

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

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.<sup>447</sup> To announce Comey's termination, the White House released a statement, which Priebus thought had been dictated by the President.<sup>448</sup> 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."<sup>449</sup>

That evening, FBI Deputy Director Andrew McCabe was summoned to meet with the President at the White House.<sup>450</sup> 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.<sup>451</sup> The President asked McCabe if he was aware that Comey had told the President three times that he was not under investigation.<sup>452</sup> 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.<sup>453</sup> 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.<sup>454</sup>

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<sup>445</sup> 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.

<sup>446</sup> 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.").

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

<sup>448</sup> Priebus 10/13/17 302, at 28.

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

<sup>450</sup> McCabe 9/26/17 302, at 4; SCR025\_000044 (President's Daily Diary, 5/9/17); McCabe 5/10/17 Memorandum, at 1.

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

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

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

<sup>454</sup> 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.<sup>455</sup> The President also called Chris Christie and, according to Christie, said he was getting "killed" in the press over Comey's termination.<sup>456</sup> The President asked what he should do.<sup>457</sup> Christie asked, "Did you fire [Comey] because of what Rod wrote in the memo?", and the President responded, "Yes."<sup>458</sup> Christie said that the President should "get Rod out there" and have him defend the decision.<sup>459</sup> The President told Christie that this was a "good idea" and said he was going to call Rosenstein right away.<sup>460</sup>

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.<sup>461</sup> Rosenstein told other DOJ officials that he would not participate in putting out a "false story."<sup>462</sup> 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.<sup>463</sup> 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.<sup>464</sup> 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.<sup>465</sup>

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."<sup>466</sup> That evening and the next morning, White House officials and spokespeople continued to maintain that the

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

<sup>456</sup> Christie 2/13/19 302, at 6.

<sup>457</sup> Christie 2/13/19 302, at 6.

<sup>458</sup> Christie 2/13/19 302, at 6.

<sup>459</sup> Christie 2/13/19 302, at 6.

<sup>460</sup> Christie 2/13/19 302, at 6.

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

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

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

<sup>464</sup> 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).

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

<sup>466</sup> 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.<sup>467</sup>

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.<sup>468</sup> 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."<sup>469</sup> 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."<sup>470</sup> 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."<sup>471</sup> 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.<sup>472</sup>

That same morning, on May 10, 2017, the President called McCabe.<sup>473</sup> 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

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<sup>467</sup> 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).

<sup>468</sup> 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.).

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

<sup>470</sup> 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").

<sup>471</sup> Hicks 12/8/17 302, at 19.

<sup>472</sup> McGahn 12/12/17 302, at 18.

<sup>473</sup> SCR025\_000046 (President's Daily Diary, 5/10/17); McCabe 5/10/17 Memorandum, at 1.

employees.<sup>474</sup> The President said he had received “hundreds” of messages from FBI employees indicating their support for terminating Comey.<sup>475</sup> 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.<sup>476</sup> 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.<sup>477</sup>

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.<sup>478</sup> 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.”<sup>479</sup> 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.”<sup>480</sup> 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.<sup>481</sup> Sanders told this Office that her reference to hearing from “countless members of the FBI” was a “slip of the tongue.”<sup>482</sup> 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.<sup>483</sup>

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

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<sup>474</sup> McCabe 5/10/17 Memorandum, at 1.

<sup>475</sup> McCabe 5/10/17 Memorandum, at 1.

<sup>476</sup> 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.

<sup>477</sup> 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).

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

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

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

<sup>481</sup> Sanders 7/3/18 302, at 4.

<sup>482</sup> Sanders 7/3/18 302, at 4.

<sup>483</sup> Sanders 7/3/18 302, at 3.

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

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.<sup>487</sup> 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."<sup>488</sup> 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."<sup>489</sup>

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."<sup>490</sup> 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."<sup>491</sup> 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."<sup>492</sup> The President affirmed that he expected the new FBI director to continue the Russia investigation.<sup>493</sup>

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."<sup>494</sup> The same day, the media reported that the President had demanded that Comey pledge his loyalty to the President in a private dinner shortly

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

<sup>485</sup> Donaldson 11/6/17 302, at 27.

<sup>486</sup> McGahn 12/12/17 302, at 17.

<sup>487</sup> Dhillon 11/21/17 302, at 11.

