President’s, met at the White House with Priebus and Bannon.⁵⁴⁷ Ruddy recalled that they told him the President was strongly considering firing the Special Counsel

⁵⁴¹ SC_AD_00361 (Donaldson 5/31/17 Notes).

⁵⁴² SC_AD_00361 (Donaldson 5/31/17 Notes).

⁵⁴³ See, e.g., Michael S. Schmidt, *In a Private Dinner, Trump Demanded Loyalty. Comey Demurred*, New York Times (May 11, 2017); Michael S. Schmidt, *Comey Memorandum Says Trump Asked Him to End Flynn Investigation*, New York Times (May 16, 2017); Matt Apuzzo et al., *Trump Told Russians That Firing ‘Nut Job’ Comey Eased Pressure From Investigation*, New York Times (May 19, 2017).

⁵⁴⁴ *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 5-6). Comey testified that he deliberately caused his memorandum documenting the February 14, 2017 meeting to be leaked to the New York Times in response to a tweet from the President, sent on May 12, 2017, that stated “James Comey better hope that there are no ‘tapes’ of our conversations before he starts leaking to the press!” and because he thought sharing the memorandum with a reporter “might prompt the appointment of a special counsel.” *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (CQ Cong. Transcripts, at 55) (testimony by James B. Comey, former Director of the FBI).

⁵⁴⁵ See, e.g., Matt Zapotosky, *Comey lays out the case that Trump obstructed justice*, Washington Post (June 8, 2017) (“Legal analysts said Comey’s testimony clarified and bolstered the case that the president obstructed justice.”).

⁵⁴⁶ 6/9/17 Email, Special Counsel’s Office to the White House Counsel’s Office. This Office made the notification to give the White House an opportunity to invoke executive privilege in advance of the interviews. On June 12, 2017, the Special Counsel’s Office interviewed Admiral Rogers in the presence of agency counsel. Rogers 6/12/17 302, at 1. On June 13, the Special Counsel’s Office interviewed Ledgett. Ledgett 6/13/17 302, at 1. On June 14, the Office interviewed Coats and other personnel from his office. Coats 6/14/17 302, at 1; Gistaro 6/14/17 302, at 1; Culver 6/14/17 302, at 1.

⁵⁴⁷ Ruddy 6/6/18 302, at 5.

and that he would do so precipitously, without vetting the decision through Administration officials.⁵⁴⁸ Ruddy asked Priebus if Ruddy could talk publicly about the discussion they had about the Special Counsel, and Priebus said he could.⁵⁴⁹ Priebus told Ruddy he hoped another blow up like the one that followed the termination of Comey did not happen.⁵⁵⁰ Later that day, Ruddy stated in a televised interview that the President was “considering perhaps terminating the Special Counsel” based on purported conflicts of interest.⁵⁵¹ Ruddy later told another news outlet that “Trump is definitely considering” terminating the Special Counsel and “it’s not something that’s being dismissed.”⁵⁵² Ruddy’s comments led to extensive coverage in the media that the President was considering firing the Special Counsel.⁵⁵³

White House officials were unhappy with that press coverage and Ruddy heard from friends that the President was upset with him.⁵⁵⁴ On June 13, 2017, Sanders asked the President for guidance on how to respond to press inquiries about the possible firing of the Special Counsel.⁵⁵⁵ The President dictated an answer, which Sanders delivered, saying that “[w]hile the president has every right to” fire the Special Counsel, “he has no intention to do so.”⁵⁵⁶

Also on June 13, 2017, the President’s personal counsel contacted the Special Counsel’s Office and raised concerns about possible conflicts.⁵⁵⁷ The President’s counsel cited Mueller’s previous partnership in his law firm, his interview for the FBI Director position, and an asserted personal relationship he had with Comey.⁵⁵⁸ That same day, Rosenstein had testified publicly before Congress and said he saw no evidence of good cause to terminate the Special Counsel, including for conflicts of interest.⁵⁵⁹ Two days later, on June 15, 2017, the Special Counsel’s

⁵⁴⁸ Ruddy 6/6/18 302, at 5-6.

⁵⁴⁹ Ruddy 6/6/18 302, at 6.

⁵⁵⁰ Ruddy 6/6/18 302, at 6.

⁵⁵¹ *Trump Confidant Christopher Ruddy says Mueller has “real conflicts” as special counsel*, PBS (June 12, 2017); Michael D. Shear & Maggie Haberman, *Friend Says Trump Is Considering Firing Mueller as Special Counsel*, New York Times (June 12, 2017).

⁵⁵² Katherine Faulders & Veronica Stracqualursi, *Trump friend Chris Ruddy says Spicer’s ‘bizarre’ statement doesn’t deny claim Trump seeking Mueller firing*, ABC (June 13, 2017).

⁵⁵³ See, e.g., Michael D. Shear & Maggie Haberman, *Friend Says Trump Is Considering Firing Mueller as Special Counsel*, New York Times (June 12, 2017).

⁵⁵⁴ Ruddy 6/6/18 302, at 6-7.

⁵⁵⁵ Sanders 7/3/18 302, at 6-7.

⁵⁵⁶ Glenn Thrush et al., *Trump Stews, Staff Steps In, and Mueller Is Safe for Now*, New York Times (June 13, 2017); see Sanders 7/3/18 302, at 6 (Sanders spoke with the President directly before speaking to the press on Air Force One and the answer she gave is the answer the President told her to give).

⁵⁵⁷ Special Counsel’s Office Attorney 6/13/17 Notes.

⁵⁵⁸ Special Counsel’s Office Attorney 6/13/17 Notes.

⁵⁵⁹ *Hearing on Fiscal 2018 Justice Department Budget before the Senate Appropriations Subcommittee on Commerce, Justice, and Science*, 115th Cong. (June 13, 2017) (CQ Cong. Transcripts, at 14) (testimony by Rod Rosenstein, Deputy Attorney General).

Office informed the Acting Attorney General's office about the areas of concern raised by the President's counsel and told the President's counsel that their concerns had been communicated to Rosenstein so that the Department of Justice could take any appropriate action.⁵⁶⁰

3. The Press Reports that the President is Being Investigated for Obstruction of Justice and the President Directs the White House Counsel to Have the Special Counsel Removed

On the evening of June 14, 2017, the Washington Post published an article stating that the Special Counsel was investigating whether the President had attempted to obstruct justice.⁵⁶¹ This was the first public report that the President himself was under investigation by the Special Counsel's Office, and cable news networks quickly picked up on the report.⁵⁶² The Post story stated that the Special Counsel was interviewing intelligence community leaders, including Coats and Rogers, about what the President had asked them to do in response to Comey's March 20, 2017 testimony; that the inquiry into obstruction marked "a major turning point" in the investigation; and that while "Trump had received private assurances from then-FBI Director James B. Comey starting in January that he was not personally under investigation," "[o]fficials say that changed shortly after Comey's firing."⁵⁶³ That evening, at approximately 10:31 p.m., the President called McGahn on McGahn's personal cell phone and they spoke for about 15 minutes.⁵⁶⁴ McGahn did not have a clear memory of the call but thought they might have discussed the stories reporting that the President was under investigation.⁵⁶⁵

Beginning early the next day, June 15, 2017, the President issued a series of tweets acknowledging the existence of the obstruction investigation and criticizing it. He wrote: "They made up a phony collusion with the Russians story, found zero proof, so now they go for obstruction of justice on the phony story. Nice";⁵⁶⁶ "You are witnessing the single greatest WITCH HUNT in American political history—led by some very bad and conflicted people!";⁵⁶⁷ and "Crooked H destroyed phones w/ hammer, 'bleached' emails, & had husband meet w/AG days

⁵⁶⁰ Special Counsel's Office Attorney 6/15/17 Notes.

⁵⁶¹ Devlin Barrett et al., *Special counsel is investigating Trump for possible obstruction of justice, officials say*, Washington Post (June 14, 2017).

⁵⁶² CNN, for example, began running a chyron at 6:55 p.m. that stated: "WASH POST: MUELLER INVESTIGATING TRUMP FOR OBSTRUCTION OF JUSTICE." CNN, (June 14, 2017, published online at 7:15 p.m. ET).

⁵⁶³ Devlin Barrett et al., *Special counsel is investigating Trump for possible obstruction of justice, officials say*, Washington Post (June 14, 2017).

⁵⁶⁴ SCR026_000183 (President's Daily Diary, 6/14/17) (reflecting call from the President to McGahn on 6/14/17 with start time 10:31 p.m. and end time 10:46 p.m.); Call Records of Don McGahn.

⁵⁶⁵ McGahn 2/28/19 302, at 1-2. McGahn thought he and the President also probably talked about the investiture ceremony for Supreme Court Justice Neil Gorsuch, which was scheduled for the following day. McGahn 2/28/18 302, at 2.

⁵⁶⁶ @realDonaldTrump 6/15/17 (6:55 a.m. ET) Tweet.

⁵⁶⁷ @realDonaldTrump 6/15/17 (7:57 a.m. ET) Tweet.

before she was cleared—& they talk about obstruction?”⁵⁶⁸ The next day, June 16, 2017, the President wrote additional tweets criticizing the investigation: “After 7 months of investigations & committee hearings about my ‘collusion with the Russians,’ nobody has been able to show any proof. Sad!”⁵⁶⁹ and “I am being investigated for firing the FBI Director by the man who told me to fire the FBI Director! Witch Hunt.”⁵⁷⁰

On Saturday, June 17, 2017, the President called McGahn and directed him to have the Special Counsel removed.⁵⁷¹ McGahn was at home and the President was at Camp David.⁵⁷² In interviews with this Office, McGahn recalled that the President called him at home twice and on both occasions directed him to call Rosenstein and say that Mueller had conflicts that precluded him from serving as Special Counsel.⁵⁷³

On the first call, McGahn recalled that the President said something like, “You gotta do this. You gotta call Rod.”⁵⁷⁴ McGahn said he told the President that he would see what he could do.⁵⁷⁵ McGahn was perturbed by the call and did not intend to act on the request.⁵⁷⁶ He and other advisors believed the asserted conflicts were “silly” and “not real,” and they had previously communicated that view to the President.⁵⁷⁷ McGahn also had made clear to the President that the White House Counsel’s Office should not be involved in any effort to press the issue of conflicts.⁵⁷⁸ McGahn was concerned about having any role in asking the Acting Attorney General to fire the Special Counsel because he had grown up in the Reagan era and wanted to be more like Judge

⁵⁶⁸ @realDonaldTrump 6/15/17 (3:56 p.m. ET) Tweet.

⁵⁶⁹ @realDonaldTrump 6/16/17 (7:53 a.m. ET) Tweet.

⁵⁷⁰ @realDonaldTrump 6/16/17 (9:07 a.m. ET) Tweet.

⁵⁷¹ McGahn 3/8/18 302, at 1-2; McGahn 12/14/17 302, at 10.

⁵⁷² McGahn 3/8/18 302, at 1, 3; SCR026_000196 (President’s Daily Diary, 6/17/17) (records showing President departed the White House at 11:07 a.m. on June 17, 2017, and arrived at Camp David at 11:37 a.m.).

⁵⁷³ McGahn 3/8/18 302, at 1-2; McGahn 12/14/17 302, at 10. Phone records show that the President called McGahn in the afternoon on June 17, 2017, and they spoke for approximately 23 minutes. SCR026_000196 (President’s Daily Diary, 6/17/17) (reflecting call from the President to McGahn on 6/17/17 with start time 2:23 p.m. and end time 2:46 p.m.); (Call Records of Don McGahn). Phone records do not show another call between McGahn and the President that day. Although McGahn recalled receiving multiple calls from the President on the same day, in light of the phone records he thought it was possible that the first call instead occurred on June 14, 2017, shortly after the press reported that the President was under investigation for obstruction of justice. McGahn 2/28/19 302, at 1-3. While McGahn was not certain of the specific dates of the calls, McGahn was confident that he had at least two phone conversations with the President in which the President directed him to call the Acting Attorney General to have the Special Counsel removed. McGahn 2/28/19 302, at 1-3.

⁵⁷⁴ McGahn 3/8/18 302, at 1.

⁵⁷⁵ McGahn 3/8/18 302, at 1.

⁵⁷⁶ McGahn 3/8/18 302, at 1.

⁵⁷⁷ McGahn 3/8/18 302, at 1-2.

⁵⁷⁸ McGahn 3/8/18 302, at 1-2.

Robert Bork and not "Saturday Night Massacre Bork."⁵⁷⁹ McGahn considered the President's request to be an inflection point and he wanted to hit the brakes.⁵⁸⁰

When the President called McGahn a second time to follow up on the order to call the Department of Justice, McGahn recalled that the President was more direct, saying something like, "Call Rod, tell Rod that Mueller has conflicts and can't be the Special Counsel."⁵⁸¹ McGahn recalled the President telling him "Mueller has to go" and "Call me back when you do it."⁵⁸² McGahn understood the President to be saying that the Special Counsel had to be removed by Rosenstein.⁵⁸³ To end the conversation with the President, McGahn left the President with the impression that McGahn would call Rosenstein.⁵⁸⁴ McGahn recalled that he had already said no to the President's request and he was worn down, so he just wanted to get off the phone.⁵⁸⁵

McGahn recalled feeling trapped because he did not plan to follow the President's directive but did not know what he would say the next time the President called.⁵⁸⁶ McGahn decided he had to resign.⁵⁸⁷ He called his personal lawyer and then called his chief of staff, Annie Donaldson, to inform her of his decision.⁵⁸⁸ He then drove to the office to pack his belongings and submit his resignation letter.⁵⁸⁹ Donaldson recalled that McGahn told her the President had called and demanded he contact the Department of Justice and that the President wanted him to do something that McGahn did not want to do.⁵⁹⁰ McGahn told Donaldson that the President had called at least twice and in one of the calls asked "have you done it?"⁵⁹¹ McGahn did not tell Donaldson the specifics of the President's request because he was consciously trying not to involve her in the

⁵⁷⁹ McGahn 3/8/18 302, at 2.

⁵⁸⁰ McGahn 3/8/18 302, at 2.

⁵⁸¹ McGahn 3/8/18 302, at 5.

⁵⁸² McGahn 3/8/18 302, at 2, 5; McGahn 2/28/19 302, at 3.

⁵⁸³ McGahn 3/8/18 302, at 1-2, 5.

⁵⁸⁴ McGahn 3/8/18 302, at 2.

⁵⁸⁵ McGahn 2/28/19 302, at 3; McGahn 3/8/18 302, at 2.

⁵⁸⁶ McGahn 3/8/18 302, at 2.

⁵⁸⁷ McGahn 3/8/18 302, at 2.

⁵⁸⁸ McGahn 3/8/18 302, at 2-3; McGahn 2/28/19 302, at 3; Donaldson 4/2/18 302, at 4; Call Records of Don McGahn.

⁵⁸⁹ McGahn 3/8/18 302, at 2; Donaldson 4/2/18 302, at 4.

⁵⁹⁰ Donaldson 4/2/18 302, at 4.

⁵⁹¹ Donaldson 4/2/18 302, at 4.

investigation, but Donaldson inferred that the President's directive was related to the Russia investigation.⁵⁹² Donaldson prepared to resign along with McGahn.⁵⁹³

That evening, McGahn called both Priebus and Bannon and told them that he intended to resign.⁵⁹⁴ McGahn recalled that, after speaking with his attorney and given the nature of the President's request, he decided not to share details of the President's request with other White House staff.⁵⁹⁵ Priebus recalled that McGahn said that the President had asked him to "do crazy shit," but he thought McGahn did not tell him the specifics of the President's request because McGahn was trying to protect Priebus from what he did not need to know.⁵⁹⁶ Priebus and Bannon both urged McGahn not to quit, and McGahn ultimately returned to work that Monday and remained in his position.⁵⁹⁷ He had not told the President directly that he planned to resign, and when they next saw each other the President did not ask McGahn whether he had followed through with calling Rosenstein.⁵⁹⁸

Around the same time, Chris Christie recalled a telephone call with the President in which the President asked what Christie thought about the President firing the Special Counsel.⁵⁹⁹ Christie advised against doing so because there was no substantive basis for the President to fire the Special Counsel, and because the President would lose support from Republicans in Congress if he did so.⁶⁰⁰

Analysis

In analyzing the President's direction to McGahn to have the Special Counsel removed, the following evidence is relevant to the elements of obstruction of justice:

a. Obstructive act. As with the President's firing of Comey, the attempt to remove the Special Counsel would qualify as an obstructive act if it would naturally obstruct the

⁵⁹² McGahn 2/28/19 302, at 3-4; Donaldson 4/2/18 302, at 4-5. Donaldson said she believed McGahn consciously did not share details with her because he did not want to drag her into the investigation. Donaldson 4/2/18 302, at 5; see McGahn 2/28/19 302, at 3.

⁵⁹³ Donaldson 4/2/18 302, at 5.

⁵⁹⁴ McGahn 12/14/17 302, at 10; Call Records of Don McGahn; McGahn 2/28/19 302, at 3-4; Priebus 4/3/18 302, at 6-7.

⁵⁹⁵ McGahn 2/28/19 302, at 4. Priebus and Bannon confirmed that McGahn did not tell them the specific details of the President's request. Priebus 4/3/18 302, at 7; Bannon 2/14/18 302, at 10.

⁵⁹⁶ Priebus 4/3/18 302, at 7.

⁵⁹⁷ McGahn 3/8/18 302, at 3; McGahn 2/28/19 302, at 3-4.

⁵⁹⁸ McGahn 3/8/18 302, at 3.

⁵⁹⁹ Christie 2/13/19 302, at 7. Christie did not recall the precise date of this call, but believed it was after Christopher Wray was announced as the nominee to be the new FBI director, which was on June 7, 2017. Christie 2/13/19 302, at 7. Telephone records show that the President called Christie twice after that time period, on July 4, 2017, and July 14, 2017. Call Records of Chris Christie.

