



U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

February 10, 2021

Austin R. Evers
American Oversight
1030 15th Street NW Suite B255
Washington, DC 20005
foia@americanoversight.org

Re: DOJ-2020-007102
19-cv-03540 (D.D.C.)
VRB:TAZ:BPF

Dear Austin Evers:

This is a sixth interim response to certain Freedom of Information Act (FOIA) requests you submitted between September 24, 2019, and October 4, 2019, seeking various records related to the withholding of funds from Ukraine, including the July 25, 2019 telephone call between President Trump and Ukrainian President Zelensky, the resultant whistleblower complaint, and individuals relevant to the topic.

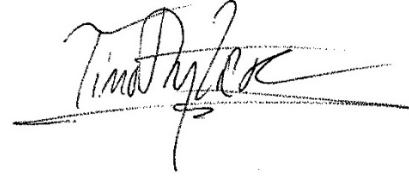
On May 22, 2020, July 10, 2020, September 10, 2020, November 10, 2020, and December 10, 2020, OIP sent interim responses to you. OIP has now processed an additional 200 pages containing records responsive to your request. I have determined that these 200 pages are appropriate for release with excisions made pursuant to Exemptions 5, 6, 7(C), and 7(E) of the FOIA, 5 U.S.C. § 552(b)(5), (b)(6), (b)(7)(C), and (b)(7)(E), and copies are enclosed. Please note that the enclosed pages also contain duplicative records, which have not been processed and are marked accordingly.

Exemption 5 pertains to certain inter- and intra-agency communications protected by the deliberative process privilege. Exemption 6 pertains to information the release of which would constitute a clearly unwarranted invasion of personal privacy. Exemption 7(C) pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy. Exemption 7(E) pertains to records or information compiled for law enforcement purposes, the release of which would disclose certain techniques and procedures or guidelines for law enforcement investigations or prosecutions.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2018). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

If you have any questions regarding this response, please contact Andrew Freidah of the Department's Civil Division, Federal Programs Branch, at 202-305-0879.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy Ziese", written over a horizontal line.

Timothy Ziese
Senior Supervisory Attorney
for
Vanessa R. Brinkmann
Senior Counsel

Enclosures

Boyd, Stephen E. (OLA)

From: Boyd, Stephen E. (OLA)
Sent: Monday, December 16, 2019 12:57 PM
To: Bratt, Jay (NSD); DuCharme, Seth (OAG)
Cc: Demers, John C. (NSD); Thorley, Charles A. (OLA)
Subject: RE: Package

Rgr. Will stand by. SB

From: Bratt, Jay (NSD) (b)(6)
Sent: Monday, December 16, 2019 12:56 PM
To: Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>; DuCharme, Seth (OAG) <sducharme@jmd.usdoj.gov>
Cc: Demers, John C. (NSD) (b)(6); Thorley, Charles A. (OLA) <cathorley@jmd.usdoj.gov>
Subject: RE: Package

That will work for me, but I need to check with John Brown from the FBI, who was also going to attend.

From: Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>
Sent: Monday, December 16, 2019 12:44 PM
To: Bratt, Jay (NSD) (b)(6); DuCharme, Seth (OAG) <sducharme@jmd.usdoj.gov>
Cc: Demers, John C. (NSD) (b)(6); Thorley, Charles A. (OLA) <cathorley@jmd.usdoj.gov>
Subject: RE: Package

Gents – Schedules on the Hill have shifted, and Nunes is now requesting a 5 PM Wednesday meeting. Sorry for the change. Can you accommodate? SB

From: Bratt, Jay (NSD) (b)(6)
Sent: Saturday, December 14, 2019 10:56 AM
To: DuCharme, Seth (OAG) <sducharme@jmd.usdoj.gov>
Cc: Demers, John C. (NSD) (b)(6); Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>
Subject: FW: Package

Seth:

Below is a description of the package that I sent John and Adam yesterday. I reached out to John Brown and am waiting to hear back from him.