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

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

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

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

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

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

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

after being sworn in.<sup>495</sup> 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.”<sup>496</sup> 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?”<sup>497</sup>

### *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

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

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

<sup>497</sup> @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.<sup>498</sup> 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.<sup>499</sup> 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.<sup>500</sup>

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

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<sup>498</sup> See Volume II, Section II.K.1, *infra*.

<sup>499</sup> See Volume I, Section III.D.1, *supra*.

<sup>500</sup> 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.<sup>501</sup> 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.<sup>502</sup> 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.<sup>503</sup> 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."<sup>504</sup> 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?"<sup>505</sup> 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.<sup>506</sup> Sessions recalled that the President said to him, "you were supposed to protect me," or words to that effect.<sup>507</sup> 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."<sup>508</sup>

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<sup>501</sup> 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).

<sup>502</sup> 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).

<sup>503</sup> 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).

<sup>504</sup> Hunt-000039 (Hunt 5/17/17 Notes).

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

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

<sup>507</sup> Sessions 1/17/18 302, at 14.

<sup>508</sup> 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.<sup>509</sup> Sessions agreed to submit his resignation and left the Oval Office.<sup>510</sup> Hicks saw the President shortly after Sessions departed and described the President as being extremely upset by the Special Counsel's appointment.<sup>511</sup> Hicks said that she had only seen the President like that one other time, when the Access Hollywood tape came out during the campaign.<sup>512</sup>

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.<sup>513</sup> 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.<sup>514</sup>

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."<sup>515</sup> Sessions, accompanied by Hunt, brought the letter to the White House and handed it to the President.<sup>516</sup> The President put the resignation letter in his pocket and asked Sessions several times whether he wanted to continue serving as Attorney General.<sup>517</sup> Sessions ultimately told the President he wanted to stay, but it was up to the President.<sup>518</sup> The President said he wanted Sessions to stay.<sup>519</sup> At the conclusion of the meeting, the President shook Sessions's hand but did not return the resignation letter.<sup>520</sup>

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.<sup>521</sup> Priebus told Sessions it was not good for the President to have the letter because it

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

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

<sup>511</sup> Hicks 12/8/17 302, at 21.

<sup>512</sup> 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*.

<sup>513</sup> McGahn 12/14/17 302, at 9; SCR015\_000175-82 (Undated Draft Memoranda to White House Staff).

<sup>514</sup> 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).

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

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

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

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

<sup>519</sup> Sessions 1/17/18 302, at 14.

<sup>520</sup> Hunt-000049 (Hunt 5/18/17 Notes).

<sup>521</sup> 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.”<sup>522</sup> 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.<sup>523</sup>

On May 19, 2017, the President left for a trip to the Middle East.<sup>524</sup> 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.<sup>525</sup> 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.<sup>526</sup> 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.”<sup>527</sup>

## 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.<sup>528</sup> 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.<sup>529</sup> The President’s advisors pushed

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

<sup>523</sup> Hunt-000051 (Hunt 5/18/17 Notes).

<sup>524</sup> SCR026\_000110 (President’s Daily Diary, 5/19/17).

<sup>525</sup> Hicks 12/8/17 302, at 22.

<sup>526</sup> 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).

<sup>527</sup> 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**

<sup>528</sup> 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.

<sup>529</sup> 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.<sup>530</sup> 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.<sup>531</sup> 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.<sup>532</sup> Bannon said that, although the White House thought about beseeching Mueller to become Director again, he did not come in looking for the job.<sup>533</sup> Bannon also told the President that the law firm position did not amount to a conflict in the legal community.<sup>534</sup> 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.”<sup>535</sup> The President did not respond when Bannon pushed back on the stated conflicts of interest.<sup>536</sup>

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.<sup>537</sup> 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.<sup>538</sup> 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.<sup>539</sup> 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.<sup>540</sup> 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

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

<sup>530</sup> 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).

<sup>531</sup> Bannon 10/26/18 302, at 12-13.

<sup>532</sup> Bannon 10/26/18 302, at 12.

<sup>533</sup> Bannon 10/26/18 302, at 12.

<sup>534</sup> Bannon 10/26/18 302, at 12.

<sup>535</sup> Bannon 10/26/18 302, at 13.

<sup>536</sup> Bannon 10/26/18 302, at 12.

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

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

<sup>539</sup> 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.

