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

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

Overview

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

Evidence

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

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

---


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

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

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

---


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

783 Rosalind S. Helderman & Josh Dawsey, Trump moved to fire Mueller in June, bringing White House counsel to the brink of leaving, Washington Post (Jan. 26, 2018); see McGahn 3/8/18 302, at 3-4.

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


788 Hicks 3/13/18 302, at 11. Hicks also recalled that the President spoke on the phone that day with Chief of Staff John Kelly and that the President said Kelly told him that McGahn had totally refuted the story and was going to put out a statement. Hicks 3/13/18 302, at 11. But Kelly said that he did not speak to McGahn when the article came out and did not tell anyone he had done so. Kelly 8/2/18 302, at 1-2.
Also on January 26, 2017, Hicks recalled that the President asked Sanders to contact McGahn about the story. McGahn told Sanders there was no need to respond and indicated that some of the article was accurate. Consistent with that position, McGahn did not correct the Times story.

On February 4, 2018, Priebus appeared on Meet the Press and said he had not heard the President say that he wanted the Special Counsel fired. After Priebus’s appearance, the President called Priebus and said he did a great job on Meet the Press. The President also told Priebus that the President had “never said any of those things about” the Special Counsel.

The next day, on February 5, 2018, the President complained about the Times article to Porter. The President told Porter that the article was “bullshit” and he had not sought to terminate the Special Counsel. The President said that McGahn leaked to the media to make himself look good. The President then directed Porter to tell McGahn to create a record to make clear that the President never directed McGahn to fire the Special Counsel. Porter thought the matter should be handled by the White House communications office, but the President said he wanted McGahn to write a letter to the file “for our records” and wanted something beyond a press statement to demonstrate that the reporting was inaccurate. The President referred to McGahn as a “lying bastard” and said that he wanted a record from him. Porter recalled the President

---

789 Hicks 3/13/18 302, at 11. Sanders did not recall whether the President asked her to speak to McGahn or if she did it on her own. Sanders 7/23/18 302, at 2.

790 Sanders 7/23/18 302, at 1-2.

791 Meet the Press Interview with Reince Priebus, NBC (Feb. 4, 2018).


794 Porter 4/13/18 302, at 16-17. Porter did not recall the timing of this discussion with the President. Porter 4/13/18 302, at 17. Evidence indicates it was February 5, 2018. On the back of a pocket card dated February 5, 2018, Porter took notes that are consistent with his description of the discussion: “COS: (1) Letter from DM – Never threatened to quit – DJT never told him to fire M.” SC_RRP000053 (Porter Undated Notes). Porter said it was possible he took the notes on a day other than February 5. Porter 4/13/18 302, at 17. But Porter also said that “COS” referred to matters he wanted to discuss with Chief of Staff Kelly, Porter 4/13/18 302, at 17, and Kelly took notes dated February 5, 2018, that state “POTUS – Don McGahn letter – Mueller + resigning.” WH000017684 (Kelly 2/5/18 Notes). Kelly said he did not recall what the notes meant, but thought the President may have “mused” about having McGahn write a letter. Kelly 8/2/18 302, at 3. McGahn recalled that Porter spoke with him about the President’s request about two weeks after the New York Times story was published, which is consistent with the discussion taking place on or about February 5. McGahn 3/8/18 302, at 4.

795 Porter 4/13/18 302, at 17.

796 Porter 4/13/18 302, at 17.

797 Porter 4/13/18 302, at 17.


saying something to the effect of, "If he doesn’t write a letter, then maybe I’ll have to get rid of him."  