Jay

From: Bratt, Jay (NSD)
Sent: Friday, December 13, 2019 6:09 PM
To: Demers, John C. (NSD) (b)(6); Hickey, Adam (NSD)
(b)(6)
Subject: Package

John/Adam:

I've reviewed the package John gave me. It was sent by two Ukrainian legislators. They are the subjects of the article in the link below. In the package is a letter dated December 2, 2019, from the two legislators that alleges that U.S. grant money to fight corruption is being mismanaged and misspent. Enclosed with the letter are a December 2017 "decision" from the "Accounting Chamber" detailing shortcomings in the administration of funds received through international technical assistance; a one-page excerpt from a March 2016 criminal investigation involving, in part, approximately \$2 million in U.S. grant money for the "Attorney General of Ukraine, Odessa Regional State Administration" and that was apparently closed; an undated "Joint Action Plan for the implementation of international technical assistance"; and what appears to be a budget for the "Joint Action Plan" (again undated), which the letter alleges demonstrates waste and fraud. Also enclosed in the package was a separate letter to Mick Mulvaney, which makes essentially the same allegations and attached to which is a transcript of the event described in the link. The Mulvaney letter also references a third letter, which was apparently sent to Sen. Lindsey Graham.

Jay

<https://www.thedailybeast.com/theres-no-new-biden-or-burisma-investigation-but-some-ukrainian-pols-are-playing-games-with-impeachment-info>

Jay I. Bratt
Chief
Counterintelligence and Export Control
Section
National Security Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

(b)(6)

Engel, Steven A. (OLC)

From: Engel, Steven A. (OLC)
Sent: Tuesday, December 3, 2019 4:34 PM
To: (b) (6) (OLC); Colborn, Paul P (OLC); Gannon, Curtis E. (OLC); (b) (6) (OLC); (b) (6) (OLC)
Cc: Hardy, Liam P. (OLC)
Subject: RE: HPSCI Report

(b) (5)

From: (b) (6) (OLC) <(b) (6)>
Sent: Tuesday, December 3, 2019 3:46 PM
To: Colborn, Paul P (OLC) <(b) (6)>; Engel, Steven A. (OLC) <(b) (6)>
Gannon, Curtis E. (OLC) <(b) (6)> (b) (6) (OLC) <(b) (6)> (b) (6)
(OLC) <(b) (6)>
Cc: Hardy, Liam P. (OLC) <(b) (6)>
Subject: RE: HPSCI Report

(b) (5)

From: Colborn, Paul P (OLC) <(b) (6)>
Sent: Tuesday, December 3, 2019 3:07 PM
To: Engel, Steven A. (OLC) <(b) (6)> Gannon, Curtis E. (OLC) <(b) (6)>
(b) (6) (OLC) <(b) (6)>; (b) (6) (OLC) <(b) (6)> (b) (6)
(OLC) <(b) (6)>
Subject: FW: HPSCI Report

fyi

From: Greer, Megan L. (OLA) <mjgreer@jmd.usdoj.gov>
Sent: Tuesday, December 03, 2019 2:58 PM
To: Colborn, Paul P (OLC) <(b) (6)>
Subject: FW: HPSCI Report

Megan L. Greer
Office of Legislative Affairs
202.353.9085 office
(b)(6) mobile

From: Greer, Megan L. (OLA)
Sent: Tuesday, December 3, 2019 2:52 PM
To: Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>
Subject: HPSCI Report

HPSCI's report has been released (attached).

###

Washington, DC – Today, the House Permanent Select Committee on Intelligence released the draft report – “The Trump-Ukraine Impeachment Inquiry Report” – to all Members and the public. The Committee will vote tonight to issue the report, before the Chairman of the Committee transmits it and any accompanying materials to the House Judiciary Committee consistent with H.Res. 660.

The draft report was written by the staff of the House Intelligence, Oversight and Reform and Foreign Affairs Committees.

After releasing the report to all Members and the public, Chairman Adam Schiff, Chairwoman Carolyn B. Maloney and Chairman Eliot Engel stated:

“We want to thank the Members and staff of the House Intelligence, Oversight and Reform, and Foreign Affairs Committees for their hard work in conducting this investigation over the last three months and preparing this report.

“The evidence is clear that President Trump used the power of his office to pressure Ukraine into announcing investigations into his political rival, former Vice President Joe Biden, and a debunked conspiracy theory that it was Ukraine, not Russia, that interfered in the 2016 election. These investigations were designed to benefit his 2020 presidential reelection campaign.

“The evidence is also clear that President Trump conditioned official acts on the public announcement of these investigations: a coveted White House visit and critical U.S. military assistance Ukraine needed to fight its Russian adversary.

“Finally, the evidence is clear that after his scheme to secure foreign help in his reelection was uncovered, President Trump engaged in categorical and unprecedented obstruction in order to cover-up his misconduct.