<sup>540</sup> SC\_AD\_00361 (Donaldson 5/31/17 Notes).

just[ice].”<sup>541</sup> 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.”<sup>542</sup> 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.<sup>543</sup>

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.<sup>544</sup> Comey’s testimony led to a series of news reports about whether the President had obstructed justice.<sup>545</sup> 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.<sup>546</sup>

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.<sup>547</sup> Ruddy recalled that they told him the President was strongly considering firing the Special Counsel

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<sup>541</sup> SC\_AD\_00361 (Donaldson 5/31/17 Notes).

<sup>542</sup> SC\_AD\_00361 (Donaldson 5/31/17 Notes).

<sup>543</sup> 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).

<sup>544</sup> *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).

<sup>545</sup> See, e.g., Matt Zapposky, *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.”).

<sup>546</sup> 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.

<sup>547</sup> Ruddy 6/6/18 302, at 5.

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

White House officials were unhappy with that press coverage and Ruddy heard from friends that the President was upset with him.<sup>554</sup> 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.<sup>555</sup> 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.”<sup>556</sup>

Also on June 13, 2017, the President’s personal counsel contacted the Special Counsel’s Office and raised concerns about possible conflicts.<sup>557</sup> 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.<sup>558</sup> 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.<sup>559</sup> Two days later, on June 15, 2017, the Special Counsel’s

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<sup>548</sup> Ruddy 6/6/18 302, at 5-6.

<sup>549</sup> Ruddy 6/6/18 302, at 6.

<sup>550</sup> Ruddy 6/6/18 302, at 6.

<sup>551</sup> *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).

<sup>552</sup> 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).

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

<sup>554</sup> Ruddy 6/6/18 302, at 6-7.

<sup>555</sup> Sanders 7/3/18 302, at 6-7.

<sup>556</sup> 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).

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

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

<sup>559</sup> *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.<sup>560</sup>

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.<sup>561</sup> 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.<sup>562</sup> 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."<sup>563</sup> 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.<sup>564</sup> 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.<sup>565</sup>

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";<sup>566</sup> "You are witnessing the single greatest WITCH HUNT in American political history—led by some very bad and conflicted people!";<sup>567</sup> and "Crooked H destroyed phones w/ hammer, 'bleached' emails, & had husband meet w/AG days

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

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

<sup>562</sup> 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).

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

<sup>564</sup> 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.

<sup>565</sup> 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.

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

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

before she was cleared—& they talk about obstruction?”<sup>568</sup> 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!”,<sup>569</sup> and “I am being investigated for firing the FBI Director by the man who told me to fire the FBI Director! Witch Hunt.”<sup>570</sup>

On Saturday, June 17, 2017, the President called McGahn and directed him to have the Special Counsel removed.<sup>571</sup> McGahn was at home and the President was at Camp David.<sup>572</sup> 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.<sup>573</sup>

On the first call, McGahn recalled that the President said something like, “You gotta do this. You gotta call Rod.”<sup>574</sup> McGahn said he told the President that he would see what he could do.<sup>575</sup> McGahn was perturbed by the call and did not intend to act on the request.<sup>576</sup> He and other advisors believed the asserted conflicts were “silly” and “not real,” and they had previously communicated that view to the President.<sup>577</sup> 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.<sup>578</sup> 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

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

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

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

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

<sup>572</sup> 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.).

<sup>573</sup> 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.

<sup>574</sup> McGahn 3/8/18 302, at 1.

<sup>575</sup> McGahn 3/8/18 302, at 1.

<sup>576</sup> McGahn 3/8/18 302, at 1.

<sup>577</sup> McGahn 3/8/18 302, at 1-2.

<sup>578</sup> McGahn 3/8/18 302, at 1-2.

Robert Bork and not “Saturday Night Massacre Bork.”<sup>579</sup> McGahn considered the President’s request to be an inflection point and he wanted to hit the brakes.<sup>580</sup>

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.”<sup>581</sup> McGahn recalled the President telling him “Mueller has to go” and “Call me back when you do it.”<sup>582</sup> McGahn understood the President to be saying that the Special Counsel had to be removed by Rosenstein.<sup>583</sup> To end the conversation with the President, McGahn left the President with the impression that McGahn would call Rosenstein.<sup>584</sup> 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.<sup>585</sup>

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.<sup>586</sup> McGahn decided he had to resign.<sup>587</sup> He called his personal lawyer and then called his chief of staff, Annie Donaldson, to inform her of his decision.<sup>588</sup> He then drove to the office to pack his belongings and submit his resignation letter.<sup>589</sup> 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.<sup>590</sup> McGahn told Donaldson that the President had called at least twice and in one of the calls asked “have you done it?”<sup>591</sup> McGahn did not tell Donaldson the specifics of the President’s request because he was consciously trying not to involve her in the

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<sup>579</sup> McGahn 3/8/18 302, at 2.