⁶⁰⁰ Christie 2/13/19 302, at 7.

investigation and any grand jury proceedings that might flow from the inquiry. Even if the removal of the lead prosecutor would not prevent the investigation from continuing under a new appointee, a factfinder would need to consider whether the act had the potential to delay further action in the investigation, chill the actions of any replacement Special Counsel, or otherwise impede the investigation.

A threshold question is whether the President in fact directed McGahn to have the Special Counsel removed. After news organizations reported that in June 2017 the President had ordered McGahn to have the Special Counsel removed, the President publicly disputed these accounts, and privately told McGahn that he had simply wanted McGahn to bring conflicts of interest to the Department of Justice's attention. See Volume II, Section II.I, *infra*. Some of the President's specific language that McGahn recalled from the calls is consistent with that explanation. Substantial evidence, however, supports the conclusion that the President went further and in fact directed McGahn to call Rosenstein to have the Special Counsel removed.

First, McGahn's clear recollection was that the President directed him to tell Rosenstein not only that conflicts existed but also that "Mueller has to go." McGahn is a credible witness with no motive to lie or exaggerate given the position he held in the White House.⁶⁰¹ McGahn spoke with the President twice and understood the directive the same way both times, making it unlikely that he misheard or misinterpreted the President's request. In response to that request, McGahn decided to quit because he did not want to participate in events that he described as akin to the Saturday Night Massacre. He called his lawyer, drove to the White House, packed up his office, prepared to submit a resignation letter with his chief of staff, told Priebus that the President had asked him to "do crazy shit," and informed Priebus and Bannon that he was leaving. Those acts would be a highly unusual reaction to a request to convey information to the Department of Justice.

Second, in the days before the calls to McGahn, the President, through his counsel, had already brought the asserted conflicts to the attention of the Department of Justice. Accordingly, the President had no reason to have McGahn call Rosenstein that weekend to raise conflicts issues that already had been raised.

Third, the President's sense of urgency and repeated requests to McGahn to take immediate action on a weekend—"You gotta do this. You gotta call Rod."—support McGahn's recollection that the President wanted the Department of Justice to take action to remove the Special Counsel. Had the President instead sought only to have the Department of Justice re-examine asserted conflicts to evaluate whether they posed an ethical bar, it would have been unnecessary to set the process in motion on a Saturday and to make repeated calls to McGahn.

Finally, the President had discussed "knocking out Mueller" and raised conflicts of interest in a May 23, 2017 call with McGahn, reflecting that the President connected the conflicts to a plan to remove the Special Counsel. And in the days leading up to June 17, 2017, the President made clear to Priebus and Bannon, who then told Ruddy, that the President was considering terminating

⁶⁰¹ When this Office first interviewed McGahn about this topic, he was reluctant to share detailed information about what had occurred and only did so after continued questioning. See McGahn 12/14/17 302 (agent notes).

the Special Counsel. Also during this time period, the President reached out to Christie to get his thoughts on firing the Special Counsel. This evidence shows that the President was not just seeking an examination of whether conflicts existed but instead was looking to use asserted conflicts as a way to terminate the Special Counsel.

b. Nexus to an official proceeding. To satisfy the proceeding requirement, it would be necessary to establish a nexus between the President's act of seeking to terminate the Special Counsel and a pending or foreseeable grand jury proceeding.

Substantial evidence indicates that by June 17, 2017, the President knew his conduct was under investigation by a federal prosecutor who could present any evidence of federal crimes to a grand jury. On May 23, 2017, McGahn explicitly warned the President that his "biggest exposure" was not his act of firing Comey but his "other contacts" and "calls," and his "ask re: Flynn." By early June, it was widely reported in the media that federal prosecutors had issued grand jury subpoenas in the Flynn inquiry and that the Special Counsel had taken over the Flynn investigation.⁶⁰² On June 9, 2017, the Special Counsel's Office informed the White House that investigators would be interviewing intelligence agency officials who allegedly had been asked by the President to push back against the Russia investigation. On June 14, 2017, news outlets began reporting that the President was himself being investigated for obstruction of justice. Based on widespread reporting, the President knew that such an investigation could include his request for Comey's loyalty; his request that Comey "let[] Flynn go"; his outreach to Coats and Rogers; and his termination of Comey and statement to the Russian Foreign Minister that the termination had relieved "great pressure" related to Russia. And on June 16, 2017, the day before he directed McGahn to have the Special Counsel removed, the President publicly acknowledged that his conduct was under investigation by a federal prosecutor, tweeting, "I am being investigated for firing the FBI Director by the man who told me to fire the FBI Director!"

c. Intent. Substantial evidence indicates that the President's attempts to remove the Special Counsel were linked to the Special Counsel's oversight of investigations that involved the President's conduct—and, most immediately, to reports that the President was being investigated for potential obstruction of justice.

Before the President terminated Comey, the President considered it critically important that he was not under investigation and that the public not erroneously think he was being investigated. As described in Volume II, Section II.D, *supra*, advisors perceived the President, while he was drafting the Comey termination letter, to be concerned more than anything else about getting out that he was not personally under investigation. When the President learned of the appointment of the Special Counsel on May 17, 2017, he expressed further concern about the investigation, saying "[t]his is the end of my Presidency." The President also faulted Sessions for recusing, saying "you were supposed to protect me."

On June 14, 2017, when the Washington Post reported that the Special Counsel was investigating the President for obstruction of justice, the President was facing what he had wanted

⁶⁰² See, e.g., Evan Perez et al., *CNN exclusive: Grand jury subpoenas issued in FBI's Russia investigation*, CNN (May 9, 2017); Matt Ford, *Why Mueller Is Taking Over the Michael Flynn Grand Jury*, The Atlantic (June 2, 2017).

to avoid: a criminal investigation into his own conduct that was the subject of widespread media attention. The evidence indicates that news of the obstruction investigation prompted the President to call McGahn and seek to have the Special Counsel removed. By mid-June, the Department of Justice had already cleared the Special Counsel's service and the President's advisors had told him that the claimed conflicts of interest were "silly" and did not provide a basis to remove the Special Counsel. On June 13, 2017, the Acting Attorney General testified before Congress that no good cause for removing the Special Counsel existed, and the President dictated a press statement to Sanders saying he had no intention of firing the Special Counsel. But the next day, the media reported that the President was under investigation for obstruction of justice and the Special Counsel was interviewing witnesses about events related to possible obstruction—spurring the President to write critical tweets about the Special Counsel's investigation. The President called McGahn at home that night and then called him on Saturday from Camp David. The evidence accordingly indicates that news that an obstruction investigation had been opened is what led the President to call McGahn to have the Special Counsel terminated.

There also is evidence that the President knew that he should not have made those calls to McGahn. The President made the calls to McGahn after McGahn had specifically told the President that the White House Counsel's Office—and McGahn himself—could not be involved in pressing conflicts claims and that the President should consult with his personal counsel if he wished to raise conflicts. Instead of relying on his personal counsel to submit the conflicts claims, the President sought to use his official powers to remove the Special Counsel. And after the media reported on the President's actions, he denied that he ever ordered McGahn to have the Special Counsel terminated and made repeated efforts to have McGahn deny the story, as discussed in Volume II, Section II.I, *infra*. Those denials are contrary to the evidence and suggest the President's awareness that the direction to McGahn could be seen as improper.

F. The President's Efforts to Curtail the Special Counsel Investigation

Overview

Two days after the President directed McGahn to have the Special Counsel removed, the President made another attempt to affect the course of the Russia investigation. On June 19, 2017, the President met one-on-one with Corey Lewandowski in the Oval Office and dictated a message to be delivered to Attorney General Sessions that would have had the effect of limiting the Russia investigation to future election interference only. One month later, the President met again with Lewandowski and followed up on the request to have Sessions limit the scope of the Russia investigation. Lewandowski told the President the message would be delivered soon. Hours later, the President publicly criticized Sessions in an unplanned press interview, raising questions about Sessions's job security.

1. The President Asks Corey Lewandowski to Deliver a Message to Sessions to Curtail the Special Counsel Investigation

On June 19, 2017, two days after the President directed McGahn to have the Special Counsel removed, the President met one-on-one in the Oval Office with his former campaign

manager Corey Lewandowski.⁶⁰³ Senior White House advisors described Lewandowski as a “devotee” of the President and said the relationship between the President and Lewandowski was “close.”⁶⁰⁴

During the June 19 meeting, Lewandowski recalled that, after some small talk, the President brought up Sessions and criticized his recusal from the Russia investigation.⁶⁰⁵ The President told Lewandowski that Sessions was weak and that if the President had known about the likelihood of recusal in advance, he would not have appointed Sessions.⁶⁰⁶ The President then asked Lewandowski to deliver a message to Sessions and said “write this down.”⁶⁰⁷ This was the first time the President had asked Lewandowski to take dictation, and Lewandowski wrote as fast as possible to make sure he captured the content correctly.⁶⁰⁸

The President directed that Sessions should give a speech publicly announcing:

I know that I recused myself from certain things having to do with specific areas. But our POTUS . . . is being treated very unfairly. He shouldn't have a Special Prosecutor/Counsel b/c he hasn't done anything wrong. I was on the campaign w/ him for nine months, there were no Russians involved with him. I know it for a fact b/c I was there. He didn't do anything wrong except he ran the greatest campaign in American history.⁶⁰⁹

The dictated message went on to state that Sessions would meet with the Special Counsel to limit his jurisdiction to future election interference:

Now a group of people want to subvert the Constitution of the United States. I am going to meet with the Special Prosecutor to explain this is very unfair and let the Special Prosecutor move forward with investigating election meddling for future elections so that nothing can happen in future elections.⁶¹⁰

⁶⁰³ Lewandowski 4/6/18 302, at 2; SCR026 000201 (President's Daily Diary, 6/19/17).

Personal Privacy

⁶⁰⁴ Kelly 8/2/18 302, at 7; Dearborn 6/20/18 302, at 1 (describing Lewandowski as a “comfort to the President” whose loyalty was appreciated). Kelly said that when he was Chief of Staff and the President had meetings with friends like Lewandowski, Kelly tried not to be there and to push the meetings to the residence to create distance from the West Wing. Kelly 8/2/18 302, at 7.

⁶⁰⁵ Lewandowski 4/6/18 302, at 2.

⁶⁰⁶ Lewandowski 4/6/18 302, at 2.

⁶⁰⁷ Lewandowski 4/6/18 302, at 2.

⁶⁰⁸ Lewandowski 4/6/18 302, at 3.

⁶⁰⁹ Lewandowski 4/6/18 302, at 2-3; Lewandowski 6/19/17 Notes, at 1-2.

⁶¹⁰ Lewandowski 4/6/18 302, at 3; Lewandowski 6/19/17 Notes, at 3.

The President said that if Sessions delivered that statement he would be the “most popular guy in the country.”⁶¹¹ Lewandowski told the President he understood what the President wanted Sessions to do.⁶¹²

Lewandowski wanted to pass the message to Sessions in person rather than over the phone.⁶¹³ He did not want to meet at the Department of Justice because he did not want a public log of his visit and did not want Sessions to have an advantage over him by meeting on what Lewandowski described as Sessions’s turf.⁶¹⁴ Lewandowski called Sessions and arranged a meeting for the following evening at Lewandowski’s office, but Sessions had to cancel due to a last minute conflict.⁶¹⁵ Shortly thereafter, Lewandowski left Washington, D.C., without having had an opportunity to meet with Sessions to convey the President’s message.⁶¹⁶ Lewandowski stored the notes in a safe at his home, which he stated was his standard procedure with sensitive items.⁶¹⁷

2. The President Follows Up with Lewandowski

Following his June meeting with the President, Lewandowski contacted Rick Dearborn, then a senior White House official, and asked if Dearborn could pass a message to Sessions.⁶¹⁸ Dearborn agreed without knowing what the message was, and Lewandowski later confirmed that Dearborn would meet with Sessions for dinner in late July and could deliver the message then.⁶¹⁹ Lewandowski recalled thinking that the President had asked him to pass the message because the President knew Lewandowski could be trusted, but Lewandowski believed Dearborn would be a better messenger because he had a longstanding relationship with Sessions and because Dearborn was in the government while Lewandowski was not.⁶²⁰

On July 19, 2017, the President again met with Lewandowski alone in the Oval Office.⁶²¹ In the preceding days, as described in Volume II, Section II.G, *infra*, emails and other information about the June 9, 2016 meeting between several Russians and Donald Trump Jr., Jared Kushner, and Paul Manafort had been publicly disclosed. In the July 19 meeting with Lewandowski, the

⁶¹¹ Lewandowski 4/6/18 302, at 3; Lewandowski 6/19/17 Notes, at 4.

⁶¹² Lewandowski 4/6/18 302, at 3.

⁶¹³ Lewandowski 4/6/18 302, at 3-4.

⁶¹⁴ Lewandowski 4/6/18 302, at 4.

⁶¹⁵ Lewandowski 4/6/18 302, at 4.

⁶¹⁶ Lewandowski 4/6/18 302, at 4.

⁶¹⁷ Lewandowski 4/6/18 302, at 4.

⁶¹⁸ Lewandowski 4/6/18 302, at 4; see Dearborn 6/20/18 302, at 3.

⁶¹⁹ Lewandowski 4/6/18 302, at 4-5.

⁶²⁰ Lewandowski 4/6/18 302, at 4, 6.

⁶²¹ Lewandowski 4/6/18 302, at 5; SCR029b_000002-03 (6/5/18 Additional Response to Special Counsel Request for Certain Visitor Log Information).

President raised his previous request and asked if Lewandowski had talked to Sessions.⁶²² Lewandowski told the President that the message would be delivered soon.⁶²³ Lewandowski recalled that the President told him that if Sessions did not meet with him, Lewandowski should tell Sessions he was fired.⁶²⁴

Immediately following the meeting with the President, Lewandowski saw Dearborn in the anteroom outside the Oval Office and gave him a typewritten version of the message the President had dictated to be delivered to Sessions.⁶²⁵ Lewandowski told Dearborn that the notes were the message they had discussed, but Dearborn did not recall whether Lewandowski said the message was from the President.⁶²⁶ The message “definitely raised an eyebrow” for Dearborn, and he recalled not wanting to ask where it came from or think further about doing anything with it.⁶²⁷ Dearborn also said that being asked to serve as a messenger to Sessions made him uncomfortable.⁶²⁸ He recalled later telling Lewandowski that he had handled the situation, but he did not actually follow through with delivering the message to Sessions, and he did not keep a copy of the typewritten notes Lewandowski had given him.⁶²⁹

3. The President Publicly Criticizes Sessions in a New York Times Interview

Within hours of the President’s meeting with Lewandowski on July 19, 2017, the President gave an unplanned interview to the New York Times in which he criticized Sessions’s decision to recuse from the Russia investigation.⁶³⁰ The President said that “Sessions should have never recused himself, and if he was going to recuse himself, he should have told me before he took the job, and I would have picked somebody else.”⁶³¹ Sessions’s recusal, the President said, was “very unfair to the president. How do you take a job and then recuse yourself? If he would have recused himself before the job, I would have said, ‘Thanks, Jeff, but I can’t, you know, I’m not going to

⁶²² Lewandowski 4/6/18 302, at 5.

⁶²³ Lewandowski 4/6/18 302, at 5.

⁶²⁴ Lewandowski 4/6/18 302, at 6. Priebus vaguely recalled Lewandowski telling him that in approximately May or June 2017 the President had asked Lewandowski to get Sessions’s resignation. Priebus recalled that Lewandowski described his reaction as something like, “What can I do? I’m not an employee of the administration. I’m a nobody.” Priebus 4/3/18 302, at 6.

⁶²⁵ Lewandowski 4/6/18 302, at 5. Lewandowski said he asked Hope Hicks to type the notes when he went in to the Oval Office, and he then retrieved the notes from her partway through his meeting with the President. Lewandowski 4/6/18 302, at 5.

⁶²⁶ Lewandowski 4/6/18 302, at 5; Dearborn 6/20/18 302, at 3.

⁶²⁷ Dearborn 6/20/18 302, at 3.

⁶²⁸ Dearborn 6/20/18 302, at 3.

⁶²⁹ Dearborn 6/20/18 302, at 3-4.

⁶³⁰ Peter Baker et al., *Excerpts From The Times’s Interview With Trump*, New York Times (July 19, 2017).

⁶³¹ Peter Baker et al., *Excerpts From The Times’s Interview With Trump*, New York Times (July 19, 2017).

take you.’ It’s extremely unfair, and that’s a mild word, to the president.”⁶³² Hicks, who was present for the interview, recalled trying to “throw [herself] between the reporters and [the President]” to stop parts of the interview, but the President “loved the interview.”⁶³³

Later that day, Lewandowski met with Hicks and they discussed the President’s New York Times interview.⁶³⁴ Lewandowski recalled telling Hicks about the President’s request that he meet with Sessions and joking with her about the idea of firing Sessions as a private citizen if Sessions would not meet with him.⁶³⁵ As Hicks remembered the conversation, Lewandowski told her the President had recently asked him to meet with Sessions and deliver a message that he needed to do the “right thing” and resign.⁶³⁶ While Hicks and Lewandowski were together, the President called Hicks and told her he was happy with how coverage of his New York Times interview criticizing Sessions was playing out.⁶³⁷

4. The President Orders Priebus to Demand Sessions’s Resignation

Three days later, on July 21, 2017, the Washington Post reported that U.S. intelligence intercepts showed that Sessions had discussed campaign-related matters with the Russian ambassador, contrary to what Sessions had said publicly.⁶³⁸ That evening, Priebus called Hunt to talk about whether Sessions might be fired or might resign.⁶³⁹ Priebus had previously talked to Hunt when the media had reported on tensions between Sessions and the President, and, after speaking to Sessions, Hunt had told Priebus that the President would have to fire Sessions if he wanted to remove Sessions because Sessions was not going to quit.⁶⁴⁰ According to Hunt, who took contemporaneous notes of the July 21 call, Hunt told Priebus that, as they had previously discussed, Sessions had no intention of resigning.⁶⁴¹ Hunt asked Priebus what the President would

⁶³² Peter Baker et al., *Excerpts From The Times’s Interview With Trump*, New York Times (July 19, 2017).