“These matters are not seriously contested. To the contrary, they make it plain that President Trump abused the power of his office for personal and political gain, at the expense of our national security.

“The President’s actions have damaged our national security, undermined the integrity of the next election, and violated his oath of office. They have also challenged the very core of our Constitutional system of checks and balances, separation of powers, and rule of law.

“It will be up to the Congress to determine whether these acts rise to the level of an impeachable offense, whether the President shall be held to account, and whether we as a nation are committed to the rule of law—or, instead, whether a president who uses the power of his office to coerce foreign interference in a U.S. election is something that Americans must simply ‘get over.’

“With the release of our report, the American people can review for themselves the evidence detailing President Trump’s betrayal of the public trust.”

As stated in the Executive Summary to the draft report, the Committees concluded that:

The impeachment inquiry into Donald J. Trump, the 45th President of the United States, uncovered a months-long effort by President Trump to use the powers of his office to solicit foreign interference on his behalf in the 2020 election. As described in this executive summary and the report that follows, President Trump’s scheme subverted U.S. foreign policy toward Ukraine and undermined our national security in favor of two politically motivated investigations that would help his presidential reelection campaign. The President demanded that the newly-elected Ukrainian president, Volodymyr Zelensky, publicly announce investigations into a political rival that he

apparently feared the most, former Vice President Joe Biden, and into a discredited theory that it was Ukraine, not Russia, that interfered in the 2016 presidential election. To compel the Ukrainian President to do his political bidding, President Trump conditioned two official acts on the public announcement of the investigations: a coveted White House visit and critical U.S. military assistance Ukraine needed to fight its Russian adversary.

During a July 25, 2019, call between President Trump and President Zelensky, President Zelensky expressed gratitude for U.S. military assistance. President Trump immediately responded by asking President Zelensky to “do us a favor though” and openly pressed for Ukraine to investigate former Vice President Biden and the 2016 conspiracy theory. In turn, President Zelensky assured President Trump that he would pursue the investigation and reiterated his interest in the White House meeting. Although President Trump’s scheme intentionally bypassed many career personnel, it was undertaken with the knowledge and approval of senior Administration officials, including the President’s Acting Chief of Staff Mick Mulvaney, Secretary of State Mike Pompeo, and Secretary of Energy Rick Perry. In fact, at a press conference weeks after public revelations about the scheme, Mr. Mulvaney publicly acknowledged that the President directly tied the hold on military aid to his desire to get Ukraine to conduct a political investigation, telling Americans to “get over it.”

President Trump and his senior officials may see nothing wrong with using the power of the Office of the President to pressure a foreign country to help the President’s reelection campaign. Indeed, President Trump continues to encourage Ukraine and other foreign countries to engage in the same kind of election interference today. However, the Founding Fathers prescribed a remedy for a chief executive who places his personal interests above those of the country: impeachment. Accordingly, as part of the House of Representatives’ impeachment inquiry, the Permanent Select Committee on Intelligence, in coordination with the Committees on Oversight and Reform and Foreign Affairs, were compelled to undertake a serious, sober, and expeditious investigation into whether the President’s misconduct warrants that remedy.

In response, President Trump engaged in an unprecedented campaign of obstruction of this impeachment inquiry. Nevertheless, due in large measure to patriotic and courageous public servants who provided the Committees with direct evidence of the President’s actions, the Committees uncovered significant misconduct on the part of the President of the United States. As required under House Resolution 660, the Intelligence Committee, in consultation with the Committees on Oversight and Reform and Foreign Affairs, has prepared this report to detail the evidence uncovered to date, which will now be transmitted to the Judiciary Committee for its consideration.

Based on witness testimony and evidence collected during the impeachment inquiry, the Committees released the following findings:

I. Donald J. Trump, the 45th President of the United States—acting personally and through his agents within and outside of the U.S. government—solicited the interference of a foreign government, Ukraine, in the 2020 U.S. presidential election. The President engaged in this course of conduct for the benefit of his reelection, to harm the election prospects of a political opponent, and to influence our nation’s upcoming presidential election to his advantage. In so doing, the President placed his personal political interests above the national interests of the United States, sought to undermine the integrity of the U.S. presidential election process, and endangered U.S. national security.