Later that day, Porter spoke to McGahn to deliver the President’s message. 801 Porter told McGahn that he had to write a letter to dispute that he was ever ordered to terminate the Special Counsel. 802 McGahn shrugged off the request, explaining that the media reports were true. 803 McGahn told Porter that the President had been insistent on firing the Special Counsel and that McGahn had planned to resign rather than carry out the order, although he had not personally told the President he intended to quit. 804 Porter told McGahn that the President suggested that McGahn would be fired if he did not write the letter. 805 McGahn dismissed the threat, saying that the optics would be terrible if the President followed through with firing him on that basis. 806 McGahn said he would not write the letter the President had requested. 807 Porter said that to his knowledge the issue of McGahn’s letter never came up with the President again, but Porter did recall telling Kelly about his conversation with McGahn. 808

The next day, on February 6, 2018, Kelly scheduled time for McGahn to meet with him and the President in the Oval Office to discuss the Times article. 809 The morning of the meeting, the President’s personal counsel called McGahn’s attorney and said that the President was going to be speaking with McGahn and McGahn could not resign no matter what happened in the meeting. 810

The President began the Oval Office meeting by telling McGahn that the New York Times story did not “look good” and McGahn needed to correct it. 811 McGahn recalled the President said, “I never said to fire Mueller. I never said ‘fire.’ This story doesn’t look good. You need to correct this. You’re the White House counsel.” 812

---

800 Porter 4/13/18 302, at 17.
808 Porter 4/13/18 302, at 18.
809 McGahn 3/8/18 302, at 4; WH000017685 (Kelly 2/6/18 Notes). McGahn recalled that, before the Oval Office meeting, he told Kelly that he was not inclined to fix the article. McGahn 3/8/18 302, at 4.
810 McGahn 3/8/18 302, at 5 (agent note); 2/26/19 Email, Counsel for Don McGahn to Special Counsel’s Office (confirming February 6, 2018 date of call from the President’s personal counsel).
In response, McGahn acknowledged that he had not told the President directly that he planned to resign, but said that the story was otherwise accurate.\textsuperscript{813} The President asked McGahn, “Did I say the word ‘fire’?” McGahn responded, “What you said is, ‘Call Rod [Rosenstein], tell Rod that Mueller has conflicts and can’t be the Special Counsel.’”\textsuperscript{815} The President responded, “I never said that.”\textsuperscript{815} The President said he merely wanted McGahn to raise the conflicts issue with Rosenstein and leave it to him to decide what to do.\textsuperscript{817} McGahn told the President he did not understand the conversation that way and instead had heard, “Call Rod. There are conflicts. Mueller has to go.”\textsuperscript{818} The President asked McGahn whether he would “do a correction,” and McGahn said no.\textsuperscript{819} McGahn thought the President was testing his mettle to see how committed McGahn was to what happened.\textsuperscript{820} Kelly described the meeting as “a little tense.”\textsuperscript{821}

The President also asked McGahn in the meeting why he had told Special Counsel’s Office investigators that the President had told him to have the Special Counsel removed.\textsuperscript{822} McGahn responded that he had to and that his conversations with the President were not protected by attorney-client privilege.\textsuperscript{823} The President then asked, “What about these notes? Why do you take notes? Lawyers don’t take notes. I never had a lawyer who took notes.”\textsuperscript{824} McGahn responded that he keeps notes because he is a “real lawyer” and explained that notes create a record and are not a bad thing.\textsuperscript{825} The President said, “I’ve had a lot of great lawyers, like Roy Cohn. He did not take notes.”\textsuperscript{826}

After the Oval Office meeting concluded, Kelly recalled McGahn telling him that McGahn and the President “didn’t have that conversation” about removing the Special Counsel.\textsuperscript{827} McGahn recalled that Kelly said that he had pointed out to the President after the Oval Office that McGahn

\textsuperscript{813} McGahn 3/8/18 302, at 4.
\textsuperscript{814} McGahn 3/8/18 302, at 4; Kelly 8/2/18 302, at 2.
\textsuperscript{815} McGahn 3/8/18 302, at 5.
\textsuperscript{816} McGahn 3/8/18 302, at 5.
\textsuperscript{817} McGahn 3/8/18 302, at 5.
\textsuperscript{818} McGahn 3/8/18 302, at 5.
\textsuperscript{819} McGahn 3/8/18 302, at 5; Kelly 8/2/18 302, at 2.
\textsuperscript{820} McGahn 3/8/18 302, at 5.
\textsuperscript{821} Kelly 8/2/18 302, at 2.
\textsuperscript{822} McGahn 3/8/18 302, at 5.
\textsuperscript{823} McGahn 3/8/18 302, at 5.
\textsuperscript{824} McGahn 3/8/18 302, at 5. McGahn said the President was referring to Donaldson’s notes, which the President thought of as McGahn’s notes. McGahn 3/8/18 302, at 5.
\textsuperscript{825} McGahn 3/8/18 302, at 5.
\textsuperscript{826} McGahn 3/8/18 302, at 5.
\textsuperscript{827} Kelly 8/2/18 302, at 2.
had not backed down and would not budge. Following the Oval Office meeting, the President’s personal counsel called McGahn’s counsel and relayed that the President was “fine” with McGahn.