⁶³³ Hicks 12/8/17 302, at 23.

⁶³⁴ Hicks 3/13/18 302, at 10; Lewandowski 4/6/18 302, at 6.

⁶³⁵ Lewandowski 4/6/18 302, at 6.

⁶³⁶ Hicks 3/13/18 302, at 10. Hicks thought that the President might be able to make a recess appointment of a new Attorney General because the Senate was about to go on recess. Hicks 3/13/18 302, at 10. Lewandowski recalled that in the afternoon of July 19, 2017, following his meeting with the President, he conducted research on recess appointments but did not share his research with the President. Lewandowski 4/6/18 302, at 7.

⁶³⁷ Lewandowski 4/6/18 302, at 6.

⁶³⁸ Adam Entous et al., *Sessions discussed Trump campaign-related matters with Russian ambassador, U.S. intelligence intercepts show*, Washington Post (July 21, 2017). The underlying events concerning the Sessions-Kislyak contacts are discussed in Volume I, Section IV.A.4.c, *supra*.

⁶³⁹ Hunt 2/1/18 302, at 23.

⁶⁴⁰ Hunt 2/1/18 302, at 23.

⁶⁴¹ Hunt 2/1/18 302, at 23-24; Hunt 7/21/17 Notes, at 1.

accomplish by firing Sessions, pointing out there was an investigation before and there would be an investigation after.⁶⁴²

Early the following morning, July 22, 2017, the President tweeted, "A new INTELLIGENCE LEAK from the Amazon Washington Post, this time against A.G. Jeff Sessions. These illegal leaks, like Comey's, must stop!"⁶⁴³ Approximately one hour later, the President tweeted, "So many people are asking why isn't the A.G. or Special Council looking at the many Hillary Clinton or Comey crimes. 33,000 e-mails deleted?"⁶⁴⁴ Later that morning, while aboard Marine One on the way to Norfolk, Virginia, the President told Priebus that he had to get Sessions to resign immediately.⁶⁴⁵ The President said that the country had lost confidence in Sessions and the negative publicity was not tolerable.⁶⁴⁶ According to contemporaneous notes taken by Priebus, the President told Priebus to say that he "need[ed] a letter of resignation on [his] desk immediately" and that Sessions had "no choice" but "must immediately resign."⁶⁴⁷ Priebus replied that if they fired Sessions, they would never get a new Attorney General confirmed and that the Department of Justice and Congress would turn their backs on the President, but the President suggested he could make a recess appointment to replace Sessions.⁶⁴⁸

Priebus believed that the President's request was a problem, so he called McGahn and asked for advice, explaining that he did not want to pull the trigger on something that was "all wrong."⁶⁴⁹ Although the President tied his desire for Sessions to resign to Sessions's negative press and poor performance in congressional testimony, Priebus believed that the President's desire to replace Sessions was driven by the President's hatred of Sessions's recusal from the Russia investigation.⁶⁵⁰ McGahn told Priebus not to follow the President's order and said they should consult their personal counsel, with whom they had attorney-client privilege.⁶⁵¹ McGahn

⁶⁴² Hunt 2/1/18 302, at 23-24; Hunt 7/21/17 Notes, at 1-2.

⁶⁴³ @realDonaldTrump 7/22/17 (6:33 a.m. ET) Tweet.

⁶⁴⁴ @realDonaldTrump 7/22/17 (7:44 a.m. ET) Tweet. Three minutes later, the President tweeted, "What about all of the Clinton ties to Russia, including Podesta Company, Uranium deal, Russian Reset, big dollar speeches etc." @realDonaldTrump 7/22/17 (7:47 a.m. ET) Tweet.

⁶⁴⁵ Priebus 1/18/18 302, at 13-14.

⁶⁴⁶ Priebus 1/18/18 302, at 14; Priebus 4/3/18 302, at 4-5; see RP_000073 (Priebus 7/22/17 Notes).

⁶⁴⁷ RP_000073 (Priebus 7/22/17 Notes).

⁶⁴⁸ Priebus 4/3/18 302, at 5.

⁶⁴⁹ Priebus 1/18/18 302, at 14; Priebus 4/3/18 302, at 4-5.

⁶⁵⁰ Priebus 4/3/18 302, at 5.

⁶⁵¹ RP_000074 (Priebus 7/22/17 Notes); McGahn 12/14/17 302, at 11; Priebus 1/18/18 302, at 14. Priebus followed McGahn's advice and called his personal attorney to discuss the President's request because he thought it was the type of thing about which one would need to consult an attorney. Priebus 1/18/18 302, at 14.

and Priebus discussed the possibility that they would both have to resign rather than carry out the President's order to fire Sessions.⁶⁵²

That afternoon, the President followed up with Priebus about demanding Sessions's resignation, using words to the effect of, "Did you get it? Are you working on it?"⁶⁵³ Priebus said that he believed that his job depended on whether he followed the order to remove Sessions, although the President did not directly say so.⁶⁵⁴ Even though Priebus did not intend to carry out the President's directive, he told the President he would get Sessions to resign.⁶⁵⁵ Later in the day, Priebus called the President and explained that it would be a calamity if Sessions resigned because Priebus expected that Rosenstein and Associate Attorney General Rachel Brand would also resign and the President would be unable to get anyone else confirmed.⁶⁵⁶ The President agreed to hold off on demanding Sessions's resignation until after the Sunday shows the next day, to prevent the shows from focusing on the firing.⁶⁵⁷

By the end of that weekend, Priebus recalled that the President relented and agreed not to ask Sessions to resign.⁶⁵⁸ Over the next several days, the President tweeted about Sessions. On the morning of Monday, July 24, 2017, the President criticized Sessions for neglecting to investigate Clinton and called him "beleaguered."⁶⁵⁹ On July 25, the President tweeted, "Attorney General Jeff Sessions has taken a VERY weak position on Hillary Clinton crimes (where are E-mails & DNC server) & Intel leakers!"⁶⁶⁰ The following day, July 26, the President tweeted, "Why didn't A.G. Sessions replace Acting FBI Director Andrew McCabe, a Comey friend who was in charge of Clinton investigation?"⁶⁶¹ According to Hunt, in light of the President's frequent public attacks, Sessions prepared another resignation letter and for the rest of the year carried it with him in his pocket every time he went to the White House.⁶⁶²

⁶⁵² McGahn 12/14/17 302, at 11; RP_000074 (Priebus 7/22/17 Notes) ("discuss resigning together").

⁶⁵³ Priebus 1/18/18 302, at 14; Priebus 4/3/18 302, at 4.

⁶⁵⁴ Priebus 4/3/18 302, at 4.

⁶⁵⁵ Priebus 1/18/18 302, at 15.

⁶⁵⁶ Priebus 1/18/18 302, at 15.

⁶⁵⁷ Priebus 1/18/18 302, at 15.

⁶⁵⁸ Priebus 1/18/18 302, at 15.

⁶⁵⁹ @realDonaldTrump 7/24/17 (8:49 a.m. ET) Tweet ("So why aren't the Committees and investigators, and of course our beleaguered A.G., looking into Crooked Hillarys crimes & Russia relations?").

⁶⁶⁰ @realDonaldTrump 7/25/17 (6:12 a.m. ET) Tweet. The President sent another tweet shortly before this one asking "where is the investigation A.G." @realDonaldTrump 7/25/17 (6:03 a.m. ET) Tweet.

⁶⁶¹ @realDonaldTrump 7/26/17 (9:48 a.m. ET) Tweet.

⁶⁶² Hunt 2/1/18 302, at 24-25.

Analysis

In analyzing the President's efforts to have Lewandowski deliver a message directing Sessions to publicly announce that the Special Counsel investigation would be confined to future election interference, the following evidence is relevant to the elements of obstruction of justice:

a. Obstructive act. The President's effort to send Sessions a message through Lewandowski would qualify as an obstructive act if it would naturally obstruct the investigation and any grand jury proceedings that might flow from the inquiry.

The President sought to have Sessions announce that the President "shouldn't have a Special Prosecutor/Counsel" and that Sessions was going to "meet with the Special Prosecutor to explain this is very unfair and let the Special Prosecutor move forward with investigating election meddling for future elections so that nothing can happen in future elections." The President wanted Sessions to disregard his recusal from the investigation, which had followed from a formal DOJ ethics review, and have Sessions declare that he knew "for a fact" that "there were no Russians involved with the campaign" because he "was there." The President further directed that Sessions should explain that the President should not be subject to an investigation "because he hasn't done anything wrong." Taken together, the President's directives indicate that Sessions was being instructed to tell the Special Counsel to end the existing investigation into the President and his campaign, with the Special Counsel being permitted to "move forward with investigating election meddling for future elections."

b. Nexus to an official proceeding. As described above, by the time of the President's initial one-on-one meeting with Lewandowski on June 19, 2017, the existence of a grand jury investigation supervised by the Special Counsel was public knowledge. By the time of the President's follow-up meeting with Lewandowski, **Grand Jury**

[REDACTED] See Volume II, Section II.G, *infra*. To satisfy the nexus requirement, it would be necessary to show that limiting the Special Counsel's investigation would have the natural and probable effect of impeding that grand jury proceeding.

c. Intent. Substantial evidence indicates that the President's effort to have Sessions limit the scope of the Special Counsel's investigation to future election interference was intended to prevent further investigative scrutiny of the President's and his campaign's conduct.

As previously described, *see* Volume II, Section II.B, *supra*, the President knew that the Russia investigation was focused in part on his campaign, and he perceived allegations of Russian interference to cast doubt on the legitimacy of his election. The President further knew that the investigation had broadened to include his own conduct and whether he had obstructed justice. Those investigations would not proceed if the Special Counsel's jurisdiction were limited to future election interference only.

The timing and circumstances of the President's actions support the conclusion that he sought that result. The President's initial direction that Sessions should limit the Special Counsel's investigation came just two days after the President had ordered McGahn to have the Special Counsel removed, which itself followed public reports that the President was personally under

investigation for obstruction of justice. The sequence of those events raises an inference that after seeking to terminate the Special Counsel, the President sought to exclude his and his campaign's conduct from the investigation's scope. The President raised the matter with Lewandowski again on July 19, 2017, just days after emails and information about the June 9, 2016 meeting between Russians and senior campaign officials had been publicly disclosed, generating substantial media coverage and investigative interest.

The manner in which the President acted provides additional evidence of his intent. Rather than rely on official channels, the President met with Lewandowski alone in the Oval Office. The President selected a loyal "devotee" outside the White House to deliver the message, supporting an inference that he was working outside White House channels, including McGahn, who had previously resisted contacting the Department of Justice about the Special Counsel. The President also did not contact the Acting Attorney General, who had just testified publicly that there was no cause to remove the Special Counsel. Instead, the President tried to use Sessions to restrict and redirect the Special Counsel's investigation when Sessions was recused and could not properly take any action on it.

The July 19, 2017 events provide further evidence of the President's intent. The President followed up with Lewandowski in a separate one-on-one meeting one month after he first dictated the message for Sessions, demonstrating he still sought to pursue the request. And just hours after Lewandowski assured the President that the message would soon be delivered to Sessions, the President gave an unplanned interview to the New York Times in which he publicly attacked Sessions and raised questions about his job security. Four days later, on July 22, 2017, the President directed Priebus to obtain Sessions's resignation. That evidence could raise an inference that the President wanted Sessions to realize that his job might be on the line as he evaluated whether to comply with the President's direction that Sessions publicly announce that, notwithstanding his recusal, he was going to confine the Special Counsel's investigation to future election interference.

G. The President's Efforts to Prevent Disclosure of Emails About the June 9, 2016 Meeting Between Russians and Senior Campaign Officials

Overview

By June 2017, the President became aware of emails setting up the June 9, 2016 meeting between senior campaign officials and Russians who offered derogatory information on Hillary Clinton as "part of Russia and its government's support for Mr. Trump." On multiple occasions in late June and early July 2017, the President directed aides not to publicly disclose the emails, and he then dictated a statement about the meeting to be issued by Donald Trump Jr. describing the meeting as about adoption.

Evidence

1. The President Learns About the Existence of Emails Concerning the June 9, 2016 Trump Tower Meeting

In mid-June 2017—the same week that the President first asked Lewandowski to pass a message to Sessions—senior Administration officials became aware of emails exchanged during

the campaign arranging a meeting between Donald Trump Jr., Paul Manafort, Jared Kushner, and a Russian attorney.⁶⁶³ As described in Volume I, Section IV.A.5, *supra*, the emails stated that the “Crown [P]rosecutor of Russia” had offered “to provide the Trump campaign with some official documents and information that would incriminate Hillary and her dealings with Russia” as part of “Russia and its government’s support for Mr. Trump.”⁶⁶⁴ Trump Jr. responded, “[I]f it’s what you say I love it,”⁶⁶⁵ and he, Kushner, and Manafort met with the Russian attorney and several other Russian individuals at Trump Tower on June 9, 2016.⁶⁶⁶ At the meeting, the Russian attorney claimed that funds derived from illegal activities in Russia were provided to Hillary Clinton and other Democrats, and the Russian attorney then spoke about the Magnitsky Act, a 2012 U.S. statute that imposed financial and travel sanctions on Russian officials and that had resulted in a retaliatory ban in Russia on U.S. adoptions of Russian children.⁶⁶⁷

According to written answers submitted by the President in response to questions from this Office, the President had no recollection of learning of the meeting or the emails setting it up at the time the meeting occurred or at any other time before the election.⁶⁶⁸

The Trump Campaign had previously received a document request from SSCI that called for the production of various information, including, “[a] list and a description of all meetings” between any “individual affiliated with the Trump campaign” and “any individual formally or informally affiliated with the Russian government or Russian business interests which took place between June 16, 2015, and 12 pm on January 20, 2017,” and associated records.⁶⁶⁹ Trump Organization attorneys became aware of the June 9 meeting no later than the first week of June 2017, when they began interviewing the meeting participants, and the Trump Organization attorneys provided the emails setting up the meeting to the President’s personal counsel.⁶⁷⁰ Mark Corallo, who had been hired as a spokesman for the President’s personal legal team, recalled that he learned about the June 9 meeting around June 21 or 22, 2017.⁶⁷¹ Priebus recalled learning about the June 9 meeting from Fox News host Sean Hannity in late June 2017.⁶⁷² Priebus notified one

⁶⁶³ Hicks 3/13/18 302, at 1; Raffel 2/8/18 302, at 2.

⁶⁶⁴ RG000061 (6/3/16 Email, Goldstone to Trump Jr.); @DonaldJTrumpJR 7/11/17 (11:01 a.m. ET) Tweet.

⁶⁶⁵ RG000061 (6/3/16 Email, Trump Jr. to Goldstone); @DonaldJTrumpJR 7/11/17 (11:01 a.m. ET) Tweet.

⁶⁶⁶ Samochornov 7/12/17 302, at 4.

⁶⁶⁷ See Volume I, Section IV.A.5, *supra* (describing meeting in detail).

⁶⁶⁸ Written Responses of Donald J. Trump (Nov. 20, 2018), at 8 (Response to Question I, Parts (a) through (c)). The President declined to answer questions about his knowledge of the June 9 meeting or other events after the election.

⁶⁶⁹ DJTFP_SCO_PDF_00000001-02 (5/17/17 Letter, SSCI to Donald J. Trump for President, Inc.).

⁶⁷⁰ Goldstone 2/8/18 302, at 12; 6/2/17 and 6/5/17 Emails, Goldstone & Garten; Raffel 2/8/18 302, at 3; Hicks 3/13/18 302, at 2.

⁶⁷¹ Corallo 2/15/18 302, at 3.

⁶⁷² Priebus 4/3/18 302, at 7.

of the President's personal attorneys, who told Priebus he was already working on it.⁶⁷³ By late June, several advisors recalled receiving media inquiries that could relate to the June 9 meeting.⁶⁷⁴

2. The President Directs Communications Staff Not to Publicly Disclose Information About the June 9 Meeting

Communications advisors Hope Hicks and Josh Raffel recalled discussing with Jared Kushner and Ivanka Trump that the emails were damaging and would inevitably be leaked.⁶⁷⁵ Hicks and Raffel advised that the best strategy was to proactively release the emails to the press.⁶⁷⁶ On or about June 22, 2017, Hicks attended a meeting in the White House residence with the President, Kushner, and Ivanka Trump.⁶⁷⁷ According to Hicks, Kushner said that he wanted to fill the President in on something that had been discovered in the documents he was to provide to the congressional committees involving a meeting with him, Manafort, and Trump Jr.⁶⁷⁸ Kushner brought a folder of documents to the meeting and tried to show them to the President, but the President stopped Kushner and said he did not want to know about it, shutting the conversation down.⁶⁷⁹

On June 28, 2017, Hicks viewed the emails at Kushner's attorney's office.⁶⁸⁰ She recalled being shocked by the emails because they looked "really bad."⁶⁸¹ The next day, Hicks spoke privately with the President to mention her concern about the emails, which she understood were soon going to be shared with Congress.⁶⁸² The President seemed upset because too many people knew about the emails and he told Hicks that just one lawyer should deal with the matter.⁶⁸³ The President indicated that he did not think the emails would leak, but said they would leak if everyone had access to them.⁶⁸⁴

⁶⁷³ Priebus 4/3/18 302, at 7.

⁶⁷⁴ Corallo 2/15/18 302, at 3; Hicks 12/7/17 302, at 8; Raffel 2/8/18 302, at 3.

⁶⁷⁵ Raffel 2/8/18 302, at 2-3; Hicks 3/13/18 302, at 2.

⁶⁷⁶ Raffel 2/8/18 302, at 2-3, 5; Hicks 3/13/18 302, at 2; Hicks 12/7/17 302, at 8.

⁶⁷⁷ Hicks 12/7/17 302, at 6-7; Hicks 3/13/18 302, at 1.