II. In furtherance of this scheme, President Trump—directly and acting through his agents within and outside the U.S. government—sought to pressure and induce Ukraine’s newly-elected president, Volodymyr Zelensky, to publicly announce unfounded investigations that would benefit President Trump’s personal political interests and reelection effort. To advance his personal political objectives, President Trump encouraged the President of Ukraine to work with his personal attorney, Rudy Giuliani.

III. As part of this scheme, President Trump, acting in his official capacity and using his position of public trust, personally and directly requested from the President of Ukraine that the government of Ukraine publicly announce investigations into (1) the President’s political opponent, former Vice President Joseph R. Biden, Jr. and his son, Hunter Biden, and (2) a baseless theory promoted by

Russia alleging that Ukraine—rather than Russia—interfered in the 2016 U.S. election. These investigations were intended to harm a potential political opponent of President Trump and benefit the President's domestic political standing.

IV. President Trump ordered the suspension of \$391 million in vital military assistance urgently needed by Ukraine, a strategic partner, to resist Russian aggression. Because the aid was appropriated by Congress, on a bipartisan basis, and signed into law by the President, its expenditure was required by law. Acting directly and through his subordinates within the U.S. government, the President withheld from Ukraine this military assistance without any legitimate foreign policy, national security, or anti-corruption justification. The President did so despite the longstanding bipartisan support of Congress, uniform support across federal departments and agencies for the provision to Ukraine of the military assistance, and his obligations under the Impoundment Control Act.

V. President Trump used the power of the Office of the President and exercised his authority over the Executive Branch, including his control of the instruments of the federal government, to apply increasing pressure on the President of Ukraine and the Ukrainian government to announce the politically-motivated investigations desired by President Trump. Specifically, to advance and promote his scheme, the President withheld official acts of value to Ukraine and conditioned their fulfillment on actions by Ukraine that would benefit his personal political interests:

1. President Trump—acting through agents within and outside the U.S. government—conditioned a head of state meeting at the White House, which the President of Ukraine desperately sought to demonstrate continued United States support for Ukraine in the face of Russian aggression, on Ukraine publicly announcing the investigations that President Trump believed would aid his reelection campaign.
2. To increase leverage over the President of Ukraine, President Trump, acting through his agents and subordinates, conditioned release of the vital military assistance he had suspended to Ukraine on the President of Ukraine's public announcement of the investigations that President Trump sought.
3. President Trump's closest subordinates and advisors within the Executive Branch, including Acting Chief of Staff Mick Mulvaney, Secretary of State Mike Pompeo, Secretary of Energy J. Richard Perry, and other senior White House and Executive Branch officials had knowledge of, in some cases facilitated and furthered the President's scheme, and withheld information about the scheme from the Congress and the American public.

VI. In directing and orchestrating this scheme to advance his personal political interests, President Trump did not implement, promote, or advance U.S. anti-corruption policies. In fact, the President sought to pressure and induce the government of Ukraine to announce politically-motivated investigations lacking legitimate predication that the U.S. government otherwise discourages and opposes as a matter of policy in that country and around the world. In so doing, the President undermined U.S. policy supporting anti-corruption reform and the rule of law in Ukraine, and undermined U.S. national security.

VII. By withholding vital military assistance and diplomatic support from a strategic foreign partner government engaged in an ongoing military conflict illegally instigated by Russia, President Trump compromised national security to advance his personal political interests.

VIII. Faced with the revelation of his actions, President Trump publicly and repeatedly persisted in urging foreign governments, including Ukraine and China, to investigate his political opponent. This continued solicitation of foreign interference in a U.S. election presents a clear and present danger that the President will continue to use the power of his office for his personal political gain.

IX. Using the power of the Office of the President, and exercising his authority over the Executive Branch, President Trump ordered and implemented a campaign to conceal his conduct from the public and frustrate and obstruct the House of Representatives' impeachment inquiry by:

1. refusing to produce to the impeachment inquiry's investigating Committees information and records in the possession of the White House, in defiance of a lawful subpoena;
2. directing Executive Branch agencies to defy lawful subpoenas and withhold the production of all documents and records from the investigating Committees;

3. directing current and former Executive Branch officials not to cooperate with the Committees, including in defiance of lawful subpoenas for testimony; and
4. intimidating, threatening, and tampering with prospective and actual witnesses in the impeachment inquiry in an effort to prevent, delay, or influence the testimony of those witnesses.