<sup>580</sup> McGahn 3/8/18 302, at 2.

<sup>581</sup> McGahn 3/8/18 302, at 5.

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

<sup>583</sup> McGahn 3/8/18 302, at 1-2, 5.

<sup>584</sup> McGahn 3/8/18 302, at 2.

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

<sup>586</sup> McGahn 3/8/18 302, at 2.

<sup>587</sup> McGahn 3/8/18 302, at 2.

<sup>588</sup> 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.

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

<sup>590</sup> Donaldson 4/2/18 302, at 4.

<sup>591</sup> Donaldson 4/2/18 302, at 4.

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

That evening, McGahn called both Priebus and Bannon and told them that he intended to resign.<sup>594</sup> 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.<sup>595</sup> 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.<sup>596</sup> Priebus and Bannon both urged McGahn not to quit, and McGahn ultimately returned to work that Monday and remained in his position.<sup>597</sup> 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.<sup>598</sup>

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.<sup>599</sup> 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.<sup>600</sup>

### *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

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<sup>592</sup> 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.

<sup>593</sup> Donaldson 4/2/18 302, at 5.

<sup>594</sup> 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.

<sup>595</sup> 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.

<sup>596</sup> Priebus 4/3/18 302, at 7.

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

<sup>598</sup> McGahn 3/8/18 302, at 3.

<sup>599</sup> 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.

<sup>600</sup> 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.<sup>601</sup> 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

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<sup>601</sup> 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.<sup>602</sup> 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

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<sup>602</sup> 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.<sup>603</sup> Senior White House advisors described Lewandowski as a “devotee” of the President and said the relationship between the President and Lewandowski was “close.”<sup>604</sup>

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.<sup>605</sup> 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.<sup>606</sup> The President then asked Lewandowski to deliver a message to Sessions and said “write this down.”<sup>607</sup> 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.<sup>608</sup>

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.<sup>609</sup>

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.<sup>610</sup>

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

**Personal Privacy**

<sup>604</sup> 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.

<sup>605</sup> Lewandowski 4/6/18 302, at 2.

<sup>606</sup> Lewandowski 4/6/18 302, at 2.

<sup>607</sup> Lewandowski 4/6/18 302, at 2.

<sup>608</sup> Lewandowski 4/6/18 302, at 3.

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

<sup>610</sup> 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.”<sup>611</sup> Lewandowski told the President he understood what the President wanted Sessions to do.<sup>612</sup>

Lewandowski wanted to pass the message to Sessions in person rather than over the phone.<sup>613</sup> 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.<sup>614</sup> 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.<sup>615</sup> Shortly thereafter, Lewandowski left Washington, D.C., without having had an opportunity to meet with Sessions to convey the President’s message.<sup>616</sup> Lewandowski stored the notes in a safe at his home, which he stated was his standard procedure with sensitive items.<sup>617</sup>

## 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.<sup>618</sup> 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.<sup>619</sup> 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.<sup>620</sup>

On July 19, 2017, the President again met with Lewandowski alone in the Oval Office.<sup>621</sup> 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

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

<sup>612</sup> Lewandowski 4/6/18 302, at 3.

<sup>613</sup> Lewandowski 4/6/18 302, at 3-4.

<sup>614</sup> Lewandowski 4/6/18 302, at 4.

<sup>615</sup> Lewandowski 4/6/18 302, at 4.

<sup>616</sup> Lewandowski 4/6/18 302, at 4.

<sup>617</sup> Lewandowski 4/6/18 302, at 4.

<sup>618</sup> Lewandowski 4/6/18 302, at 4; *see* Dearborn 6/20/18 302, at 3.

<sup>619</sup> Lewandowski 4/6/18 302, at 4-5.

<sup>620</sup> Lewandowski 4/6/18 302, at 4, 6.