⁶⁷⁸ Hicks 12/7/17 302, at 7; Hicks 3/13/18 302, at 1.

⁶⁷⁹ Hicks 12/7/17 302, at 7; Hicks 3/13/18 302, at 1. Counsel for Ivanka Trump provided an attorney proffer that is consistent with Hicks's account and with the other events involving Ivanka Trump set forth in this section of the report. Kushner said that he did not recall talking to the President at this time about the June 9 meeting or the underlying emails. Kushner 4/11/18 302, at 30.

⁶⁸⁰ Hicks 3/13/18 302, at 1-2.

⁶⁸¹ Hicks 3/13/18 302, at 2.

⁶⁸² Hicks 12/7/17 302, at 8.

⁶⁸³ Hicks 3/13/18 302, at 2-3; Hicks 12/7/17 302, at 8.

⁶⁸⁴ Hicks 12/7/17 302, at 8.

Later that day, Hicks, Kushner, and Ivanka Trump went together to talk to the President.⁶⁸⁵ Hicks recalled that Kushner told the President the June 9 meeting was not a big deal and was about Russian adoption, but that emails existed setting up the meeting.⁶⁸⁶ Hicks said she wanted to get in front of the story and have Trump Jr. release the emails as part of an interview with “softball questions.”⁶⁸⁷ The President said he did not want to know about it and they should not go to the press.⁶⁸⁸ Hicks warned the President that the emails were “really bad” and the story would be “massive” when it broke, but the President was insistent that he did not want to talk about it and said he did not want details.⁶⁸⁹ Hicks recalled that the President asked Kushner when his document production was due.⁶⁹⁰ Kushner responded that it would be a couple of weeks and the President said, “then leave it alone.”⁶⁹¹ Hicks also recalled that the President said Kushner’s attorney should give the emails to whomever he needed to give them to, but the President did not think they would be leaked to the press.⁶⁹² Raffel later heard from Hicks that the President had directed the group not to be proactive in disclosing the emails because the President believed they would not leak.⁶⁹³

3. The President Directs Trump Jr.’s Response to Press Inquiries About the June 9 Meeting

The following week, the President departed on an overseas trip for the G20 summit in Hamburg, Germany, accompanied by Hicks, Raffel, Kushner, and Ivanka Trump, among others.⁶⁹⁴ On July 7, 2017, while the President was overseas, Hicks and Raffel learned that the New York Times was working on a story about the June 9 meeting.⁶⁹⁵ The next day, Hicks told the President about the story and he directed her not to comment.⁶⁹⁶ Hicks thought the President’s reaction was odd because he usually considered not responding to the press to be the ultimate sin.⁶⁹⁷ Later that day, Hicks and the President again spoke about the story.⁶⁹⁸ Hicks recalled that the President asked

⁶⁸⁵ Hicks 12/7/17 302, at 8; Hicks 3/13/18 302, at 2.

⁶⁸⁶ Hicks 3/13/18 302, at 2; Hicks 12/7/17 302, at 9.

⁶⁸⁷ Hicks 3/13/18 302, at 2-3.

⁶⁸⁸ Hicks 3/13/18 302, at 2-3; Hicks 12/7/17 302, at 9.

⁶⁸⁹ Hicks 3/13/18 302, at 3; Hicks 12/7/17 302, at 9.

⁶⁹⁰ Hicks 3/13/18 302, at 3.

⁶⁹¹ Hicks 3/13/18 302, at 3.

⁶⁹² Hicks 12/7/17 302, at 9.

⁶⁹³ Raffel 2/8/18 302, at 5.

⁶⁹⁴ Raffel 2/8/18 302, at 6.

⁶⁹⁵ Raffel 2/8/18 302, at 6-7; Hicks 3/13/18 302, at 3.

⁶⁹⁶ Hicks 12/7/17 302, at 10; Hicks 3/13/18 302, at 3.

⁶⁹⁷ Hicks 12/7/17 302, at 10.

⁶⁹⁸ Hicks 3/13/18 302, at 3.

her what the meeting had been about, and she said that she had been told the meeting was about Russian adoption.⁶⁹⁹ The President responded, "then just say that."⁷⁰⁰

On the flight home from the G20 on July 8, 2017, Hicks obtained a draft statement about the meeting to be released by Trump Jr. and brought it to the President.⁷⁰¹ The draft statement began with a reference to the information that was offered by the Russians in setting up the meeting: "I was asked to have a meeting by an acquaintance I knew from the 2013 Miss Universe pageant with an individual who I was told might have information helpful to the campaign."⁷⁰² Hicks again wanted to disclose the entire story, but the President directed that the statement not be issued because it said too much.⁷⁰³ The President told Hicks to say only that Trump Jr. took a brief meeting and it was about Russian adoption.⁷⁰⁴ After speaking with the President, Hicks texted Trump Jr. a revised statement on the June 9 meeting that read:

It was a short meeting. I asked Jared and Paul to stop by. We discussed a program about the adoption of Russian children that was active and popular with American families years ago and was since ended by the Russian government, but it was not a campaign issue at that time and there was no follow up.⁷⁰⁵

Hicks's text concluded, "Are you ok with this? Attributed to you."⁷⁰⁶ Trump Jr. responded by text message that he wanted to add the word "primarily" before "discussed" so that the statement would read, "We primarily discussed a program about the adoption of Russian children."⁷⁰⁷ Trump Jr. texted that he wanted the change because "[t]hey started with some Hillary thing which was bs and some other nonsense which we shot down fast."⁷⁰⁸ Hicks texted back, "I think that's right too but boss man worried it invites a lot of questions[.] [U]ltimately [d]efer to you and [your attorney] on that word Bc I know it's important and I think the mention of a campaign issue adds something to it in case we have to go further."⁷⁰⁹ Trump Jr. responded, "If I don't have it in there it appears as though I'm lying later when they inevitably leak something."⁷¹⁰ Trump Jr.'s statement—adding

⁶⁹⁹ Hicks 3/13/18 302, at 3; Hicks 12/7/17 302, at 10.

⁷⁰⁰ Hicks 3/13/18 302, at 3; *see* Hicks 12/7/17 302, at 10.

⁷⁰¹ Hicks 3/13/18 302, at 4.

⁷⁰² Hicks 7/8/17 Notes.

⁷⁰³ Hicks 3/13/18 302, at 4-5; Hicks 12/7/17 302, at 11.

⁷⁰⁴ Hicks 12/7/17 302, at 11.

⁷⁰⁵ SCR011a_000004 (7/8/17 Text Message, Hicks to Trump Jr.).

⁷⁰⁶ SCR011a_000004 (7/8/17 Text Message, Hicks to Trump Jr.).

⁷⁰⁷ SCR011a_000005 (7/8/17 Text Message, Trump Jr. to Hicks).

⁷⁰⁸ SCR011a_000005 (7/8/17 Text Message, Trump Jr. to Hicks).

⁷⁰⁹ SCR011a_000005 (7/8/17 Text Message, Hicks to Trump Jr.).

⁷¹⁰ SCR011a_000006 (7/8/17 Text Message, Trump Jr. to Hicks).

the word “primarily” and making other minor additions—was then provided to the New York Times.⁷¹¹ The full statement provided to the *Times* stated:

It was a short introductory meeting. I asked Jared and Paul to stop by. We primarily discussed a program about the adoption of Russian children that was active and popular with American families years ago and was since ended by the Russian government, but it was not a campaign issue at the time and there was no follow up. I was asked to attend the meeting by an acquaintance, but was not told the name of the person I would be meeting with beforehand.⁷¹²

The statement did not mention the offer of derogatory information about Clinton or any discussion of the Magnitsky Act or U.S. sanctions, which were the principal subjects of the meeting, as described in Volume I, Section IV.A.5, *supra*.

A short while later, while still on Air Force One, Hicks learned that Priebus knew about the emails, which further convinced her that additional information about the June 9 meeting would leak and the White House should be proactive and get in front of the story.⁷¹³ Hicks recalled again going to the President to urge him that they should be fully transparent about the June 9 meeting, but he again said no, telling Hicks, “You’ve given a statement. We’re done.”⁷¹⁴

Later on the flight home, Hicks went to the President’s cabin, where the President was on the phone with one of his personal attorneys.⁷¹⁵ At one point the President handed the phone to Hicks, and the attorney told Hicks that he had been working with Circa News on a separate story, and that she should not talk to the New York Times.⁷¹⁶

4. The Media Reports on the June 9, 2016 Meeting

Before the President’s flight home from the G20 landed, the New York Times published its story about the June 9, 2016 meeting.⁷¹⁷ In addition to the statement from Trump Jr., the Times story also quoted a statement from Corallo on behalf of the President’s legal team suggesting that the meeting might have been a setup by individuals working with the firm that produced the Steele reporting.⁷¹⁸ Corallo also worked with Circa News on a story published an hour later that

⁷¹¹ Hicks 3/13/18 302, at 6; see Jo Becker et al., *Trump Team Met With Lawyer Linked to Kremlin During Campaign*, New York Times (July 8, 2017).

⁷¹² See Jo Becker et al., *Trump Team Met With Lawyer Linked to Kremlin During Campaign*, New York Times (July 8, 2017).

⁷¹³ Hicks 3/13/18 302, at 6; Raffel 2/8/18 302, at 9-10.

⁷¹⁴ Hicks 12/7/17 302, at 12; Raffel 2/8/18 302, at 10.

⁷¹⁵ Hicks 3/13/18 302, at 7.

⁷¹⁶ Hicks 3/13/18 302, at 7.

⁷¹⁷ See Jo Becker et al., *Trump Team Met With Lawyer Linked to Kremlin During Campaign*, New York Times (July 8, 2017); Raffel 2/8/18 302, at 10.

⁷¹⁸ See Jo Becker et al., *Trump Team Met With Lawyer Linked to Kremlin During Campaign*, New York Times (July 8, 2017).

questioned whether Democratic operatives had arranged the June 9 meeting to create the appearance of improper connections between Russia and Trump family members.⁷¹⁹ Hicks was upset about Corallo's public statement and called him that evening to say the President had not approved the statement.⁷²⁰

The next day, July 9, 2017, Hicks and the President called Corallo together and the President criticized Corallo for the statement he had released.⁷²¹ Corallo told the President the statement had been authorized and further observed that Trump Jr.'s statement was inaccurate and that a document existed that would contradict it.⁷²² Corallo said that he purposely used the term "document" to refer to the emails setting up the June 9 meeting because he did not know what the President knew about the emails.⁷²³ Corallo recalled that when he referred to the "document" on the call with the President, Hicks responded that only a few people had access to it and said "it will never get out."⁷²⁴ Corallo took contemporaneous notes of the call that say: "Also mention existence of doc. Hope says 'only a few people have it. It will never get out.'"⁷²⁵ Hicks later told investigators that she had no memory of making that comment and had always believed the emails would eventually be leaked, but she might have been channeling the President on the phone call because it was clear to her throughout her conversations with the President that he did not think the emails would leak.⁷²⁶

On July 11, 2017, Trump Jr. posted redacted images of the emails setting up the June 9 meeting on Twitter; the New York Times reported that he did so "[a]fter being told that The Times was about to publish the content of the emails."⁷²⁷ Later that day, the media reported that the President had been personally involved in preparing Trump Jr.'s initial statement to the New York Times that had claimed the meeting "primarily" concerned "a program about the adoption of Russian children."⁷²⁸ Over the next several days, the President's personal counsel repeatedly and

⁷¹⁹ See *Donald Trump Jr. gathered members of campaign for meeting with Russian lawyer before election*, Circa News (July 8, 2017).

⁷²⁰ Hicks 3/13/18 302, at 8; Corallo 2/15/18 302, at 6-7.

⁷²¹ Corallo 2/15/18 302, at 7.

⁷²² Corallo 2/15/18 302, at 7.

⁷²³ Corallo 2/15/18 302, at 7-9.

⁷²⁴ Corallo 2/15/18 302, at 8.

⁷²⁵ Corallo 2/15/18 302, at 8; Corallo 7/9/17 Notes ("Sunday 9th – Hope calls w/ POTUS on line"). Corallo said he is "100% confident" that Hicks said "It will never get out" on the call. Corallo 2/15/18 302, at 9.

⁷²⁶ Hicks 3/13/18 302, at 9.

⁷²⁷ @DonaldJTrumpJR 7/11/17 (11:01 a.m. ET) Tweet; Jo Becker et al., *Russian Dirt on Clinton? 'I Love It,' Donald Trump Jr. Said*, New York Times (July 11, 2017).

⁷²⁸ See, e.g., Peter Baker & Maggie Haberman, *Rancor at White House as Russia Story Refuses to Let the Page Turn*, New York Times (July 11, 2017) (reporting that the President "signed off" on Trump Jr.'s statement).

inaccurately denied that the President played any role in drafting Trump Jr.'s statement.⁷²⁹ After consulting with the President on the issue, White House Press Secretary Sarah Sanders told the media that the President "certainly didn't dictate" the statement, but that "he weighed in, offered suggestions like any father would do."⁷³⁰ Several months later, the President's personal counsel stated in a private communication to the Special Counsel's Office that "the President dictated a short but accurate response to the New York Times article on behalf of his son, Donald Trump, Jr."⁷³¹ The President later told the press that it was "irrelevant" whether he dictated the statement and said, "It's a statement to the New York Times. . . . That's not a statement to a high tribunal of judges."⁷³²

On July 12, 2017, the Special Counsel's Office **Grand Jury** Trump Jr. **Grand Jury** related to the June 9 meeting and those who attended the June 9 meeting.⁷³³

On July 19, 2017, the President had his follow-up meeting with Lewandowski and then met with reporters for the New York Times. In addition to criticizing Sessions in his Times interview, the President addressed the June 9, 2016 meeting and said he "didn't know anything about the meeting" at the time.⁷³⁴ The President added, "As I've said—most other people, you know, when they call up and say, 'By the way, we have information on your opponent,' I think most politicians — I was just with a lot of people, they said . . . , 'Who wouldn't have taken a meeting like that?'"⁷³⁵

Analysis

In analyzing the President's actions regarding the disclosure of information about the June 9 meeting, the following evidence is relevant to the elements of obstruction of justice:

a. **Obstructive act.** On at least three occasions between June 29, 2017, and July 9, 2017, the President directed Hicks and others not to publicly disclose information about the June

⁷²⁹ See, e.g., David Wright, *Trump lawyer: President was aware of "nothing"*, CNN (July 12, 2017) (quoting the President's personal attorney as saying, "I wasn't involved in the statement drafting at all nor was the President."); see also Good Morning America, ABC (July 12, 2017) ("The President didn't sign off on anything. . . . The President wasn't involved in that."); Meet the Press, NBC (July 16, 2017) ("I do want to be clear—the President was not involved in the drafting of the statement.").

⁷³⁰ Sarah Sanders, *White House Daily Briefing*, C-SPAN (Aug. 1, 2017); Sanders 7/3/18 302, at 9 (the President told Sanders he "weighed in, as any father would" and knew she intended to tell the press what he said).

⁷³¹ 1/29/18 Letter, President's Personal Counsel to Special Counsel's Office, at 18.

⁷³² Remarks by President Trump in Press Gaggle (June 15, 2018).

⁷³³ **Grand Jury**.

⁷³⁴ Peter Baker et al., *Excerpts From The Times's Interview With Trump*, New York Times (July 19, 2017).

⁷³⁵ Peter Baker et al., *Excerpts From The Times's Interview With Trump*, New York Times (July 19, 2017).

9, 2016 meeting between senior campaign officials and a Russian attorney. On June 29, Hicks warned the President that the emails setting up the June 9 meeting were “really bad” and the story would be “massive” when it broke, but the President told her and Kushner to “leave it alone.” Early on July 8, after Hicks told the President the New York Times was working on a story about the June 9 meeting, the President directed her not to comment, even though Hicks said that the President usually considered not responding to the press to be the ultimate sin. Later that day, the President rejected Trump Jr.’s draft statement that would have acknowledged that the meeting was with “an individual who I was told might have information helpful to the campaign.” The President then dictated a statement to Hicks that said the meeting was about Russian adoption (which the President had twice been told was discussed at the meeting). The statement dictated by the President did not mention the offer of derogatory information about Clinton.

Each of these efforts by the President involved his communications team and was directed at the press. They would amount to obstructive acts only if the President, by taking these actions, sought to withhold information from or mislead congressional investigators or the Special Counsel. On May 17, 2017, the President’s campaign received a document request from SSCI that clearly covered the June 9 meeting and underlying emails, and those documents also plainly would have been relevant to the Special Counsel’s investigation.

But the evidence does not establish that the President took steps to prevent the emails or other information about the June 9 meeting from being provided to Congress or the Special Counsel. The series of discussions in which the President sought to limit access to the emails and prevent their public release occurred in the context of developing a press strategy. The only evidence we have of the President discussing the production of documents to Congress or the Special Counsel is the conversation on June 29, 2017, when Hicks recalled the President acknowledging that Kushner’s attorney should provide emails related to the June 9 meeting to whomever he needed to give them to. We do not have evidence of what the President discussed with his own lawyers at that time.

b. Nexus to an official proceeding. As described above, by the time of the President’s attempts to prevent the public release of the emails regarding the June 9 meeting, the existence of a grand jury investigation supervised by the Special Counsel was public knowledge, and the President had been told that the emails were responsive to congressional inquiries. To satisfy the nexus requirement, however, it would be necessary to show that preventing the release of the emails to the public would have the natural and probable effect of impeding the grand jury proceeding or congressional inquiries. As noted above, the evidence does not establish that the President sought to prevent disclosure of the emails in those official proceedings.

c. Intent. The evidence establishes the President’s substantial involvement in the communications strategy related to information about his campaign’s connections to Russia and his desire to minimize public disclosures about those connections. The President became aware of the emails no later than June 29, 2017, when he discussed them with Hicks and Kushner, and he could have been aware of them as early as June 2, 2017, when lawyers for the Trump Organization began interviewing witnesses who participated in the June 9 meeting. The President thereafter repeatedly rejected the advice of Hicks and other staffers to publicly release information about the June 9 meeting. The President expressed concern that multiple people had access to the emails and instructed Hicks that only one lawyer should deal with the matter. And the President

dictated a statement to be released by Trump Jr. in response to the first press accounts of the June 9 meeting that said the meeting was about adoption.