In so doing, and despite the fact that the Constitution vests in the House of Representatives the "sole Power of Impeachment," the President sought to arrogate to himself the right to determine the propriety, scope, and nature of an impeachment inquiry into his own misconduct, and the right to deny any and all information to the Congress in the conduct of its constitutional responsibilities.

Megan L. Greer

Office of Legislative Affairs

202.353.9085 *office*

(b)(6) *mobile*

Engel, Steven A. (OLC)

From: Engel, Steven A. (OLC)
Sent: Wednesday, November 27, 2019 2:11 PM
To: Colborn, Paul P (OLC); Gannon, Curtis E. (OLC)
Subject: RE: HPSCI Request for Information from SDNY Defendant Parnas

Thanks. Those edits look good.

From: Colborn, Paul P (OLC) <(b) (6)>
Sent: Wednesday, November 27, 2019 2:07 PM
To: Engel, Steven A. (OLC) <(b) (6)> Gannon, Curtis E. (OLC) <(b) (6)>
Subject: (b) (5)

FYI – my edits on an OLA email to HPSCI staffer (former SDNY prosecutor) Dan Goldman.

From: Colborn, Paul P (OLC)
Sent: Wednesday, November 27, 2019 2:05 PM
To: Greer, Megan L. (OLA) <mlgreer@jmd.usdoj.gov>
Subject: RE: updated email language

Following up on our conversation. What do you think of my editing suggestions below?

From: Greer, Megan L. (OLA) <mlgreer@jmd.usdoj.gov>
Sent: Wednesday, November 27, 2019 1:30 PM
To: Colborn, Paul P (OLC) <(b) (6)>
Subject: Fwd: updated email language

Can you call me re this?

Sent from my iPhone

Begin forwarded message:

From: "Hovakimian, Patrick (ODAG)" <phovakimian4@jmd.usdoj.gov>
Date: November 27, 2019 at 1:20:33 PM EST
To: "Escalona, Prim F. (OLA)" <pfescalona@jmd.usdoj.gov>
Cc: "Boyd, Stephen E. (OLA)" <seboyd@jmd.usdoj.gov>, "Greer, Megan L. (OLA)" <mlgreer@jmd.usdoj.gov>
Subject: RE: updated email language

Thanks. Some modest edits below.

Once you speak to Brian, please get it to Audrey ASAP before transmission to the Committee. Please let us know if Audrey has any material changes.

Thanks Prim.

From: Escalona, Prim F. (OLA) <pfescalona@jmd.usdoj.gov>
Sent: Wednesday, November 27, 2019 1:16 PM
To: Hovakimian, Patrick (ODAG) <phovakimian4@jmd.usdoj.gov>
Cc: Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>; Greer, Megan L. (OLA) <mlgreer@jmd.usdoj.gov>
Subject: updated email language

*** Deliberative/Pre-decisional/Confidential ***

Slightly updated (the last two sentences of the first paragraph are slightly tweaked based on Megan's previous conversations with Audrey and Dan.

(b) (5)

[REDACTED]

[REDACTED]

Prim Escalona
Principal Deputy Assistant Attorney General
Office of Legislative Affairs
(202) 305-4573

Engel, Steven A. (OLC)

From: Engel, Steven A. (OLC)
Sent: Tuesday, November 26, 2019 3:46 PM
To: Rabbitt, Brian (OAG); Moran, John (OAG); Hovakimian, Patrick (ODAG); Raman, Sujit (ODAG)
Cc: Gannon, Curtis E. (OLC)
Subject: OLC impeachment opinion
Attachments: 2019.11.26 Imp Draft Op (1530).docx

Attached is the near-final draft of the OLC impeachment opinion. (b)(5)

Thanks, Steve

Steven A. Engel
Assistant Attorney General
Office of Legal Counsel
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530
Office: (b)(6)
(b)(6)

Cronan, John (CRM)

From: Carr, Peter (OPA)
Sent: Monday, November 25, 2019 9:37 AM
To: Benczkowski, Brian (CRM); Cronan, John (CRM); Miner, Matthew (CRM); Kahn, Daniel (CRM); Zink, Robert
Subject: NYT: Why Giuliani Singled Out 2 Ukrainian Oligarchs to Help Dig Up Dirt

NYT: Why Giuliani Singled Out 2 Ukrainian Oligarchs to Help Dig Up Dirt

<https://www.nytimes.com/2019/11/25/us/giuliani-ukraine-oligarchs.html>

November 25, 2019

They were two Ukrainian oligarchs with American legal problems. One had been indicted on federal bribery charges. The other was embroiled in a vast banking scandal and was reported to be under investigation by the F.B.I.