<sup>621</sup> 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.<sup>622</sup> Lewandowski told the President that the message would be delivered soon.<sup>623</sup> Lewandowski recalled that the President told him that if Sessions did not meet with him, Lewandowski should tell Sessions he was fired.<sup>624</sup>

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.<sup>625</sup> 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.<sup>626</sup> 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.<sup>627</sup> Dearborn also said that being asked to serve as a messenger to Sessions made him uncomfortable.<sup>628</sup> 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.<sup>629</sup>

### 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.<sup>630</sup> 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.”<sup>631</sup> 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

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<sup>622</sup> Lewandowski 4/6/18 302, at 5.

<sup>623</sup> Lewandowski 4/6/18 302, at 5.

<sup>624</sup> 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.

<sup>625</sup> 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.

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

<sup>627</sup> Dearborn 6/20/18 302, at 3.

<sup>628</sup> Dearborn 6/20/18 302, at 3.

<sup>629</sup> Dearborn 6/20/18 302, at 3-4.

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

<sup>631</sup> 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.”<sup>632</sup> 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.”<sup>633</sup>

Later that day, Lewandowski met with Hicks and they discussed the President’s New York Times interview.<sup>634</sup> 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.<sup>635</sup> 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.<sup>636</sup> 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.<sup>637</sup>

#### 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.<sup>638</sup> That evening, Priebus called Hunt to talk about whether Sessions might be fired or might resign.<sup>639</sup> 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.<sup>640</sup> 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.<sup>641</sup> Hunt asked Priebus what the President would

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

<sup>633</sup> Hicks 12/8/17 302, at 23.

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

<sup>635</sup> Lewandowski 4/6/18 302, at 6.

<sup>636</sup> 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.

<sup>637</sup> Lewandowski 4/6/18 302, at 6.

<sup>638</sup> 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*.

<sup>639</sup> Hunt 2/1/18 302, at 23.

<sup>640</sup> Hunt 2/1/18 302, at 23.

<sup>641</sup> 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.<sup>642</sup>

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!”<sup>643</sup> 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?”<sup>644</sup> 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.<sup>645</sup> The President said that the country had lost confidence in Sessions and the negative publicity was not tolerable.<sup>646</sup> 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.”<sup>647</sup> 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.<sup>648</sup>

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.”<sup>649</sup> 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.<sup>650</sup> 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.<sup>651</sup> McGahn

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

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

<sup>644</sup> @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.

<sup>645</sup> Priebus 1/18/18 302, at 13-14.

<sup>646</sup> Priebus 1/18/18 302, at 14; Priebus 4/3/18 302, at 4-5; see RP\_000073 (Priebus 7/22/17 Notes).

<sup>647</sup> RP\_000073 (Priebus 7/22/17 Notes).

<sup>648</sup> Priebus 4/3/18 302, at 5.

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

<sup>650</sup> Priebus 4/3/18 302, at 5.

<sup>651</sup> 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.<sup>652</sup>

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?"<sup>653</sup> 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.<sup>654</sup> Even though Priebus did not intend to carry out the President's directive, he told the President he would get Sessions to resign.<sup>655</sup> 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.<sup>656</sup> 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.<sup>657</sup>

By the end of that weekend, Priebus recalled that the President relented and agreed not to ask Sessions to resign.<sup>658</sup> 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."<sup>659</sup> 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!"<sup>660</sup> 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."<sup>661</sup> 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.<sup>662</sup>

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<sup>652</sup> McGahn 12/14/17 302, at 11; RP\_000074 (Priebus 7/22/17 Notes) ("discuss resigning together").

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

<sup>654</sup> Priebus 4/3/18 302, at 4.

<sup>655</sup> Priebus 1/18/18 302, at 15.

<sup>656</sup> Priebus 1/18/18 302, at 15.

<sup>657</sup> Priebus 1/18/18 302, at 15.

<sup>658</sup> Priebus 1/18/18 302, at 15.

<sup>659</sup> @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?").

<sup>660</sup> @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.

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

<sup>662</sup> 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.<sup>663</sup> 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.”<sup>664</sup> Trump Jr. responded, “[I]f it’s what you say I love it,”<sup>665</sup> and he, Kushner, and Manafort met with the Russian attorney and several other Russian individuals at Trump Tower on June 9, 2016.<sup>666</sup> 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.<sup>667</sup>

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.<sup>668</sup>

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.<sup>669</sup> 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.<sup>670</sup> 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.<sup>671</sup> Priebus recalled learning about the June 9 meeting from Fox News host Sean Hannity in late June 2017.<sup>672</sup> Priebus notified one

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

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

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

<sup>666</sup> Samochornov 7/12/17 302, at 4.