But as described above, the evidence does not establish that the President intended to prevent the Special Counsel's Office or Congress from obtaining the emails setting up the June 9 meeting or other information about that meeting. The statement recorded by Corallo—that the emails “will never get out”—can be explained as reflecting a belief that the emails would not be made public if the President's press strategy were followed, even if the emails were provided to Congress and the Special Counsel.

H. The President's Further Efforts to Have the Attorney General Take Over the Investigation

Overview

From summer 2017 through 2018, the President attempted to have Attorney General Sessions reverse his recusal, take control of the Special Counsel's investigation, and order an investigation of Hillary Clinton.

Evidence

1. The President Again Seeks to Have Sessions Reverse his Recusal

After returning Sessions's resignation letter at the end of May 2017, but before the President's July 19, 2017 New York Times interview in which he publicly criticized Sessions for recusing from the Russia investigation, the President took additional steps to have Sessions reverse his recusal. In particular, at some point after the May 17, 2017 appointment of the Special Counsel, Sessions recalled, the President called him at home and asked if Sessions would “unrecuse” himself.⁷³⁶ According to Sessions, the President asked him to reverse his recusal so that Sessions could direct the Department of Justice to investigate and prosecute Hillary Clinton, and the “gist” of the conversation was that the President wanted Sessions to unrecuse from “all of it,” including the Special Counsel's Russia investigation.⁷³⁷ Sessions listened but did not respond, and he did not reverse his recusal or order an investigation of Clinton.⁷³⁸

In early July 2017, the President asked Staff Secretary Rob Porter what he thought of Associate Attorney General Rachel Brand.⁷³⁹ Porter recalled that the President asked him if Brand was good, tough, and “on the team.”⁷⁴⁰ The President also asked if Porter thought Brand was interested in being responsible for the Special Counsel's investigation and whether she would want

⁷³⁶ Sessions 1/17/18 302, at 15. That was the second time that the President asked Sessions to reverse his recusal from campaign-related investigations. See Volume II, Section II.C.1, *supra* (describing President's March 2017 request at Mar-a-Lago for Sessions to unrecuse).

⁷³⁷ Sessions 1/17/18 302, at 15.

⁷³⁸ Sessions 1/17/18 302, at 15.

⁷³⁹ Porter 4/13/18 302, at 11; Porter 5/8/18 302, at 6.

⁷⁴⁰ Porter 4/13/18 302, at 11; Porter 5/8/18 302, at 6.

to be Attorney General one day.⁷⁴¹ Because Porter knew Brand, the President asked him to sound her out about taking responsibility for the investigation and being Attorney General.⁷⁴² Contemporaneous notes taken by Porter show that the President told Porter to “Keep in touch with your friend,” in reference to Brand.⁷⁴³ Later, the President asked Porter a few times in passing whether he had spoken to Brand, but Porter did not reach out to her because he was uncomfortable with the task.⁷⁴⁴ In asking him to reach out to Brand, Porter understood the President to want to find someone to end the Russia investigation or fire the Special Counsel, although the President never said so explicitly.⁷⁴⁵ Porter did not contact Brand because he was sensitive to the implications of that action and did not want to be involved in a chain of events associated with an effort to end the investigation or fire the Special Counsel.⁷⁴⁶

McGahn recalled that during the summer of 2017, he and the President discussed the fact that if Sessions were no longer in his position the Special Counsel would report directly to a non-recused Attorney General.⁷⁴⁷ McGahn told the President that things might not change much under a new Attorney General.⁷⁴⁸ McGahn also recalled that in or around July 2017, the President frequently brought up his displeasure with Sessions.⁷⁴⁹ Hicks recalled that the President viewed Sessions’s recusal from the Russia investigation as an act of disloyalty.⁷⁵⁰ In addition to criticizing Sessions’s recusal, the President raised other concerns about Sessions and his job performance with McGahn and Hicks.⁷⁵¹

⁷⁴¹ Porter 4/13/18 302, at 11; Porter 5/8/18 302, at 6. Because of Sessions’s recusal, if Rosenstein were no longer in his position, Brand would, by default, become the DOJ official in charge of supervising the Special Counsel’s investigation, and if both Sessions and Rosenstein were removed, Brand would be next in line to become Acting Attorney General for all DOJ matters. *See* 28 U.S.C. § 508.

⁷⁴² Porter 4/13/18 302, at 11; Porter 5/8/18 302, at 6.

⁷⁴³ SC_RRP000020 (Porter 7/10/17 Notes).

⁷⁴⁴ Porter 4/13/18 302, at 11-12.

⁷⁴⁵ Porter 4/13/18 302, at 11-12.

⁷⁴⁶ Porter 4/13/18 302, at 11-12. Brand confirmed that no one ever raised with her the prospect of taking over the Russia investigation or becoming Attorney General. Brand 1/29/19 302, at 2.

⁷⁴⁷ McGahn 12/14/17 302, at 11.

⁷⁴⁸ McGahn 12/14/17 302, at 11.

⁷⁴⁹ McGahn 12/14/17 302, at 9.

⁷⁵⁰ Hicks 3/13/18 302, at 10.

⁷⁵¹ McGahn 12/14/17 302, at 9; Hicks 3/13/18 302, at 10.

2. Additional Efforts to Have Sessions Unrecuse or Direct Investigations Covered by his Recusal

Later in 2017, the President continued to urge Sessions to reverse his recusal from campaign-related investigations and considered replacing Sessions with an Attorney General who would not be recused.

On October 16, 2017, the President met privately with Sessions and said that the Department of Justice was not investigating individuals and events that the President thought the Department should be investigating.⁷⁵² According to contemporaneous notes taken by Porter, who was at the meeting, the President mentioned Clinton's emails and said, "Don't have to tell us, just take [a] look."⁷⁵³ Sessions did not offer any assurances or promises to the President that the Department of Justice would comply with that request.⁷⁵⁴ Two days later, on October 18, 2017, the President tweeted, "Wow, FBI confirms report that James Comey drafted letter exonerating Crooked Hillary Clinton long before investigation was complete. Many people not interviewed, including Clinton herself. Comey stated under oath that he didn't do this-obviously a fix? Where is Justice Dept?"⁷⁵⁵ On October 29, 2017, the President tweeted that there was "ANGER & UNITY" over a "lack of investigation" of Clinton and "the Comey fix," and concluded: "DO SOMETHING!"⁷⁵⁶

On December 6, 2017, five days after Flynn pleaded guilty to lying about his contacts with the Russian government, the President asked to speak with Sessions in the Oval Office at the end of a cabinet meeting.⁷⁵⁷ During that Oval Office meeting, which Porter attended, the President again suggested that Sessions could "unrecuse," which Porter linked to taking back supervision of the Russia investigation and directing an investigation of Hillary Clinton.⁷⁵⁸ According to contemporaneous notes taken by Porter, the President said, "I don't know if you could un-recuse yourself. You'd be a hero. Not telling you to do anything. Dershowitz says POTUS can get involved. Can order AG to investigate. I don't want to get involved. I'm not going to get involved. I'm not going to do anything or direct you to do anything. I just want to be treated fairly."⁷⁵⁹ According to Porter's notes, Sessions responded, "We are taking steps; whole new leadership

⁷⁵² Porter 5/8/18 302, at 10.

⁷⁵³ SC_RRP000024 (Porter 10/16/17 Notes); see Porter 5/8/18 302, at 10.

⁷⁵⁴ Porter 5/8/18 302, at 10.

⁷⁵⁵ @realDonaldTrump 10/18/17 (6:21 a.m. ET) Tweet; @realDonaldTrump 10/18/17 (6:27 a.m. ET) Tweet.

⁷⁵⁶ @realDonaldTrump 10/29/17 (9:53 a.m. ET) Tweet; @realDonaldTrump 10/29/17 (10:02 a.m. ET) Tweet; @realDonaldTrump 10/29/17 (10:17 a.m. ET) Tweet.

⁷⁵⁷ Porter 4/13/18 302, at 5-6; see SC_RRP000031 (Porter 12/6/17 Notes) ("12:45pm With the President, Gen. Kelly, and Sessions (who I pulled in after the Cabinet meeting)"); SC_RRP000033 (Porter 12/6/17 Notes) ("Post-cabinet meeting - POTUS asked me to get AG Sessions. Asked me to stay. Also COS Kelly.").

⁷⁵⁸ Porter 5/8/18 302, at 12; Porter 4/13/18 302, at 5-6.

⁷⁵⁹ SC_RRP000033 (Porter 12/6/17 Notes); see Porter 4/13/18 302, at 6; Porter 5/8/18 302, at 12.

team. Professionals; will operate according to the law.”⁷⁶⁰ Sessions also said, “I never saw anything that was improper,” which Porter thought was noteworthy because it did not fit with the previous discussion about Clinton.⁷⁶¹ Porter understood Sessions to be reassuring the President that he was on the President’s team.⁷⁶²

At the end of December, the President told the New York Times it was “too bad” that Sessions had recused himself from the Russia investigation.⁷⁶³ When asked whether Holder had been a more loyal Attorney General to President Obama than Sessions was to him, the President said, “I don’t want to get into loyalty, but I will tell you that, I will say this: Holder protected President Obama. Totally protected him. When you look at the things that they did, and Holder protected the president. And I have great respect for that, I’ll be honest.”⁷⁶⁴ Later in January, the President brought up the idea of replacing Sessions and told Porter that he wanted to “clean house” at the Department of Justice.⁷⁶⁵ In a meeting in the White House residence that Porter attended on January 27, 2018, Porter recalled that the President talked about the great attorneys he had in the past with successful win records, such as Roy Cohn and Jay Goldberg, and said that one of his biggest failings as President was that he had not surrounded himself with good attorneys, citing Sessions as an example.⁷⁶⁶ The President raised Sessions’s recusal and brought up and criticized the Special Counsel’s investigation.⁷⁶⁷

Over the next several months, the President continued to criticize Sessions in tweets and media interviews and on several occasions appeared to publicly encourage him to take action in the Russia investigation despite his recusal.⁷⁶⁸ On June 5, 2018, for example, the President

⁷⁶⁰ SC_RRP000033 (Porter 12/6/17 Notes); see Porter 4/13/18 302, at 6.

⁷⁶¹ SC_RRP000033 (Porter 12/6/17 Notes); Porter 4/13/18 302, at 6.

⁷⁶² Porter 4/13/18 302, at 6-7.

⁷⁶³ Michael S. Schmidt & Michael D. Shear, *Trump Says Russia Inquiry Makes U.S. “Look Very Bad”*, New York Times (Dec. 28, 2017).

⁷⁶⁴ Michael S. Schmidt & Michael D. Shear, *Trump Says Russia Inquiry Makes U.S. “Look Very Bad”*, New York Times (Dec. 28, 2017).

⁷⁶⁵ Porter 4/13/18 302, at 14.

⁷⁶⁶ Porter 5/8/18 302, at 15. Contemporaneous notes Porter took of the conversation state, “Roy Cohn (14-0) / Jay Goldberg (12-0).” SC_RRP000047 (Porter 1/27/18 Notes).

⁷⁶⁷ Porter 5/8/18 302, at 15-16.

⁷⁶⁸ See, e.g., @realDonaldTrump 2/28/18 (9:34 a.m. ET) Tweet (“Why is A.G. Jeff Sessions asking the Inspector General to investigate potentially massive FISA abuse. Will take forever, has no prosecutorial power and already late with reports on Comey etc. Isn’t the I.G. an Obama guy? Why not use Justice Department lawyers? DISGRACEFUL!”); @realDonaldTrump 4/7/18 (4:52 p.m. ET) Tweet (“Lawmakers of the House Judiciary Committee are angrily accusing the Department of Justice of missing the Thursday Deadline for turning over UNREDACTED Documents relating to FISA abuse, FBI, Comey, Lynch, McCabe, Clinton Emails and much more. Slow walking – what is going on? BAD!”); @realDonaldTrump 4/22/18 (8:22 a.m. ET) Tweet (“‘GOP Lawmakers asking Sessions to Investigate Comey and Hillary Clinton.’ @FoxNews Good luck with that request!”); @realDonaldTrump 12/16/18 (3:37 p.m. ET) Tweet

tweeted, "The Russian Witch Hunt Hoax continues, all because Jeff Sessions didn't tell me he was going to recuse himself. . . . I would have quickly picked someone else. So much time and money wasted, so many lives ruined . . . and Sessions knew better than most that there was No Collusion!"⁷⁶⁹ On August 1, 2018, the President tweeted that "Attorney General Jeff Sessions should stop this Rigged Witch Hunt right now."⁷⁷⁰ On August 23, 2018, the President publicly criticized Sessions in a press interview and suggested that prosecutions at the Department of Justice were politically motivated because Paul Manafort had been prosecuted but Democrats had not.⁷⁷¹ The President said, "I put in an Attorney General that never took control of the Justice Department, Jeff Sessions."⁷⁷² That day, Sessions issued a press statement that said, "I took control of the Department of Justice the day I was sworn in While I am Attorney General, the actions of the Department of Justice will not be improperly influenced by political considerations."⁷⁷³ The next day, the President tweeted a response: "Department of Justice will not be improperly influenced by political considerations.' Jeff, this is GREAT, what everyone wants, so look into all of the corruption on the 'other side' including deleted Emails, Comey lies & leaks, Mueller conflicts, McCabe, Strzok, Page, Ohr, FISA abuse, Christopher Steele & his phony and corrupt Dossier, the Clinton Foundation, illegal surveillance of Trump campaign, Russian collusion by Dems – and so much more. Open up the papers & documents without redaction? Come on Jeff, you can do it, the country is waiting!"⁷⁷⁴

On November 7, 2018, the day after the midterm elections, the President replaced Sessions with Sessions's chief of staff as Acting Attorney General.⁷⁷⁵

Analysis

In analyzing the President's efforts to have Sessions unrecuse himself and regain control of the Russia investigation, the following considerations and evidence are relevant to the elements of obstruction of justice:

a. Obstructive act. To determine if the President's efforts to have the Attorney General unrecuse could qualify as an obstructive act, it would be necessary to assess evidence on whether those actions would naturally impede the Russia investigation. That inquiry would take into account the supervisory role that the Attorney General, if unrecused, would play in the Russia investigation. It also would have to take into account that the Attorney General's recusal covered

("Jeff Sessions should be ashamed of himself for allowing this total HOAX to get started in the first place!").

⁷⁶⁹ @realDonaldTrump 6/5/18 (7:31 a.m. ET) Tweet.

⁷⁷⁰ @realDonaldTrump 8/1/18 (9:24 a.m. ET) Tweet.

⁷⁷¹ Fox & Friends Interview of President Trump, Fox News (Aug. 23, 2018).

⁷⁷² Fox & Friends Interview of President Trump, Fox News (Aug. 23, 2018).

⁷⁷³ Sessions 8/23/18 Press Statement.

⁷⁷⁴ @realDonaldTrump 8/24/18 (6:17 a.m. ET) Tweet; @realDonaldTrump 8/24/18 (6:28 a.m. ET) Tweet.

⁷⁷⁵ @realDonaldTrump 11/7/18 (2:44 p.m. ET) Tweet.

other campaign-related matters. The inquiry would not turn on what Attorney General Sessions would actually do if unrecused, but on whether the efforts to reverse his recusal would naturally have had the effect of impeding the Russia investigation.

On multiple occasions in 2017, the President spoke with Sessions about reversing his recusal so that he could take over the Russia investigation and begin an investigation and prosecution of Hillary Clinton. For example, in early summer 2017, Sessions recalled the President asking him to unrecuse, but Sessions did not take it as a directive. When the President raised the issue again in December 2017, the President said, as recorded by Porter, “Not telling you to do anything. . . . I’m not going to get involved. I’m not going to do anything or direct you to do anything. I just want to be treated fairly.” The duration of the President’s efforts—which spanned from March 2017 to August 2018—and the fact that the President repeatedly criticized Sessions in public and in private for failing to tell the President that he would have to recuse is relevant to assessing whether the President’s efforts to have Sessions unrecuse could qualify as obstructive acts.

b. Nexus to an official proceeding. As described above, by mid-June 2017, the existence of a grand jury investigation supervised by the Special Counsel was public knowledge. In addition, in July 2017, a different grand jury supervised by the Special Counsel was empaneled in the District of Columbia, and the press reported on the existence of this grand jury in early August 2017.⁷⁷⁶ Whether the conduct towards the Attorney General would have a foreseeable impact on those proceedings turns on much of the same evidence discussed above with respect to the obstructive-act element.

c. Intent. There is evidence that at least one purpose of the President’s conduct toward Sessions was to have Sessions assume control over the Russia investigation and supervise it in a way that would restrict its scope. By the summer of 2017, the President was aware that the Special Counsel was investigating him personally for obstruction of justice. And in the wake of the disclosures of emails about the June 9 meeting between Russians and senior members of the campaign, *see* Volume II, Section II.G, *supra*, it was evident that the investigation into the campaign now included the President’s son, son-in-law, and former campaign manager. The President had previously and unsuccessfully sought to have Sessions publicly announce that the Special Counsel investigation would be confined to future election interference. Yet Sessions remained recused. In December 2017, shortly after Flynn pleaded guilty, the President spoke to Sessions in the Oval Office with only Porter present and told Sessions that he would be a hero if he unrecused. Porter linked that request to the President’s desire that Sessions take back supervision of the Russia investigation and direct an investigation of Hillary Clinton. The President said in that meeting that he “just want[ed] to be treated fairly,” which could reflect his perception that it was unfair that he was being investigated while Hillary Clinton was not. But a principal effect of that act would be to restore supervision of the Russia investigation to the Attorney General—a position that the President frequently suggested should be occupied by someone like Eric Holder and Bobby Kennedy, who the President described as protecting their

⁷⁷⁶ *E.g.*, Del Quentin Wilbur & Byron Tau, *Special Counsel Robert Mueller Impanels Washington Grand Jury in Russia Probe*, Wall Street Journal (Aug. 3, 2017); Carol D. Leonnig et al., *Special Counsel Mueller using grand jury in federal court in Washington as part of Russia investigation*, Washington Post (Aug. 3, 2017).

presidents. A reasonable inference from those statements and the President's actions is that the President believed that an unrecused Attorney General would play a protective role and could shield the President from the ongoing Russia investigation.