And they had one more thing in common: Both had been singled out by Rudolph W. Giuliani and pressed to assist in his wide-ranging hunt for information damaging to one of President Trump's leading political rivals, former Vice President Joseph R. Biden Jr.

That effort culminated in the July 25 phone call between the American and Ukrainian presidents that has taken Mr. Trump to the brink of impeachment and inexorably brought Mr. Giuliani's Ukrainian shadow campaign into the light.

In public hearings over the last two weeks, American diplomats and national-security officials have laid out in detail how Mr. Trump, at the instigation and with the help of Mr. Giuliani, conditioned nearly \$400 million in direly needed military aid on Ukraine's announcing investigations into Mr. Biden and his son, as well as a debunked conspiracy theory that Ukraine, not Russia, interfered in the 2016 presidential election.

But interviews with the two Ukrainian oligarchs — Dmitry Firtash and Ihor Kolomoisky — as well as with several other people with knowledge of Mr. Giuliani's dealings, point to a new dimension in his exertions on behalf of his client, Mr. Trump. Taken together, they depict a strategy clearly aimed at leveraging information from politically powerful but legally vulnerable foreign citizens.

In the case of Mr. Firtash, an energy tycoon with deep ties to the Kremlin who is facing extradition to the United States on bribery and racketeering charges, one of Mr. Giuliani's associates has described offering the oligarch help with his Justice Department problems — if Mr. Firtash hired two lawyers who were close to President Trump and were already working with Mr. Giuliani on his dirt-digging mission. Mr. Firtash said the offer was made in late June when he met with Lev Parnas and Igor Fruman, both Soviet-born businessmen involved in Mr. Giuliani's Ukraine pursuit.

Mr. Parnas's lawyer, Joseph A. Bondy, confirmed that account and added that his client had met with Mr. Firtash at Mr. Giuliani's direction and encouraged the oligarch to help in the hunt for compromising information "as part of any potential resolution to his extradition matter."

Mr. Firtash's relationship to the Trump-allied lawyers — Victoria Toensing and Joseph diGenova — has led to intense speculation that he is, at least indirectly, helping to finance Mr. Giuliani's campaign. But until now he has stayed silent, and many of the details of how and why he came to hire the lawyers have remained murky.

In the interview, Mr. Firtash said he had no information about the Bidens and had not financed the search for it. "Without my will and desire," he said, "I was sucked into this internal U.S. fight." But to help his legal case, he said, he had paid his new lawyers \$1.2 million to date, with a portion set aside as something of a referral fee for Mr. Parnas.

And in late August, Ms. Toensing and Mr. diGenova did as promised: They went to the Justice Department and pleaded Mr. Firtash's case with the attorney general, William P. Barr.

In an interview, Mr. Giuliani acknowledged that he had sought information helpful to Mr. Trump from a member of Mr. Firtash's original legal team. But, Mr. Giuliani said, "the only thing he could give me was what I already had, hearsay." Asked if he had then directed his associates to meet with Mr. Firtash, Mr. Giuliani initially said, "I don't think I can comment," but later said, "I did not tell Parnas to do anything with Firtash."

He added, though, that there would be nothing improper about seeking information about the Bidens from the oligarchs. "Where do you think you get information about crime?" he said.

But Chuck Rosenberg, a legal expert and a United States attorney under President George W. Bush, said the "solicitation of information, under these circumstances, and to discredit the president's political opponent, is at best "crass and ethically suspect."

He added: "And it is even worse if Mr. Giuliani, either directly or through emissaries acting on his behalf, intimated that pending criminal cases can be 'fixed' at the Justice Department. The president's lawyer seems to be trading on the president's supervisory authority over the Justice Department, and that is deeply disturbing."

Mr. Bondy, the lawyer for Mr. Parnas — who was arrested with Mr. Fruman last month on campaign finance-related charges and has signaled a willingness to cooperate with impeachment investigators — said in a statement that all of his client's actions had been directed by Mr. Giuliani.