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

<sup>668</sup> 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.

<sup>669</sup> DJTFP\_SCO\_PDF\_00000001-02 (5/17/17 Letter, SSCI to Donald J. Trump for President, Inc.).

<sup>670</sup> 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.

<sup>671</sup> Corallo 2/15/18 302, at 3.

<sup>672</sup> Priebus 4/3/18 302, at 7.

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

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.<sup>675</sup> Hicks and Raffel advised that the best strategy was to proactively release the emails to the press.<sup>676</sup> On or about June 22, 2017, Hicks attended a meeting in the White House residence with the President, Kushner, and Ivanka Trump.<sup>677</sup> 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.<sup>678</sup> 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.<sup>679</sup>

On June 28, 2017, Hicks viewed the emails at Kushner's attorney's office.<sup>680</sup> She recalled being shocked by the emails because they looked "really bad."<sup>681</sup> 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.<sup>682</sup> 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.<sup>683</sup> The President indicated that he did not think the emails would leak, but said they would leak if everyone had access to them.<sup>684</sup>

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<sup>673</sup> Priebus 4/3/18 302, at 7.

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

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

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

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

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

<sup>679</sup> 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.

<sup>680</sup> Hicks 3/13/18 302, at 1-2.

<sup>681</sup> Hicks 3/13/18 302, at 2.

<sup>682</sup> Hicks 12/7/17 302, at 8.

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

<sup>684</sup> Hicks 12/7/17 302, at 8.

Later that day, Hicks, Kushner, and Ivanka Trump went together to talk to the President.<sup>685</sup> 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.<sup>686</sup> 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.”<sup>687</sup> The President said he did not want to know about it and they should not go to the press.<sup>688</sup> 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.<sup>689</sup> Hicks recalled that the President asked Kushner when his document production was due.<sup>690</sup> Kushner responded that it would be a couple of weeks and the President said, “then leave it alone.”<sup>691</sup> 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.<sup>692</sup> 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.<sup>693</sup>

### 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.<sup>694</sup> 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.<sup>695</sup> The next day, Hicks told the President about the story and he directed her not to comment.<sup>696</sup> Hicks thought the President’s reaction was odd because he usually considered not responding to the press to be the ultimate sin.<sup>697</sup> Later that day, Hicks and the President again spoke about the story.<sup>698</sup> Hicks recalled that the President asked

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

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

<sup>687</sup> Hicks 3/13/18 302, at 2-3.

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

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

<sup>690</sup> Hicks 3/13/18 302, at 3.

<sup>691</sup> Hicks 3/13/18 302, at 3.

<sup>692</sup> Hicks 12/7/17 302, at 9.

<sup>693</sup> Raffel 2/8/18 302, at 5.

<sup>694</sup> Raffel 2/8/18 302, at 6.

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

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

<sup>697</sup> Hicks 12/7/17 302, at 10.

<sup>698</sup> 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.<sup>699</sup> The President responded, “then just say that.”<sup>700</sup>

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.<sup>701</sup> 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.”<sup>702</sup> Hicks again wanted to disclose the entire story, but the President directed that the statement not be issued because it said too much.<sup>703</sup> The President told Hicks to say only that Trump Jr. took a brief meeting and it was about Russian adoption.<sup>704</sup> 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.<sup>705</sup>

Hicks’s text concluded, “Are you ok with this? Attributed to you.”<sup>706</sup> 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.”<sup>707</sup> 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.”<sup>708</sup> 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.”<sup>709</sup> Trump Jr. responded, “If I don’t have it in there it appears as though I’m lying later when they inevitably leak something.”<sup>710</sup> Trump Jr.’s statement—adding

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

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

<sup>701</sup> Hicks 3/13/18 302, at 4.

<sup>702</sup> Hicks 7/8/17 Notes.

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

<sup>704</sup> Hicks 12/7/17 302, at 11.

<sup>705</sup> SCR011a\_000004 (7/8/17 Text Message, Hicks to Trump Jr.).

<sup>706</sup> SCR011a\_000004 (7/8/17 Text Message, Hicks to Trump Jr.).