I. The President Orders McGahn to Deny that the President Tried to Fire the Special Counsel

Overview

In late January 2018, the media reported that in June 2017 the President had ordered McGahn to have the Special Counsel fired based on purported conflicts of interest but McGahn had refused, saying he would quit instead. After the story broke, the President, through his personal counsel and two aides, sought to have McGahn deny that he had been directed to remove the Special Counsel. Each time he was approached, McGahn responded that he would not refute the press accounts because they were accurate in reporting on the President's effort to have the Special Counsel removed. The President later personally met with McGahn in the Oval Office with only the Chief of Staff present and tried to get McGahn to say that the President never ordered him to fire the Special Counsel. McGahn refused and insisted his memory of the President's direction to remove the Special Counsel was accurate. In that same meeting, the President challenged McGahn for taking notes of his discussions with the President and asked why he had told Special Counsel investigators that he had been directed to have the Special Counsel removed.

Evidence

1. The Press Reports that the President Tried to Fire the Special Counsel

On January 25, 2018, the New York Times reported that in June 2017, the President had ordered McGahn to have the Department of Justice fire the Special Counsel.⁷⁷⁷ According to the article, "[a]mid the first wave of news media reports that Mr. Mueller was examining a possible obstruction case, the president began to argue that Mr. Mueller had three conflicts of interest that disqualified him from overseeing the investigation."⁷⁷⁸ The article further reported that "[a]fter receiving the president's order to fire Mr. Mueller, the White House counsel . . . refused to ask the Justice Department to dismiss the special counsel, saying he would quit instead."⁷⁷⁹ The article stated that the president "ultimately backed down after the White House counsel threatened to resign rather than carry out the directive."⁷⁸⁰ After the article was published, the President

⁷⁷⁷ Michael S. Schmidt & Maggie Haberman, *Trump Ordered Mueller Fired, but Backed Off When White House Counsel Threatened to Quit*, New York Times (Jan. 25, 2018).

⁷⁷⁸ Michael S. Schmidt & Maggie Haberman, *Trump Ordered Mueller Fired, but Backed Off When White House Counsel Threatened to Quit*, New York Times (Jan. 25, 2018).

⁷⁷⁹ Michael S. Schmidt & Maggie Haberman, *Trump Ordered Mueller Fired, but Backed Off When White House Counsel Threatened to Quit*, New York Times (Jan. 25, 2018).

⁷⁸⁰ Michael S. Schmidt & Maggie Haberman, *Trump Ordered Mueller Fired, but Backed Off When White House Counsel Threatened to Quit*, New York Times (Jan. 25, 2018).

dismissed the story when asked about it by reporters, saying, "Fake news, folks. Fake news. A typical New York Times fake story."⁷⁸¹

The next day, the Washington Post reported on the same event but added that McGahn had not told the President directly that he intended to resign rather than carry out the directive to have the Special Counsel terminated.⁷⁸² In that respect, the Post story clarified the Times story, which could be read to suggest that McGahn had told the President of his intention to quit, causing the President to back down from the order to have the Special Counsel fired.⁷⁸³

2. The President Seeks to Have McGahn Dispute the Press Reports

On January 26, 2018, the President's personal counsel called McGahn's attorney and said that the President wanted McGahn to put out a statement denying that he had been asked to fire the Special Counsel and that he had threatened to quit in protest.⁷⁸⁴ McGahn's attorney spoke with McGahn about that request and then called the President's personal counsel to relay that McGahn would not make a statement.⁷⁸⁵ McGahn's attorney informed the President's personal counsel that the Times story was accurate in reporting that the President wanted the Special Counsel removed.⁷⁸⁶ Accordingly, McGahn's attorney said, although the article was inaccurate in some other respects, McGahn could not comply with the President's request to dispute the story.⁷⁸⁷ Hicks recalled relaying to the President that one of his attorneys had spoken to McGahn's attorney about the issue.⁷⁸⁸

⁷⁸¹ Sophie Tatum & Kara Scannell, *Trump denies he called for Mueller's firing*, CNN (Jan. 26, 2018); Michael S. Schmidt & Maggie Haberman, *Trump Ordered Mueller Fired, but Backed Off When White House Counsel Threatened to Quit*, New York Times (Jan. 25, 2018).

⁷⁸² The *Post* article stated, "Despite internal objections, Trump decided to assert that Mueller had unacceptable conflicts of interest and moved to remove him from his position. . . . In response, McGahn said he would not remain at the White House if Trump went through with the move. . . . McGahn did not deliver his resignation threat directly to Trump but was serious about his threat to leave." Rosalind S. Helderman & Josh Dawsey, *Trump moved to fire Mueller in June, bringing White House counsel to the brink of leaving*, Washington Post (Jan. 26, 2018).

⁷⁸³ Rosalind S. Helderman & Josh Dawsey, *Trump moved to fire Mueller in June, bringing White House counsel to the brink of leaving*, Washington Post (Jan. 26, 2018); see McGahn 3/8/17 302, at 3-4.

⁷⁸⁴ McGahn 3/8/18 302, at 3 (agent note).

⁷⁸⁵ McGahn 3/8/18 302, at 3 (agent note).

⁷⁸⁶ McGahn 3/8/18 302, at 3-4 (agent note).

⁷⁸⁷ McGahn 3/8/18 302, at 4 (agent note).

⁷⁸⁸ Hicks 3/13/18 302, at 11. Hicks also recalled that the President spoke on the phone that day with Chief of Staff John Kelly and that the President said Kelly told him that McGahn had totally refuted the story and was going to put out a statement. Hicks 3/13/18 302, at 11. But Kelly said that he did not speak to McGahn when the article came out and did not tell anyone he had done so. Kelly 8/2/18 302, at 1-2.

Also on January 26, 2017, Hicks recalled that the President asked Sanders to contact McGahn about the story.⁷⁸⁹ McGahn told Sanders there was no need to respond and indicated that some of the article was accurate.⁷⁹⁰ Consistent with that position, McGahn did not correct the *Times* story.

On February 4, 2018, Priebus appeared on Meet the Press and said he had not heard the President say that he wanted the Special Counsel fired.⁷⁹¹ After Priebus's appearance, the President called Priebus and said he did a great job on Meet the Press.⁷⁹² The President also told Priebus that the President had "never said any of those things about" the Special Counsel.⁷⁹³

The next day, on February 5, 2018, the President complained about the *Times* article to Porter.⁷⁹⁴ The President told Porter that the article was "bullshit" and he had not sought to terminate the Special Counsel.⁷⁹⁵ The President said that McGahn leaked to the media to make himself look good.⁷⁹⁶ The President then directed Porter to tell McGahn to create a record to make clear that the President never directed McGahn to fire the Special Counsel.⁷⁹⁷ Porter thought the matter should be handled by the White House communications office, but the President said he wanted McGahn to write a letter to the file "for our records" and wanted something beyond a press statement to demonstrate that the reporting was inaccurate.⁷⁹⁸ The President referred to McGahn as a "lying bastard" and said that he wanted a record from him.⁷⁹⁹ Porter recalled the President

⁷⁸⁹ Hicks 3/13/18 302, at 11. Sanders did not recall whether the President asked her to speak to McGahn or if she did it on her own. Sanders 7/23/18 302, at 2.

⁷⁹⁰ Sanders 7/23/18 302, at 1-2.

⁷⁹¹ Meet the Press Interview with Reince Priebus, NBC (Feb. 4, 2018).

⁷⁹² Priebus 4/3/18 302, at 10.

⁷⁹³ Priebus 4/3/18 302, at 10.

⁷⁹⁴ Porter 4/13/18 302, at 16-17. Porter did not recall the timing of this discussion with the President. Porter 4/13/18 302, at 17. Evidence indicates it was February 5, 2018. On the back of a pocket card dated February 5, 2018, Porter took notes that are consistent with his description of the discussion: "COS: (1) Letter from DM – Never threatened to quit – DJT never told him to fire M." SC_RRP000053 (Porter Undated Notes). Porter said it was possible he took the notes on a day other than February 5. Porter 4/13/18 302, at 17. But Porter also said that "COS" referred to matters he wanted to discuss with Chief of Staff Kelly, Porter 4/13/18 302, at 17, and Kelly took notes dated February 5, 2018, that state "POTUS – Don McGahn letter – Mueller + resigning." WH000017684 (Kelly 2/5/18 Notes). Kelly said he did not recall what the notes meant, but thought the President may have "mused" about having McGahn write a letter. Kelly 8/2/18 302, at 3. McGahn recalled that Porter spoke with him about the President's request about two weeks after the New York Times story was published, which is consistent with the discussion taking place on or about February 5. McGahn 3/8/18 302, at 4.

⁷⁹⁵ Porter 4/13/18 302, at 17.

⁷⁹⁶ Porter 4/13/18 302, at 17.

⁷⁹⁷ Porter 4/13/18 302, at 17.

⁷⁹⁸ Porter 4/13/18 302, at 17; Porter 5/8/18 302, at 18.

⁷⁹⁹ Porter 4/13/18 302, at 17; Porter 5/8/18 302, at 18.

saying something to the effect of, "If he doesn't write a letter, then maybe I'll have to get rid of him."⁸⁰⁰

Later that day, Porter spoke to McGahn to deliver the President's message.⁸⁰¹ Porter told McGahn that he had to write a letter to dispute that he was ever ordered to terminate the Special Counsel.⁸⁰² McGahn shrugged off the request, explaining that the media reports were true.⁸⁰³ McGahn told Porter that the President had been insistent on firing the Special Counsel and that McGahn had planned to resign rather than carry out the order, although he had not personally told the President he intended to quit.⁸⁰⁴ Porter told McGahn that the President suggested that McGahn would be fired if he did not write the letter.⁸⁰⁵ McGahn dismissed the threat, saying that the optics would be terrible if the President followed through with firing him on that basis.⁸⁰⁶ McGahn said he would not write the letter the President had requested.⁸⁰⁷ Porter said that to his knowledge the issue of McGahn's letter never came up with the President again, but Porter did recall telling Kelly about his conversation with McGahn.⁸⁰⁸

The next day, on February 6, 2018, Kelly scheduled time for McGahn to meet with him and the President in the Oval Office to discuss the Times article.⁸⁰⁹ The morning of the meeting, the President's personal counsel called McGahn's attorney and said that the President was going to be speaking with McGahn and McGahn could not resign no matter what happened in the meeting.⁸¹⁰

The President began the Oval Office meeting by telling McGahn that the New York Times story did not "look good" and McGahn needed to correct it.⁸¹¹ McGahn recalled the President said, "I never said to fire Mueller. I never said 'fire.' This story doesn't look good. You need to correct this. You're the White House counsel."⁸¹²

⁸⁰⁰ Porter 4/13/18 302, at 17.

⁸⁰¹ Porter 4/13/18 302, at 17; McGahn 3/8/18 302, at 4.

⁸⁰² Porter 4/13/18 302, at 17; McGahn 3/8/18 302, at 4.

⁸⁰³ Porter 4/13/18 302, at 17; McGahn 3/8/18 302, at 4.

⁸⁰⁴ Porter 4/13/18 302, at 17; McGahn 3/8/18 302, at 4.

⁸⁰⁵ Porter 4/13/18 302, at 17; McGahn 3/8/18 302, at 4.

⁸⁰⁶ Porter 4/13/18 302, at 17-18; McGahn 3/8/18 302, at 4.

⁸⁰⁷ McGahn 3/8/18 302, at 4.

⁸⁰⁸ Porter 4/13/18 302, at 18.

⁸⁰⁹ McGahn 3/8/18 302, at 4; WH000017685 (Kelly 2/6/18 Notes). McGahn recalled that, before the Oval Office meeting, he told Kelly that he was not inclined to fix the article. McGahn 3/8/18 302, at 4.

⁸¹⁰ McGahn 3/8/18 302, at 5 (agent note); 2/26/19 Email, Counsel for Don McGahn to Special Counsel's Office (confirming February 6, 2018 date of call from the President's personal counsel).

⁸¹¹ McGahn 3/8/18 302, at 4; Kelly 8/2/18 302, at 2.

⁸¹² McGahn 3/8/18 302, at 4; Kelly 8/2/18 302, at 2.

In response, McGahn acknowledged that he had not told the President directly that he planned to resign, but said that the story was otherwise accurate.⁸¹³ The President asked McGahn, "Did I say the word 'fire'?"⁸¹⁴ McGahn responded, "What you said is, 'Call Rod [Rosenstein], tell Rod that Mueller has conflicts and can't be the Special Counsel.'" ⁸¹⁵ The President responded, "I never said that."⁸¹⁶ The President said he merely wanted McGahn to raise the conflicts issue with Rosenstein and leave it to him to decide what to do.⁸¹⁷ McGahn told the President he did not understand the conversation that way and instead had heard, "Call Rod. There are conflicts. Mueller has to go."⁸¹⁸ The President asked McGahn whether he would "do a correction," and McGahn said no.⁸¹⁹ McGahn thought the President was testing his mettle to see how committed McGahn was to what happened.⁸²⁰ Kelly described the meeting as "a little tense."⁸²¹

The President also asked McGahn in the meeting why he had told Special Counsel's Office investigators that the President had told him to have the Special Counsel removed.⁸²² McGahn responded that he had to and that his conversations with the President were not protected by attorney-client privilege.⁸²³ The President then asked, "What about these notes? Why do you take notes? Lawyers don't take notes. I never had a lawyer who took notes."⁸²⁴ McGahn responded that he keeps notes because he is a "real lawyer" and explained that notes create a record and are not a bad thing.⁸²⁵ The President said, "I've had a lot of great lawyers, like Roy Cohn. He did not take notes."⁸²⁶

After the Oval Office meeting concluded, Kelly recalled McGahn telling him that McGahn and the President "did have that conversation" about removing the Special Counsel.⁸²⁷ McGahn recalled that Kelly said that he had pointed out to the President after the Oval Office that McGahn

⁸¹³ McGahn 3/8/18 302, at 4.

⁸¹⁴ McGahn 3/8/18 302, at 4; Kelly 8/2/18 302, at 2.

⁸¹⁵ McGahn 3/8/18 302, at 5.

⁸¹⁶ McGahn 3/8/18 302, at 5.

⁸¹⁷ McGahn 3/8/18 302, at 5.

⁸¹⁸ McGahn 3/8/18 302, at 5.

⁸¹⁹ McGahn 3/8/18 302, at 5; Kelly 8/2/18 302, at 2.

⁸²⁰ McGahn 3/8/18 302, at 5.

⁸²¹ Kelly 8/2/18 302, at 2.

⁸²² McGahn 3/8/18 302, at 5.

⁸²³ McGahn 3/8/18 302, at 5.

⁸²⁴ McGahn 3/8/18 302, at 5. McGahn said the President was referring to Donaldson's notes, which the President thought of as McGahn's notes. McGahn 3/8/18 302, at 5.

⁸²⁵ McGahn 3/8/18 302, at 5.

⁸²⁶ McGahn 3/8/18 302, at 5.

⁸²⁷ Kelly 8/2/18 302, at 2.

had not backed down and would not budge.⁸²⁸ Following the Oval Office meeting, the President's personal counsel called McGahn's counsel and relayed that the President was "fine" with McGahn.⁸²⁹

Analysis

In analyzing the President's efforts to have McGahn deny that he had been ordered to have the Special Counsel removed, the following evidence is relevant to the elements of obstruction of justice:

a. Obstructive act. The President's repeated efforts to get McGahn to create a record denying that the President had directed him to remove the Special Counsel would qualify as an obstructive act if it had the natural tendency to constrain McGahn from testifying truthfully or to undermine his credibility as a potential witness if he testified consistently with his memory, rather than with what the record said.

There is some evidence that at the time the New York Times and Washington Post stories were published in late January 2018, the President believed the stories were wrong and that he had never told McGahn to have Rosenstein remove the Special Counsel. The President correctly understood that McGahn had not told the President directly that he planned to resign. In addition, the President told Priebus and Porter that he had not sought to terminate the Special Counsel, and in the Oval Office meeting with McGahn, the President said, "I never said to fire Mueller. I never said 'fire.'" That evidence could indicate that the President was not attempting to persuade McGahn to change his story but was instead offering his own—but different—recollection of the substance of his June 2017 conversations with McGahn and McGahn's reaction to them.

Other evidence cuts against that understanding of the President's conduct. As previously described, *see* Volume II, Section II.E, *supra*, substantial evidence supports McGahn's account that the President had directed him to have the Special Counsel removed, including the timing and context of the President's directive; the manner in which McGahn reacted; and the fact that the President had been told the conflicts were insubstantial, were being considered by the Department of Justice, and should be raised with the President's personal counsel rather than brought to McGahn. In addition, the President's subsequent denials that he had told McGahn to have the Special Counsel removed were carefully worded. When first asked about the New York Times story, the President said, "Fake news, folks. Fake news. A typical New York Times fake story." And when the President spoke with McGahn in the Oval Office, he focused on whether he had used the word "fire," saying, "I never said to fire Mueller. I never said 'fire'" and "Did I say the word 'fire'?" The President's assertion in the Oval Office meeting that he had never directed McGahn to have the Special Counsel removed thus runs counter to the evidence.

