

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

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

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

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

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

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

¹²⁴ Priebus 1/18/18 302, at 6.

¹²⁵ Priebus 1/18/18 302, at 6.

¹²⁶ Priebus 1/18/18 302, at 6.

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

¹²⁸ McFarland 12/22/17 302, at 12-13.

¹²⁹ McFarland 12/22/17 302, at 12.

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

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

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

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

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

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

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

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

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

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

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

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

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

¹³⁹ *Flynn Statement of Offense*, at 2.

¹⁴⁰ *Flynn Statement of Offense*, at 2.

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

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

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

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

¹⁴² Yates 8/15/17 302, at 6.

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

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

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

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

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

¹⁴⁸ McGahn 11/30/17 302, at 5.

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

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

¹⁵¹ McGahn 11/30/17 302, at 6.

¹⁵² McGahn 11/30/17 302, at 7.

¹⁵³ McGahn 11/30/17 302, at 7.

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

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

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

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

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

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

¹⁵⁶ Coats 6/14/17 302, at 2.

¹⁵⁷ Coats 6/14/17 302, at 2.

¹⁵⁸ Coats 6/14/17 302, at 2.

¹⁵⁹ Coats 6/14/17 302, at 2.

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

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

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

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

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

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

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

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

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

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

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

¹⁶⁸ Priebus 10/13/17 302, at 17.

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

¹⁷⁰ Bannon 2/12/18 302, at 17.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Flynn's Resignation

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

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

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

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

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

¹⁹⁰ Eisenberg 11/29/17 302, at 6.

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

¹⁹² Eisenberg 11/29/17 302, at 9.

¹⁹³ Flynn 11/21/17 302, at 2.

¹⁹⁴ Flynn 11/21/17 302, at 2.

¹⁹⁵ Flynn 11/21/17 302, at 2.

¹⁹⁶ Flynn 11/21/17 302, at 2-3.

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

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

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

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

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

²⁰⁰ McCabe 8/17/17 302, at 13.

²⁰¹ McCabe 8/17/17 302, at 13.

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

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

²⁰⁴ Eisenberg 11/29/17 302, at 9.

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

²⁰⁶ Flynn 11/17/17 302, at 8.

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

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

²⁰⁹ Flynn 1/19/18 302, at 9.

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

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

7. The President Discusses Flynn with FBI Director Comey

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

²¹⁰ Priebus 1/18/18 302, at 9.

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

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

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

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

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

²¹⁶ Christie 2/13/19 302, at 3.

²¹⁷ Christie 2/13/19 302, at 3.

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

²¹⁹ Christie 2/13/19 302, at 3.

²²⁰ Christie 2/13/19 302, at 3.

²²¹ Christie 2/13/19 302, at 3.

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

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

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

²²² Christie 2/13/19 302, at 3-4.

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

²²⁴ Christie 2/13/19 302, at 4.

²²⁵ Christie 2/13/19 302, at 4.

²²⁶ Christie 2/13/19 302, at 4-5.

²²⁷ Christie 2/13/19 302, at 5.

²²⁸ Christie 2/13/19 302, at 5.

²²⁹ Christie 2/13/19 302, at 5.

²³⁰ Christie 2/13/19 302, at 5.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

²⁵⁴ Priebus 1/18/18 302, at 11.

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

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

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

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

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

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

²⁵⁷ Priebus 1/18/18 302, at 11.

²⁵⁸ McFarland 12/22/17 302, at 17.

²⁵⁹ McFarland 12/22/17 302, at 17.

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

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

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

²⁶³ Priebus 1/18/18 302, at 9.

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

²⁶⁵ Priebus 1/18/18 302, at 9-10.

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

Analysis

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

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

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

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

²⁶⁷ McFarland 12/22/17 302, at 18.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Overview

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

Evidence

1. Attorney General Sessions Recuses From the Russia Investigation

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

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

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

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

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

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

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

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

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

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

²⁷⁷ Comey 11/15/17 302, at 17-18.

²⁷⁸ McGahn 11/30/17 302, at 16.

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

²⁸⁰ Sessions 1/17/18 302, at 3.

²⁸¹ McGahn 11/30/17 302, at 17.

²⁸² McGahn 11/30/17 302, at 17.

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

²⁸⁴ Sessions 1/17/18 302, at 3.

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

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

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

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

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

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

²⁸⁷ Sessions 1/17/18 302, at 2.

²⁸⁸ Sessions 1/17/18 302, at 3.