<sup>707</sup> SCR011a\_000005 (7/8/17 Text Message, Trump Jr. to Hicks).

<sup>708</sup> SCR011a\_000005 (7/8/17 Text Message, Trump Jr. to Hicks).

<sup>709</sup> SCR011a\_000005 (7/8/17 Text Message, Hicks to Trump Jr.).

<sup>710</sup> 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.<sup>711</sup> 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.<sup>712</sup>

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.<sup>713</sup> 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.”<sup>714</sup>

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.<sup>715</sup> 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.<sup>716</sup>

#### 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.<sup>717</sup> 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.<sup>718</sup> Corallo also worked with Circa News on a story published an hour later that

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<sup>711</sup> 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).

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

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

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

<sup>715</sup> Hicks 3/13/18 302, at 7.

<sup>716</sup> Hicks 3/13/18 302, at 7.

<sup>717</sup> 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.

<sup>718</sup> 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.<sup>719</sup> Hicks was upset about Corallo's public statement and called him that evening to say the President had not approved the statement.<sup>720</sup>

The next day, July 9, 2017, Hicks and the President called Corallo together and the President criticized Corallo for the statement he had released.<sup>721</sup> 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.<sup>722</sup> 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.<sup>723</sup> 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."<sup>724</sup> 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.'"<sup>725</sup> 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.<sup>726</sup>

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."<sup>727</sup> 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."<sup>728</sup> Over the next several days, the President's personal counsel repeatedly and

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

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

<sup>721</sup> Corallo 2/15/18 302, at 7.

<sup>722</sup> Corallo 2/15/18 302, at 7.

<sup>723</sup> Corallo 2/15/18 302, at 7-9.

<sup>724</sup> Corallo 2/15/18 302, at 8.

<sup>725</sup> Corallo 2/15/18 302, at 8; Corallo 7/9/17 Notes ("Sunday 9<sup>th</sup> – 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.

<sup>726</sup> Hicks 3/13/18 302, at 9.

<sup>727</sup> @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).

<sup>728</sup> 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.<sup>729</sup> 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."<sup>730</sup> 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."<sup>731</sup> 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."<sup>732</sup>

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.<sup>733</sup>

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.<sup>734</sup> 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?'"<sup>735</sup>

### *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

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<sup>729</sup> 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.").

<sup>730</sup> 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).

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

<sup>732</sup> Remarks by President Trump in Press Gaggle (June 15, 2018).

<sup>733</sup> **Grand Jury**.

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

<sup>735</sup> 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.<sup>736</sup> 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.<sup>737</sup> Sessions listened but did not respond, and he did not reverse his recusal or order an investigation of Clinton.<sup>738</sup>

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

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<sup>736</sup> 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).

<sup>737</sup> Sessions 1/17/18 302, at 15.

<sup>738</sup> Sessions 1/17/18 302, at 15.

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

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

to be Attorney General one day.<sup>741</sup> Because Porter knew Brand, the President asked him to sound her out about taking responsibility for the investigation and being Attorney General.<sup>742</sup> Contemporaneous notes taken by Porter show that the President told Porter to “Keep in touch with your friend,” in reference to Brand.<sup>743</sup> 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.<sup>744</sup> 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.<sup>745</sup> 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.<sup>746</sup>

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.<sup>747</sup> McGahn told the President that things might not change much under a new Attorney General.<sup>748</sup> McGahn also recalled that in or around July 2017, the President frequently brought up his displeasure with Sessions.<sup>749</sup> Hicks recalled that the President viewed Sessions’s recusal from the Russia investigation as an act of disloyalty.<sup>750</sup> In addition to criticizing Sessions’s recusal, the President raised other concerns about Sessions and his job performance with McGahn and Hicks.<sup>751</sup>

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<sup>741</sup> 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.

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

<sup>743</sup> SC\_RRP000020 (Porter 7/10/17 Notes).

<sup>744</sup> Porter 4/13/18 302, at 11-12.

<sup>745</sup> Porter 4/13/18 302, at 11-12.

<sup>746</sup> 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.

<sup>747</sup> McGahn 12/14/17 302, at 11.

<sup>748</sup> McGahn 12/14/17 302, at 11.

<sup>749</sup> McGahn 12/14/17 302, at 9.

<sup>750</sup> Hicks 3/13/18 302, at 10.

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