In addition, even if the President sincerely disagreed with McGahn's memory of the June 17, 2017 events, the evidence indicates that the President knew by the time of the Oval Office

⁸²⁸ McGahn 3/8/18 302, at 5. Kelly did not recall discussing the Oval Office meeting with the President after the fact. Kelly 8/2/18 302, at 2. Handwritten notes taken by Kelly state, "Don[:] Mueller discussion in June. - Bannon Priebus - came out okay." WH000017685 (Kelly 2/6/18 Notes).

⁸²⁹ McGahn 3/8/18 302, at 5 (agent note).

meeting that McGahn's account differed and that McGahn was firm in his views. Shortly after the story broke, the President's counsel told McGahn's counsel that the President wanted McGahn to make a statement denying he had been asked to fire the Special Counsel, but McGahn responded through his counsel that that aspect of the story was accurate and he therefore could not comply with the President's request. The President then directed Sanders to tell McGahn to correct the story, but McGahn told her he would not do so because the story was accurate in reporting on the President's order. Consistent with that position, McGahn never issued a correction. More than a week later, the President brought up the issue again with Porter, made comments indicating the President thought McGahn had leaked the story, and directed Porter to have McGahn create a record denying that the President had tried to fire the Special Counsel. At that point, the President said he might "have to get rid of" McGahn if McGahn did not comply. McGahn again refused and told Porter, as he had told Sanders and as his counsel had told the President's counsel, that the President had in fact ordered him to have Rosenstein remove the Special Counsel. That evidence indicates that by the time of the Oval Office meeting the President was aware that McGahn did not think the story was false and did not want to issue a statement or create a written record denying facts that McGahn believed to be true. The President nevertheless persisted and asked McGahn to repudiate facts that McGahn had repeatedly said were accurate.

b. Nexus to an official proceeding. By January 2018, the Special Counsel's use of a grand jury had been further confirmed by the return of several indictments. The President also was aware that the Special Counsel was investigating obstruction-related events because, among other reasons, on January 8, 2018, the Special Counsel's Office provided his counsel with a detailed list of topics for a possible interview with the President.⁸³⁰ The President knew that McGahn had personal knowledge of many of the events the Special Counsel was investigating and that McGahn had already been interviewed by Special Counsel investigators. And in the Oval Office meeting, the President indicated he knew that McGahn had told the Special Counsel's Office about the President's effort to remove the Special Counsel. The President challenged McGahn for disclosing that information and for taking notes that he viewed as creating unnecessary legal exposure. That evidence indicates the President's awareness that the June 17, 2017 events were relevant to the Special Counsel's investigation and any grand jury investigation that might grow out of it.

To establish a nexus, it would be necessary to show that the President's actions would have the natural tendency to affect such a proceeding or that they would hinder, delay, or prevent the communication of information to investigators. Because McGahn had spoken to Special Counsel investigators before January 2018, the President could not have been seeking to influence his prior statements in those interviews. But because McGahn had repeatedly spoken to investigators and the obstruction inquiry was not complete, it was foreseeable that he would be interviewed again on obstruction-related topics. If the President were focused solely on a press strategy in seeking to have McGahn refute the New York Times article, a nexus to a proceeding or to further investigative interviews would not be shown. But the President's efforts to have McGahn write a letter "for our records" approximately ten days after the stories had come out—well past the typical

⁸³⁰ 1/29/18 Letter, President's Personal Counsel to Special Counsel's Office, at 1-2 ("In our conversation of January 8, your office identified the following topics as areas you desired to address with the President in order to complete your investigation on the subjects of alleged collusion and obstruction of justice"; listing 16 topics).

time to issue a correction for a news story—indicates the President was not focused solely on a press strategy, but instead likely contemplated the ongoing investigation and any proceedings arising from it.

c. Intent. Substantial evidence indicates that in repeatedly urging McGahn to dispute that he was ordered to have the Special Counsel terminated, the President acted for the purpose of influencing McGahn's account in order to deflect or prevent further scrutiny of the President's conduct towards the investigation.

Several facts support that conclusion. The President made repeated attempts to get McGahn to change his story. As described above, by the time of the last attempt, the evidence suggests that the President had been told on multiple occasions that McGahn believed the President had ordered him to have the Special Counsel terminated. McGahn interpreted his encounter with the President in the Oval Office as an attempt to test his mettle and see how committed he was to his memory of what had occurred. The President had already laid the groundwork for pressing McGahn to alter his account by telling Porter that it might be necessary to fire McGahn if he did not deny the story, and Porter relayed that statement to McGahn. Additional evidence of the President's intent may be gleaned from the fact that his counsel was sufficiently alarmed by the prospect of the President's meeting with McGahn that he called McGahn's counsel and said that McGahn could not resign no matter what happened in the Oval Office that day. The President's counsel was well aware of McGahn's resolve not to issue what he believed to be a false account of events despite the President's request. Finally, as noted above, the President brought up the Special Counsel investigation in his Oval Office meeting with McGahn and criticized him for telling this Office about the June 17, 2017 events. The President's statements reflect his understanding—and his displeasure—that those events would be part of an obstruction-of-justice inquiry.

J. The President's Conduct Towards Flynn, Manafort, HOM

Overview

In addition to the interactions with McGahn described above, the President has taken other actions directed at possible witnesses in the Special Counsel's investigation, including Flynn, Manafort, HOM and as described in the next section, Cohen. When Flynn withdrew from a joint defense agreement with the President, the President's personal counsel stated that Flynn's actions would be viewed as reflecting "hostility" towards the President. During Manafort's prosecution and while the jury was deliberating, the President repeatedly stated that Manafort was being treated unfairly and made it known that Manafort could receive a pardon. Harm to Ongoing Matter

Evidence

I. Conduct Directed at Michael Flynn

As previously noted, *see* Volume II, Section II.B, *supra*, the President asked for Flynn's resignation on February 13, 2017. Following Flynn's resignation, the President made positive public comments about Flynn, describing him as a "wonderful man," "a fine person," and a "very

good person.”⁸³¹ The President also privately asked advisors to pass messages to Flynn conveying that the President still cared about him and encouraging him to stay strong.⁸³²

In late November 2017, Flynn began to cooperate with this Office. On November 22, 2017, Flynn withdrew from a joint defense agreement he had with the President.⁸³³ Flynn’s counsel told the President’s personal counsel and counsel for the White House that Flynn could no longer have confidential communications with the White House or the President.⁸³⁴ Later that night, the President’s personal counsel left a voicemail for Flynn’s counsel that said:

I understand your situation, but let me see if I can’t state it in starker terms. . . . [I]t wouldn’t surprise me if you’ve gone on to make a deal with . . . the government. . . . [I]f . . . there’s information that implicates the President, then we’ve got a national security issue, . . . so, you know, . . . we need some kind of heads up. Um, just for the sake of protecting all our interests if we can. . . . [R]emember what we’ve always said about the President and his feelings toward Flynn and, that still remains⁸³⁵

On November 23, 2017, Flynn’s attorneys returned the call from the President’s personal counsel to acknowledge receipt of the voicemail.⁸³⁶ Flynn’s attorneys reiterated that they were no longer in a position to share information under any sort of privilege.⁸³⁷ According to Flynn’s attorneys, the President’s personal counsel was indignant and vocal in his disagreement.⁸³⁸ The President’s personal counsel said that he interpreted what they said to him as a reflection of Flynn’s

⁸³¹ See, e.g., *Remarks by President Trump in Press Conference*, White House (Feb. 16, 2018) (stating that “Flynn is a fine person” and “I don’t think [Flynn] did anything wrong. If anything, he did something right You know, he was just doing his job”); *Interview of Donald J. Trump*, NBC (May 11, 2017) (stating that Flynn is a “very good person”).

⁸³² See Priebus 1/18/17 302, at 9-10 (the President asked Priebus to contact Flynn the week he was terminated to convey that the President still cared about him and felt bad about what happened to him; Priebus thought the President did not want Flynn to have a problem with him); McFarland 12/22/17 302, at 18 (about a month or two after Flynn was terminated, the President asked McFarland to get in touch with Flynn and tell him that he was a good guy, he should stay strong, and the President felt bad for him); Flynn 1/19/18 302, at 9 (recalling the call from Priebus and an additional call from Hicks who said she wanted to relay on behalf of the President that the President hoped Flynn was okay); Christie 2/13/19 302, at 3 (describing a phone conversation between Kushner and Flynn the day after Flynn was fired where Kushner said, “You know the President respects you. The President cares about you. I’ll get the President to send out a positive tweet about you later,” and the President nodded his assent to Kushner’s comment promising a tweet).

⁸³³ Counsel for Flynn 3/1/18 302, at 1.

⁸³⁴ Counsel for Flynn 3/1/18 302, at 1.

⁸³⁵ 11/22/17 Voicemail Transcript, President’s Personal Counsel to Counsel for Michael Flynn.

⁸³⁶ Counsel for Flynn 3/1/18 302, at 1.

⁸³⁷ Counsel for Flynn 3/1/18 302, at 1.

⁸³⁸ Counsel for Flynn 3/1/18 302, at 1.

hostility towards the President and that he planned to inform his client of that interpretation.⁸³⁹ Flynn's attorneys understood that statement to be an attempt to make them reconsider their position because the President's personal counsel believed that Flynn would be disturbed to know that such a message would be conveyed to the President.⁸⁴⁰

On December 1, 2017, Flynn pleaded guilty to making false statements pursuant to a cooperation agreement.⁸⁴¹ The next day, the President told the press that he was not concerned about what Flynn might tell the Special Counsel.⁸⁴² In response to a question about whether the President still stood behind Flynn, the President responded, "We'll see what happens."⁸⁴³ Over the next several days, the President made public statements expressing sympathy for Flynn and indicating he had not been treated fairly.⁸⁴⁴ On December 15, 2017, the President responded to a press inquiry about whether he was considering a pardon for Flynn by saying, "I don't want to talk about pardons for Michael Flynn yet. We'll see what happens. Let's see. I can say this: When you look at what's gone on with the FBI and with the Justice Department, people are very, very angry."⁸⁴⁵

2. Conduct Directed at Paul Manafort

On October 27, 2017, a grand jury in the District of Columbia indicted Manafort and former deputy campaign manager Richard Gates on multiple felony counts, and on February 22, 2018, a grand jury in the Eastern District of Virginia indicted Manafort and Gates on additional felony

⁸³⁹ Counsel for Flynn 3/1/18 302, at 2. Because of attorney-client privilege issues, we did not seek to interview the President's personal counsel about the extent to which he discussed his statements to Flynn's attorneys with the President.

⁸⁴⁰ Counsel for Flynn 3/1/18 302, at 2.

⁸⁴¹ Information, *United States v. Michael T. Flynn*, 1:17-cr-232 (D.D.C. Dec. 1, 2017), Doc. 1; Plea Agreement, *United States v. Michael T. Flynn*, 1:17-cr-232 (D.D.C. Dec. 1, 2017), Doc. 3.

⁸⁴² *President Trump Remarks on Tax Reform and Michael Flynn's Guilty Plea*, C-SPAN (Dec. 2, 2017).

⁸⁴³ *President Trump Remarks on Tax Reform and Michael Flynn's Guilty Plea*, C-SPAN (Dec. 2, 2017).

⁸⁴⁴ See @realDonaldTrump 12/2/17 (9:06 p.m. ET) Tweet ("So General Flynn lies to the FBI and his life is destroyed, while Crooked Hillary Clinton, on that now famous FBI holiday 'interrogation' with no swearing in and no recording, lies many times . . . and nothing happens to her? Rigged system, or just a double standard?"); President Trump Departure Remarks, C-SPAN (Dec. 4, 2017) ("Well, I feel badly for General Flynn. I feel very badly. He's led a very strong life. And I feel very badly.").

⁸⁴⁵ *President Trump White House Departure*, C-SPAN (Dec. 15, 2017).

counts.⁸⁴⁶ The charges in both cases alleged criminal conduct by Manafort that began as early as 2005 and continued through 2018.⁸⁴⁷

In January 2018, Manafort told Gates that he had talked to the President's personal counsel and they were "going to take care of us."⁸⁴⁸ Manafort told Gates it was stupid to plead, saying that he had been in touch with the President's personal counsel and repeating that they should "sit tight" and "we'll be taken care of."⁸⁴⁹ Gates asked Manafort outright if anyone mentioned pardons and Manafort said no one used that word.⁸⁵⁰

As the proceedings against Manafort progressed in court, the President told Porter that he never liked Manafort and that Manafort did not know what he was doing on the campaign.⁸⁵¹ The President discussed with aides whether and in what way Manafort might be cooperating with the Special Counsel's investigation, and whether Manafort knew any information that would be harmful to the President.⁸⁵²

In public, the President made statements criticizing the prosecution and suggesting that Manafort was being treated unfairly. On June 15, 2018, before a scheduled court hearing that day on whether Manafort's bail should be revoked based on new charges that Manafort had tampered with witnesses while out on bail, the President told the press, "I feel badly about a lot of them

⁸⁴⁶ Indictment, *United States v. Paul J. Manafort, Jr. and Richard W. Gates III*, 1:17-cr-201 (D.D.C. Oct. 27, 2017), Doc. 13 ("*Manafort and Gates* D.D.C. Indictment"); Indictment, *United States v. Paul J. Manafort, Jr. and Richard W. Gates III*, 1:18-cr-83 (E.D. Va. Feb. 22, 2018), Doc. 9 ("*Manafort and Gates* E.D. Va. Indictment")

⁸⁴⁷ *Manafort and Gates* D.D.C. Indictment; *Manafort and Gates* E.D. Va. Indictment.

⁸⁴⁸ Gates 4/18/18 302, at 4. In February 2018, Gates pleaded guilty, pursuant to a cooperation plea agreement, to a superseding criminal information charging him with conspiring to defraud and commit multiple offenses (*i.e.*, tax fraud, failure to report foreign bank accounts, and acting as an unregistered agent of a foreign principal) against the United States, as well as making false statements to our Office. Superseding Criminal Information, *United States v. Richard W. Gates III*, 1:17-cr-201 (D.D.C. Feb. 23, 2018), Doc. 195; Plea Agreement, *United States v. Richard W. Gates III*, 1:17-cr-201 (D.D.C. Feb. 23, 2018), Doc. 205. Gates has provided information and in-court testimony that the Office has deemed to be reliable.

⁸⁴⁹ Gates 4/18/18 302, at 4.

⁸⁵⁰ Gates 4/18/18 302, at 4. Manafort told this Office that he never told Gates that he had talked to the President's personal counsel or suggested that they would be taken care of. Manafort also said he hoped for a pardon but never discussed one with the President, although he noticed the President's public comments about pardons. Manafort 10/1/18 302, at 11. As explained in Volume I, Section IV.A.8, *supra*, Manafort entered into a plea agreement with our Office. The U.S. District Court for the District of Columbia determined that he breached the agreement by being untruthful in proffer sessions and before the grand jury. Order, *United States v. Manafort*, 1:17-cr-201 (D.D.C. Feb. 13, 2019), Doc. 503.

⁸⁵¹ Porter 5/8/18 302, at 11. Priebus recalled that the President never really liked Manafort. *See* Priebus 4/3/18 302, at 11. Hicks said that candidate Trump trusted Manafort's judgment while he worked on the Campaign, but she also once heard Trump tell Gates to keep an eye on Manafort. Hicks 3/13/18 302, at 16.

⁸⁵² Porter 5/8/18 302, at 11; McGahn 12/14/17 302, at 14.

because I think a lot of it is very unfair. I mean, I look at some of them where they go back 12 years. Like Manafort has nothing to do with our campaign. But I feel so—I tell you, I feel a little badly about it. They went back 12 years to get things that he did 12 years ago? . . . I feel badly for some people, because they've gone back 12 years to find things about somebody, and I don't think it's right."⁸⁵³ In response to a question about whether he was considering a pardon for Manafort or other individuals involved in the Special Counsel's investigation, the President said, "I don't want to talk about that. No, I don't want to talk about that. . . . But look, I do want to see people treated fairly. That's what it's all about."⁸⁵⁴ Hours later, Manafort's bail was revoked and the President tweeted, "Wow, what a tough sentence for Paul Manafort, who has represented Ronald Reagan, Bob Dole and many other top political people and campaigns. Didn't know Manafort was the head of the Mob. What about Comey and Crooked Hillary and all the others? Very unfair!"⁸⁵⁵

Immediately following the revocation of Manafort's bail, the President's personal lawyer, Rudolph Giuliani, gave a series of interviews in which he raised the possibility of a pardon for Manafort. Giuliani told the New York Daily News that "[w]hen the whole thing is over, things might get cleaned up with some presidential pardons."⁸⁵⁶ Giuliani also said in an interview that, although the President should not pardon anyone while the Special Counsel's investigation was ongoing, "when the investigation is concluded, he's kind of on his own, right?"⁸⁵⁷ In a CNN interview two days later, Giuliani said, "I guess I should clarify this once and for all. . . . The president has issued no pardons in this investigation. The president is not going to issue pardons in this investigation. . . . When it's over, hey, he's the president of the United States. He retains his pardon power. Nobody is taking that away from him."⁸⁵⁸ Giuliani rejected the suggestion that his and the President's comments could signal to defendants that they should not cooperate in a criminal prosecution because a pardon might follow, saying the comments were "certainly not intended that way."⁸⁵⁹ Giuliani said the comments only acknowledged that an individual involved in the investigation would not be "excluded from [a pardon], if in fact the president and his advisors . . . come to the conclusion that you have been treated unfairly."⁸⁶⁰ Giuliani observed that pardons were not unusual in political investigations but said, "That doesn't mean they're going to happen

⁸⁵³ Remarks by President Trump in Press Gaggle, White House (June 15, 2018).

⁸⁵⁴ Remarks by President Trump in Press Gaggle, White House (June 15, 2018).

⁸⁵⁵ @realDonaldTrump 6/15/18 (1:41 p.m. ET) Tweet.

⁸⁵⁶ Chris Sommerfeldt, *Rudy Giuliani says Mueller probe 'might get cleaned up' with 'presidential pardons' in light of Paul Manafort going to jail*, New York Daily News (June 15, 2018).