**Analysis**

In analyzing the President’s efforts to have McGahn deny that he had been ordered to have the Special Counsel removed, the following evidence is relevant to the elements of obstruction of justice:

a. **Obstructive act.** The President’s repeated efforts to get McGahn to create a record denying that the President had directed him to remove the Special Counsel would qualify as an obstructive act if it had the natural tendency to constrain McGahn from testifying truthfully or to undermine his credibility as a potential witness if he testified consistently with his memory, rather than with what the record said.

There is some evidence that at the time the New York Times and Washington Post stories were published in late January 2018, the President believed the stories were wrong and that he had never told McGahn to have Rosenstein remove the Special Counsel. The President correctly understood that McGahn had not told the President directly that he planned to resign. In addition, the President told Priebus and Porter that he had not sought to terminate the Special Counsel, and in the Oval Office meeting with McGahn, the President said, “I never said to fire Mueller. I never said ‘fire.’” That evidence could indicate that the President was not attempting to persuade McGahn to change his story but was instead offering his own—but different—recollection of the substance of his June 2017 conversations with McGahn and McGahn’s reaction to them.

Other evidence cuts against that understanding of the President’s conduct. As previously described, see Volume II, Section II.E, supra, substantial evidence supports McGahn’s account that the President had directed him to have the Special Counsel removed, including the timing and context of the President’s directive; the manner in which McGahn reacted; and the fact that the President had been told the conflicts were insubstantial, were being considered by the Department of Justice, and should be raised with the President’s personal counsel rather than brought to McGahn. In addition, the President’s subsequent denials that he had told McGahn to have the Special Counsel removed were carefully worded. When first asked about the New York Times story, the President said, “Fake news, folks. Fake news. A typical New York Times fake story.” And when the President spoke with McGahn in the Oval Office, he focused on whether he had used the word “fire,” saying, “I never said to fire Mueller. I never said ‘fire’” and “Did I say the word ‘fire’?” The President’s assertion in the Oval Office meeting that he had never directed McGahn to have the Special Counsel removed thus runs counter to the evidence.

In addition, even if the President sincerely disagreed with McGahn’s memory of the June 17, 2017 events, the evidence indicates that the President knew by the time of the Oval Office

---


meeting that McGahn’s account differed and that McGahn was firm in his views. Shortly after the
story broke, the President’s counsel told McGahn’s counsel that the President wanted McGahn to
make a statement denying he had been asked to fire the Special Counsel, but McGahn responded
through his counsel that that aspect of the story was accurate and he therefore could not comply
with the President’s request. The President then directed Sanders to tell McGahn to correct the
story, but McGahn told her he would not do so because the story was accurate in reporting on the
President’s order. Consistent with that position, McGahn never issued a correction. More than a
week later, the President brought up the issue again with Porter, made comments indicating the
President thought McGahn had leaked the story, and directed Porter to have McGahn create a
record denying that the President had tried to fire the Special Counsel. At that point, the President
said he might “have to get rid of” McGahn if McGahn did not comply. McGahn again refused and
told Porter, as he had told Sanders and as his counsel had told the President’s counsel, that the
President had in fact ordered him to have Rosenstein remove the Special Counsel. That evidence
indicates that by the time of the Oval Office meeting the President was aware that McGahn did not
think the story was false and did not want to issue a statement or create a written record denying
facts that McGahn believed to be true. The President nevertheless persisted and asked McGahn to
repudiate facts that McGahn had repeatedly said were accurate.