"Mr. Parnas reasonably believed Giuliani's directions reflected the interests and wishes of the president, given Parnas having witnessed and in several instances overheard Mr. Giuliani speaking with the president," the lawyer said. Mr. Parnas, he added, "is remorseful for involving himself and Mr. Firtash in the president's self-interested political plot."

A Conduit to Ukraine

By the time Mr. Giuliani turned his attention to Mr. Kolomoisky and Mr. Firtash, he had been working for months to turn up damaging information about Mr. Biden and his son Hunter, who joined the board of the Ukrainian energy company Burisma while his father was vice president.

Mr. Giuliani's assessment, according to Mr. Parnas's lawyer, was that those legal problems made Mr. Kolomoisky vulnerable to pressure.

But the meeting did not go according to plan. In an interview, Mr. Kolomoisky said the two men came "under the made-up pretext of dealing liquefied natural gas," but as soon as it became clear that what

they really wanted was a meeting between Mr. Giuliani and Mr. Zelensky, he abruptly sent them on their way. The exchange, he said, went like this:

“I say, ‘Did you see a sign on the door that says, ‘Meetings with Zelensky arranged here?’

“They said, ‘No.’

“I said, ‘Well then, you’ve ended up in the wrong place.’”

Mr. Kolomoisky, who has denied wrongdoing in the bank case, said he had not been contacted by the F.B.I.; a bureau spokesman declined to say whether the oligarch was under investigation.

After the Kolomoisky meeting’s unsuccessful end, Mr. Giuliani tweeted about the Daily Beast article and gave an interview to a Ukrainian journalist. Mr. Zelensky, he warned, “must cleanse himself from hangers-on from his past and from criminal oligarchs — Ihor Kolomoisky and others.”

Mr. Kolomoisky offered a warning of his own, predicting in the Ukrainian press that “a big scandal may break out, and not only in Ukraine, but in the United States. That is, it may turn out to be a clear conspiracy against Biden.”

Help to Fight an Extradition

The pair fared better with Mr. Firtash.

For several years, Mr. Firtash’s most visible lawyer had been Lanny Davis, a well-connected Democrat who also represented Mr. Trump’s fixer-turned-antagonist, Michael Cohen. In a television appearance in March, Mr. Giuliani had attacked Mr. Davis for taking money from the oligarch, citing federal prosecutors’ contention that he was tied to a top Russian mobster — a charge Mr. Firtash has denied.

Now, however, Mr. Giuliani wanted Mr. Firtash’s help. After being largely rebuffed by a member of the oligarch’s legal team in early June, he hit upon another approach, according to Mr. Parnas’s lawyer: persuading Mr. Firtash to hire more amenable counsel.

There was a brief discussion about Mr. Giuliani’s taking on that role himself, but Mr. Giuliani said he decided against it. According to Mr. Parnas’s lawyer, that is when Mr. Giuliani charged Mr. Parnas with persuading the oligarch to replace Mr. Davis with Ms. Toensing and Mr. diGenova. The men secured the June meeting with Mr. Firtash in Vienna after a mutual acquaintance, whom Mr. Firtash declined to name, vouched for them.

In the interview, Mr. Firtash said it had been clear to him that the two emissaries were working for Mr. Giuliani. The oligarch, a major player in the Ukrainian gas market, said Mr. Parnas and Mr. Fruman initially pitched him on a deal to sell American liquefied natural gas to Ukraine, via a terminal in Poland. While the deal didn’t make sense financially, he said, he entertained it for a time, even paying for the men’s travel expenses, because they had something else to offer.

“They said, ‘We may help you, we are offering to you good lawyers in D.C. who might represent you and deliver this message to the U.S. D.O.J.,’” Mr. Firtash recalled, referring to the Justice Department.

The oligarch had been arrested in Vienna in 2014, at the American authorities’ request, after his indictment on charges of bribing Indian officials for permission to mine titanium for Boeing. Mr.

Firtash, who denies the charges, was free on bail but an Austrian court had cleared the way for his extradition to the United States.

In hopes of blocking that order, Mr. Firtash and his Vienna lawyers had filed records showing that a key piece of evidence — a document known as “Exhibit A” that was said to lay out the bribery scheme — had been prepared not by Mr. Firtash’s firm, but by the global consultancy McKinsey & Company. But Mr. Firtash’s legal team had been unable to persuade federal prosecutors to withdraw it. McKinsey has denied recommending “bribery or other illegal acts.”