⁸⁵⁷ Sharon LaFraniere, *Judge Orders Paul Manafort Jailed Before Trial, Citing New Obstruction Charges*, New York Times (June 15, 2018) (quoting Giuliani).

⁸⁵⁸ *State of the Union with Jake Tapper Transcript*, CNN (June 17, 2018); see Karoun Demirjian, *Giuliani suggests Trump may pardon Manafort after Mueller's probe*, Washington Post (June 17, 2018).

⁸⁵⁹ *State of the Union with Jake Tapper Transcript*, CNN (June 17, 2018).

⁸⁶⁰ *State of the Union with Jake Tapper Transcript*, CNN (June 17, 2018).

here. Doesn't mean that anybody should rely on it. . . . Big signal is, nobody has been pardoned yet."⁸⁶¹

On July 31, 2018, Manafort's criminal trial began in the Eastern District of Virginia, generating substantial news coverage.⁸⁶² The next day, the President tweeted, "This is a terrible situation and Attorney General Jeff Sessions should stop this Rigged Witch Hunt right now, before it continues to stain our country any further. Bob Mueller is totally conflicted, and his 17 Angry Democrats that are doing his dirty work are a disgrace to USA!"⁸⁶³ Minutes later, the President tweeted, "Paul Manafort worked for Ronald Reagan, Bob Dole and many other highly prominent and respected political leaders. He worked for me for a very short time. Why didn't government tell me that he was under investigation. These old charges have nothing to do with Collusion—a Hoax!"⁸⁶⁴ Later in the day, the President tweeted, "Looking back on history, who was treated worse, Alfonse Capone, legendary mob boss, killer and 'Public Enemy Number One,' or Paul Manafort, political operative & Reagan/Dole darling, now serving solitary confinement—although convicted of nothing? Where is the Russian Collusion?"⁸⁶⁵ The President's tweets about the Manafort trial were widely covered by the press.⁸⁶⁶ When asked about the President's tweets, Sanders told the press, "Certainly, the President's been clear. He thinks Paul Manafort's been treated unfairly."⁸⁶⁷

On August 16, 2018, the Manafort case was submitted to the jury and deliberations began. At that time, Giuliani had recently suggested to reporters that the Special Counsel investigation needed to be "done in the next two or three weeks,"⁸⁶⁸ and media stories reported that a Manafort acquittal would add to criticism that the Special Counsel investigation was not worth the time and expense, whereas a conviction could show that ending the investigation would be premature.⁸⁶⁹

⁸⁶¹ *State of the Union with Jake Tapper Transcript*, CNN (June 17, 2018).

⁸⁶² See, e.g., Katelyn Polantz, *Takeaways from day one of the Paul Manafort trial*, CNN (July 31, 2018); Frank Bruni, *Paul Manafort's Trial Is Donald Trump's, Too*, New York Times Opinion (July 31, 2018); Rachel Weiner et al., *Paul Manafort trial Day 2: Witnesses describe extravagant clothing purchases, home remodels, lavish cars paid with wire transfers*, Washington Post (Aug. 1, 2018).

⁸⁶³ @realDonaldTrump 8/1/18 (9:24 a.m. ET) Tweet. Later that day, when Sanders was asked about the President's tweet, she told reporters, "It's not an order. It's the President's opinion." Sarah Sanders, *White House Daily Briefing*, C-SPAN (Aug. 1, 2018).

⁸⁶⁴ @realDonaldTrump 8/1/18 (9:34 a.m. ET) Tweet.

⁸⁶⁵ @realDonaldTrump 8/1/18 (11:35 a.m. ET) Tweet.

⁸⁶⁶ See, e.g., Carol D. Leonnig et al., *Trump calls Manafort prosecution "a hoax," says Sessions should stop Mueller investigation "right now"*, Washington Post (Aug. 1, 2018); Louis Nelson, *Trump claims Manafort case has "nothing to do with collusion"*, Politico (Aug. 1, 2018).

⁸⁶⁷ Sarah Sanders, *White House Daily Briefing*, C-SPAN (Aug. 1, 2018).

⁸⁶⁸ Chris Strohm & Shannon Pettypiece, *Mueller Probe Doesn't Need to Shut Down Before Midterms, Officials Say*, Bloomberg (Aug. 15, 2018).

⁸⁶⁹ See, e.g., Katelyn Polantz et al., *Manafort jury ends first day of deliberations without a verdict*, CNN (Aug. 16, 2018); David Voreacos, *What Mueller's Manafort Case Means for the Trump Battle to*

On August 17, 2018, as jury deliberations continued, the President commented on the trial from the South Lawn of the White House. In an impromptu exchange with reporters that lasted approximately five minutes, the President twice called the Special Counsel's investigation a "rigged witch hunt."⁸⁷⁰ When asked whether he would pardon Manafort if he was convicted, the President said, "I don't talk about that now. I don't talk about that."⁸⁷¹ The President then added, without being asked a further question, "I think the whole Manafort trial is very sad when you look at what's going on there. I think it's a very sad day for our country. He worked for me for a very short period of time. But you know what, he happens to be a very good person. And I think it's very sad what they've done to Paul Manafort."⁸⁷² The President did not take further questions.⁸⁷³ In response to the President's statements, Manafort's attorney said, "Mr. Manafort really appreciates the support of President Trump."⁸⁷⁴

On August 21, 2018, the jury found Manafort guilty on eight felony counts. Also on August 21, Michael Cohen pleaded guilty to eight offenses, including a campaign-finance violation that he said had occurred "in coordination with, and at the direction of, a candidate for federal office."⁸⁷⁵ The President reacted to Manafort's convictions that day by telling reporters, "Paul Manafort's a good man" and "it's a very sad thing that happened."⁸⁷⁶ The President described the Special Counsel's investigation as "a witch hunt that ends in disgrace."⁸⁷⁷ The next day, the President tweeted, "I feel very badly for Paul Manafort and his wonderful family. 'Justice' took a 12 year old tax case, among other things, applied tremendous pressure on him and, unlike Michael Cohen, he refused to 'break'—make up stories in order to get a 'deal.' Such respect for a brave man!"⁸⁷⁸

In a Fox News interview on August 22, 2018, the President said: "[Cohen] makes a better deal when he uses me, like everybody else. And one of the reasons I respect Paul Manafort so much is he went through that trial—you know they make up stories. People make up stories. This

Come, Bloomberg (Aug. 2, 2018); Gabby Morrongiello, *What a guilty verdict for Manafort would mean for Trump and Mueller*, Washington Examiner (Aug. 18, 2018).

⁸⁷⁰ President Trump Remarks on John Brennan and Mueller Probe, C-SPAN (Aug. 17, 2018).

⁸⁷¹ President Trump Remarks on John Brennan and Mueller Probe, C-SPAN (Aug. 17, 2018).

⁸⁷² President Trump Remarks on John Brennan and Mueller Probe, C-SPAN (Aug. 17, 2018).

⁸⁷³ President Trump Remarks on John Brennan and Mueller Probe, C-SPAN (Aug. 17, 2018).

⁸⁷⁴ *Trump calls Manafort "very good person," All In with Chris Hayes* (Aug. 17, 2018) (transcript); *Manafort lawyer: We appreciate Trump's support*, CNN (Aug. 17, 2018) (<https://www.cnn.com/videos/politics/2018/08/17/paul-manafort-attorney-trump-jury-deliberations-schneider-lead-vpx.cnn>).

⁸⁷⁵ Transcript at 23, *United States v. Michael Cohen*, 1:18-cr-602 (S.D.N.Y. Aug. 21, 2018), Doc. 7 (Cohen 8/21/18 Transcript).

⁸⁷⁶ President Trump Remarks on Manafort Trial, C-SPAN (Aug. 21, 2018).

⁸⁷⁷ President Trump Remarks on Manafort Trial, C-SPAN (Aug. 21, 2018).

⁸⁷⁸ @realDonaldTrump 8/22/18 (9:21 a.m. ET) Tweet.

whole thing about flipping, they call it, I know all about flipping.”⁸⁷⁹ The President said that flipping was “not fair” and “almost ought to be outlawed.”⁸⁸⁰ In response to a question about whether he was considering a pardon for Manafort, the President said, “I have great respect for what he’s done, in terms of what he’s gone through. . . . He worked for many, many people many, many years, and I would say what he did, some of the charges they threw against him, every consultant, every lobbyist in Washington probably does.”⁸⁸¹ Giuliani told journalists that the President “really thinks Manafort has been horribly treated” and that he and the President had discussed the political fallout if the President pardoned Manafort.⁸⁸² The next day, Giuliani told the Washington Post that the President had asked his lawyers for advice on the possibility of a pardon for Manafort and other aides, and had been counseled against considering a pardon until the investigation concluded.⁸⁸³

On September 14, 2018, Manafort pleaded guilty to charges in the District of Columbia and signed a plea agreement that required him to cooperate with investigators.⁸⁸⁴ Giuliani was reported to have publicly said that Manafort remained in a joint defense agreement with the President following Manafort’s guilty plea and agreement to cooperate, and that Manafort’s attorneys regularly briefed the President’s lawyers on the topics discussed and the information Manafort had provided in interviews with the Special Counsel’s Office.⁸⁸⁵ On November 26, 2018, the Special Counsel’s Office disclosed in a public court filing that Manafort had breached his plea agreement by lying about multiple subjects.⁸⁸⁶ The next day, Giuliani said that the President had been “upset for weeks” about what he considered to be “the un-American, horrible treatment of

⁸⁷⁹ *Fox & Friends Exclusive Interview with President Trump*, Fox News (Aug. 23, 2018) (recorded the previous day).

⁸⁸⁰ *Fox & Friends Exclusive Interview with President Trump*, Fox News (Aug. 23, 2018) (recorded the previous day).

⁸⁸¹ *Fox & Friends Exclusive Interview with President Trump*, Fox News (Aug. 23, 2018) (recorded the previous day).

⁸⁸² Maggie Haberman & Katie Rogers, “How Did We End Up Here?” *Trump Wonders as the White House Soldiers On*, New York Times (Aug. 22, 2018).

⁸⁸³ Carol D. Leonnig & Josh Dawsey, *Trump recently sought his lawyers’ advice on possibility of pardoning Manafort, Giuliani says*, Washington Post (Aug. 23, 2018).

⁸⁸⁴ Plea Agreement, *United States v. Paul J. Manafort, Jr.*, 1:17-cr-201 (D.D.C. Sept. 14, 2018), Doc. 422.

⁸⁸⁵ Karen Freifeld & Nathan Layne, *Trump lawyer: Manafort said nothing damaging in Mueller interviews*, Reuters (Oct. 22, 2018); Michael S. Schmidt et al., *Manafort’s Lawyer Said to Brief Trump Attorneys on What He Told Mueller*, New York Times (Nov. 27, 2018); Dana Bash, *Manafort team briefed Giuliani on Mueller meetings*, CNN, Posted 11/28/18, available at <https://www.cnn.com/videos/politics/2018/11/28/manafort-lawyers-keeping-trump-lawyers-giuliani-updated-mueller-probe-bash-sot-nr-vpx.cnn>; see Sean Hannity, *Interview with Rudy Giuliani*, Fox News (Sept. 14, 2018) (Giuliani: “[T]here was a quote put out by a source close to Manafort that the plea agreement has, and cooperation agreement has, nothing to do with the Trump campaign. . . . Now, I know that because I’ve been privy to a lot of facts I can’t repeat.”).

⁸⁸⁶ Joint Status Report, *United States v. Paul J. Manafort, Jr.*, (D.D.C. Nov. 26, 2018), Doc. 455.

Manafort.⁸⁸⁷ In an interview on November 28, 2018, the President suggested that it was “very brave” that Manafort did not “flip”:

If you told the truth, you go to jail. You know this flipping stuff is terrible. You flip and you lie and you get—the prosecutors will tell you 99 percent of the time they can get people to flip. It’s rare that they can’t. But I had three people: Manafort, Corsi—I don’t know Corsi, but he refuses to say what they demanded.⁸⁸⁸ Manafort, Corsi **HOM**. It’s actually very brave.⁸⁸⁹

In response to a question about a potential pardon for Manafort, the President said, “It was never discussed, but I wouldn’t take it off the table. Why would I take it off the table?”⁸⁹⁰

3. **Harm to Ongoing Matter**

Harm to Ongoing Matter

⁸⁹¹ **Harm to Ongoing Matter**
⁸⁹² **Harm to Ongoing Matter**

⁹³

Harm to Ongoing Matter

⁸⁹⁴ **Harm to Ongoing Matter**

⁸⁸⁷ Stephen Collinson, *Trump appears consumed by Mueller investigation as details emerge*, CNN (Nov. 29, 2018).

⁸⁸⁸ “Corsi” is a reference to Jerome Corsi, **HOM** who was involved in efforts to coordinate with WikiLeaks and Assange, and who stated publicly at that time that he had refused a plea offer from the Special Counsel’s Office because he was “not going to sign a lie.” Sara Murray & Eli Watkins, **HOM** says he won’t agree to plea deal, CNN (Nov. 26, 2018).

⁸⁸⁹ Marisa Schultz & Nikki Schwab, *Oval Office Interview with President Trump: Trump says pardon for Paul Manafort still a possibility*, New York Post (Nov. 28, 2018). That same day, the President tweeted: “While the disgusting Fake News is doing everything within their power not to report it that way, at least 3 major players are intimating that the Angry Mueller Gang of Dems is viciously telling witnesses to lie about facts & they will get relief. This is our Joseph McCarthy Era!” @realDonaldTrump 11/28/18 (8:39 a.m. ET) Tweet.

⁸⁹⁰ Marisa Schultz & Nikki Schwab, *New York Post Oval Office Interview with President Trump: Trump says pardon for Paul Manafort still a possibility*, New York Post (Nov. 28, 2018).

⁸⁹¹ **Harm to Ongoing Matter**

⁸⁹² **Harm to Ongoing Matter**

⁸⁹³ **Harm to Ongoing Matter**

⁸⁹⁴ **Harm to Ongoing Matter**

Harm to Ongoing Matter

⁹⁵ Harm to Ongoing Matter

⁹⁶

Harm to Ongoing Matter

Harm to Ongoing Matter

⁸⁹⁷

Harm to Ongoing Matter

⁹⁸ Harm to Ongoing Matter

⁸⁹⁹

Harm to Ongoing Matter

Harm to Ongoing Matter

⁸⁹⁵ Harm to Ongoing Matter

⁸⁹⁶ Harm to Ongoing Matter

⁸⁹⁷ Harm to Ongoing Matter

⁸⁹⁸ Harm to Ongoing Matter

⁸⁹⁹ Harm to Ongoing Matter

Harm to Ongoing Matter

00

Harm to Ongoing Matter

901 Harm to Ongoing Matter

02 Harm to Ongoing Matter

903

Harm to Ongoing Matter

04

Harm to Ongoing Matter

05

Harm to Ongoing Matter

06

Harm to Ongoing Matter

907

Harm to Ongoing Matter

08

900 Harm to Ongoing Matter

901 Harm to Ongoing Matter

902 Harm to Ongoing Matter

903 Harm to Ongoing Matter

904 Harm to Ongoing Matter

905 Harm to Ongoing Matter

906 Harm to Ongoing Matter

907 Harm to Ongoing Matter

908 Harm to Ongoing Matter

Analysis

In analyzing the President's conduct towards Flynn, Manafort, **HOM**, the following evidence is relevant to the elements of obstruction of justice:

a. Obstructive act. The President's actions towards witnesses in the Special Counsel's investigation would qualify as obstructive if they had the natural tendency to prevent particular witnesses from testifying truthfully, or otherwise would have the probable effect of influencing, delaying, or preventing their testimony to law enforcement.

With regard to Flynn, the President sent private and public messages to Flynn encouraging him to stay strong and conveying that the President still cared about him before he began to cooperate with the government. When Flynn's attorneys withdrew him from a joint defense agreement with the President, signaling that Flynn was potentially cooperating with the government, the President's personal counsel initially reminded Flynn's counsel of the President's warm feelings towards Flynn and said "that still remains." But when Flynn's counsel reiterated that Flynn could no longer share information under a joint defense agreement, the President's personal counsel stated that the decision would be interpreted as reflecting Flynn's hostility towards the President. That sequence of events could have had the potential to affect Flynn's decision to cooperate, as well as the extent of that cooperation. Because of privilege issues, however, we could not determine whether the President was personally involved in or knew about the specific message his counsel delivered to Flynn's counsel.

With respect to Manafort, there is evidence that the President's actions had the potential to influence Manafort's decision whether to cooperate with the government. The President and his personal counsel made repeated statements suggesting that a pardon was a possibility for Manafort, while also making it clear that the President did not want Manafort to "flip" and cooperate with the government. On June 15, 2018, the day the judge presiding over Manafort's D.C. case was considering whether to revoke his bail, the President said that he "felt badly" for Manafort and stated, "I think a lot of it is very unfair." And when asked about a pardon for Manafort, the President said, "I do want to see people treated fairly. That's what it's all about." Later that day, after Manafort's bail was revoked, the President called it a "tough sentence" that was "Very unfair!" Two days later, the President's personal counsel stated that individuals involved in the Special Counsel's investigation could receive a pardon "if in fact the [P]resident and his advisors . . . come to the conclusion that you have been treated unfairly"—using language that paralleled how the President had already described the treatment of Manafort. Those statements, combined with the President's commendation of Manafort for being a "brave man" who "refused to 'break'," suggested that a pardon was a more likely possibility if Manafort continued not to cooperate with the government. And while Manafort eventually pleaded guilty pursuant to a cooperation agreement, he was found to have violated the agreement by lying to investigators.

The President's public statements during the Manafort trial, including during jury deliberations, also had the potential to influence the trial jury. On the second day of trial, for example, the President called the prosecution a "terrible situation" and a "hoax" that "continues to stain our country" and referred to Manafort as a "Reagan/Dole darling" who was "serving solitary confinement" even though he was "convicted of nothing." Those statements were widely picked up by the press. While jurors were instructed not to watch or read news stories about the case and