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

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

²⁹¹ McGahn 12/12/17 302, at 2.

²⁹² McGahn 12/12/17 302, at 2.

²⁹³ McGahn 12/12/17 302, at 2.

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

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

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

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

²⁹⁵ McGahn 12/12/17 302, at 2.

²⁹⁶ McGahn 12/12/17 302, at 2.

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

²⁹⁸ McGahn 12/12/17 302, at 3.

²⁹⁹ Bannon 2/14/18 302, at 5.

³⁰⁰ Bannon 2/14/18 302, at 5.

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

³⁰² Sessions 1/17/18 302, at 3-4.

³⁰³ Sessions 1/17/18 302, at 3-4.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

³²⁰ McGahn 12/12/17 302, at 7.

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

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

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

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

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

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

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

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

³²⁷ Boente 1/31/18 302, at 5.

³²⁸ Boente 1/31/18 302, at 5.

³²⁹ Boente 1/31/18 302, at 5.

³³⁰ Boente 1/31/18 302, at 5.

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

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

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

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

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

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

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

³³³ Boente 1/31/18 302, at 3.

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

³³⁵ Coats 6/14/17 302, at 3.

³³⁶ Coats 6/14/17 302, at 3.

³³⁷ Pompeo 6/28/17 302, at 1-3.

³³⁸ Coats 6/14/17 302, at 3.

³³⁹ Dempsey 6/14/17 302, at 2.

³⁴⁰ Dempsey 6/14/17 302, at 2-3.

³⁴¹ Dempsey 6/14/17 302, at 3.

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

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

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

³⁴² Gistaro 6/14/17 302, at 2.

³⁴³ Culver 6/14/17 302, at 2-3.

³⁴⁴ Coats 6/14/17 302, at 4.

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

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

³⁴⁷ Rogers 6/12/17 302, at 3-4.

³⁴⁸ Rogers 6/12/17 302, at 4.

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

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

³⁵¹ Ledgett 6/13/17 302, at 2.

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

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

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

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

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

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

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

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

³⁵⁶ Gistaro 6/14/17 302, at 1.

³⁵⁷ Pompeo 6/28/17 302, at 2.

³⁵⁸ Rogers 6/12/17 302, at 6.

³⁵⁹ Coats 6/14/17 302, at 3-4.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

³⁷⁰ Comey 4/11/17 Memorandum, at 1.

³⁷¹ Comey 4/11/17 Memorandum, at 1.

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

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

³⁷⁴ Hicks 12/8/17 302, at 13.

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

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

³⁷⁷ McGahn 12/12/17 302, at 9.

³⁷⁸ McGahn 12/12/17 302, at 9.

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

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

Analysis

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

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

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

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

³⁸⁰ McGahn 12/12/17 302, at 9-10.

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

³⁸² Boente 1/31/18 302, at 7.

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

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

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

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

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

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

Overview

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

Evidence

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

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

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

³⁸⁴ McGahn 12/12/17 302, at 10-11.

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

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

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

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

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

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

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

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

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

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

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

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

³⁹³ Sessions 1/17/18 302, at 8-9.

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

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

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

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

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

2. The President Makes the Decision to Terminate Comey

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

³⁹⁷ Hunt-000022 (Hunt 5/3/17 Notes).

³⁹⁸ Sessions 1/17/18 302, at 9.

³⁹⁹ Bannon 2/12/18 302, at 20.

⁴⁰⁰ Bannon 2/12/18 302, at 20.

⁴⁰¹ Bannon 2/12/18 302, at 20.

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

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

⁴⁰⁴ S. Miller 10/31/17 302, at 5.

⁴⁰⁵ S. Miller 10/31/17 302, at 5-6.

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

⁴⁰⁷ S. Miller 10/31/17 302, at 6.

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

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

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

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

⁴⁰⁸ S. Miller 10/31/17 302, at 6-8.

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

⁴¹⁰ S. Miller 10/31/17 302, at 8.

⁴¹¹ S. Miller 10/31/17 302, at 8.

⁴¹² S. Miller 10/31/17 302, at 10.

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

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

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

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

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

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

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

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

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

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

⁴²⁰ McGahn 12/12/17 302, at 12.

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

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

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

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

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

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

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

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

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

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

⁴²⁹ Hunt-000027 (Hunt 5/8/17 Notes).

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

⁴³¹ Hunt-000028 (Hunt 5/8/17 Notes).

⁴³² McGahn 12/12/17 302, at 13.

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

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

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

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

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

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

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

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

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

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

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

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

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

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