b. **Nexus to an official proceeding.** By January 2018, the Special Counsel’s use of a
grand jury had been further confirmed by the return of several indictments. The President also
was aware that the Special Counsel was investigating obstruction-related events because, among
other reasons, on January 8, 2018, the Special Counsel’s Office provided his counsel with a
detailed list of topics for a possible interview with the President.\(^{830}\) The President knew that
McGahn had personal knowledge of many of the events the Special Counsel was investigating and
that McGahn had already been interviewed by Special Counsel investigators. And in the Oval
Office meeting, the President indicated he knew that McGahn had told the Special Counsel’s
Office about the President’s effort to remove the Special Counsel. The President challenged
McGahn for disclosing that information and for taking notes that he viewed as creating
unnecessary legal exposure. That evidence indicates the President’s awareness that the June 17,
2017 events were relevant to the Special Counsel’s investigation and any grand jury investigation
that might grow out of it.

To establish a nexus, it would be necessary to show that the President’s actions would have
the natural tendency to affect such a proceeding or that they would hinder, delay, or prevent the
communication of information to investigators. Because McGahn had spoken to Special Counsel
investigators before January 2018, the President could not have been seeking to influence his prior
statements in those interviews. But because McGahn had repeatedly spoken to investigators and
the obstruction inquiry was not complete, it was foreseeable that he would be interviewed again
on obstruction-related topics. If the President were focused solely on a press strategy in seeking
to have McGahn refute the New York Times article, a nexus to a proceeding or to further
investigative interviews would not be shown. But the President’s efforts to have McGahn write a
letter “for our records” approximately ten days after the stories had come out—well past the typical

\(^{830}\) 1/29/18 Letter, President’s Personal Counsel to Special Counsel’s Office, at 1-2 (“In our
conversation of January 8, your office identified the following topics as areas you desired to address with
the President in order to complete your investigation on the subjects of alleged collusion and obstruction of
justice”; listing 16 topics).
time to issue a correction for a news story—indicates the President was not focused solely on a press strategy, but instead likely contemplated the ongoing investigation and any proceedings arising from it.

c. **Intent.** Substantial evidence indicates that in repeatedly urging McGahn to dispute that he was ordered to have the Special Counsel terminated, the President acted for the purpose of influencing McGahn’s account in order to deflect or prevent further scrutiny of the President’s conduct towards the investigation.

Several facts support that conclusion. The President made repeated attempts to get McGahn to change his story. As described above, by the time of the last attempt, the evidence suggests that the President had been told on multiple occasions that McGahn believed the President had ordered him to have the Special Counsel terminated. McGahn interpreted his encounter with the President in the Oval Office as an attempt to test his mettle and see how committed he was to his memory of what had occurred. The President had already laid the groundwork for pressing McGahn to alter his account by telling Porter that it might be necessary to fire McGahn if he did not deny the story, and Porter relayed that statement to McGahn. Additional evidence of the President’s intent may be gleaned from the fact that his counsel was sufficiently alarmed by the prospect of the President’s meeting with McGahn that he called McGahn’s counsel and said that McGahn could not resign no matter what happened in the Oval Office that day. The President’s counsel was well aware of McGahn’s resolve not to issue what he believed to be a false account of events despite the President’s request. Finally, as noted above, the President brought up the Special Counsel investigation in his Oval Office meeting with McGahn and criticized him for telling this Office about the June 17, 2017 events. The President’s statements reflect his understanding—and his displeasure—that those events would be part of an obstruction-of-justice inquiry.

**J. The President’s Conduct Towards Flynn, Manafort, **

**Overview**

In addition to the interactions with McGahn described above, the President has taken other actions directed at possible witnesses in the Special Counsel’s investigation, including Flynn, Manafort, and as described in the next section, Cohen. When Flynn withdrew from a joint defense agreement with the President, the President’s personal counsel stated that Flynn’s actions would be viewed as reflecting “hostility” towards the President. During Manafort’s prosecution and while the jury was deliberating, the President repeatedly stated that Manafort was being treated unfairly and made it known that Manafort could receive a pardon.

**Evidence**

1. **Conduct Directed at Michael Flynn**

   As previously noted, see Volume II, Section II.B, supra, the President asked for Flynn’s resignation on February 13, 2017. Following Flynn’s resignation, the President made positive public comments about Flynn, describing him as a “wonderful man,” “a fine person,” and a “very