Ms. Toensing and Mr. diGenova, the Giuliani emissaries told him, “are in a position to insist to correct the record and call back Exhibit A as evidence,” Mr. Firtash recalled.

He hired the lawyers, he said, on a four-month contract for a singular task — to arrange a meeting with the attorney general and persuade him to withdraw Exhibit A. He said their contract was for \$300,000 a month, including Mr. Parnas’s referral fee. A person with direct knowledge of the arrangement said Mr. Parnas’s total share was \$200,000; Ms. Toensing declined to discuss the payment but has said previously that it was for case-related translation.

There was one more piece to Mr. Parnas’s play. “Per Giuliani’s instructions,” Mr. Parnas’s lawyer said, his client “informed Mr. Firtash that Toensing and diGenova were interested in collecting information on the Bidens.” (It was the former vice president who had pushed the Ukrainian government to eliminate middleman gas brokers like Mr. Firtash and diversify the country’s supply away from Russia.)

While Mr. Firtash declined to say whether anyone linked to the dirt-digging efforts had asked him for information, he was adamant that he had not provided any. Doing so might have helped Mr. Giuliani, he said, but it would not have helped him with his legal problems.

“I can tell you only one thing,” he said. “I do not have any information, I did not collect any information, I didn’t finance anyone who would collect that information, and it would be a big mistake from my side if I decided to be involved in such a fight.”

At any rate, Ms. Toensing and Mr. diGenova soon delivered for Mr. Firtash, arranging the meeting with Attorney General Barr. But by the time they met, in mid-August, the ground had shifted: The whistle-blower’s complaint laying out Mr. Trump’s phone call with Mr. Zelensky, and Mr. Giuliani’s activities in Ukraine, had been forwarded to the Justice Department and described in detail to Mr. Barr. What’s more, concerns about intervening in the Firtash case had been raised by some inside the Justice Department, according to two people with knowledge of the matter.

The department declined to comment, but Mr. Firtash said the attorney general ultimately told the lawyers to “go back to Chicago,” where the case had initially been brought, and deal with prosecutors there.

Mr. Firtash continues, however, to have faith in Ms. Toensing and Mr. diGenova’s ability to work the Justice Department angle. Their contract was just extended at least through year’s end.

Documents Leaked

If Mr. Firtash had nothing to offer, Mr. Giuliani still got some results.

After Ms. Toensing and Mr. diGenova came on board, confidential documents from Mr. Firtash’s case file found their way into articles by John Solomon, a conservative reporter whom Mr.

Giuliani has acknowledged using to advance his claims about the Bidens. Mr. Solomon is also a client of Ms. Toensing.

One article, citing internal memos circulated among Mr. Firtash's lawyers, disclosed that the office of the special counsel, Robert S. Mueller III, had offered a deal to Mr. Firtash if he could help with their investigation into Russian interference in the 2016 presidential election. Mr. Giuliani, who as a former federal prosecutor was aware that such discussions are hardly unusual, took the story a step further. In an appearance on Fox News, he alleged that the offer to Mr. Firtash amounted to an attempt to suborn perjury, but said the oligarch had refused to "lie to get out of the case" against him.

Then, after the meeting with Mr. Barr, Mr. Solomon posted a sworn affidavit from Mr. Shokin, the former Ukrainian prosecutor, repeating his contention that Mr. Biden had pressed for his firing to short-circuit his investigations.

Mr. Giuliani was soon waving the affidavit around on television, without explaining that it had been taken by a member of Mr. Firtash's legal team to support his case.

Mr. Firtash said he had not authorized the document's release and hoped his lawyers had not either. He said the affidavit had been filed confidentially with the Austrian court because it also included the former prosecutor's statement that Mr. Biden had been instrumental in blocking Mr. Firtash's return to political life in Ukraine — an assertion that Mr. Firtash believes speaks to the political nature of the case against him.

Ms. Toensing and Mr. diGenova declined to say whether they had played a role in leaking the documents, but Mark Corallo, a spokesman for their law firm, said that the pair "took the Firtash case for only one reason: They believe that Mr. Firtash is innocent of the charges brought against him."

When Mr. Parnas and Mr. Fruman were arrested, they were at Dulles International Airport awaiting a flight to Vienna, where they had arranged to have the Fox News host Sean Hannity interview Mr. Shokin. Mr. Giuliani was planning to join them the next day, he said in an interview.

A bemused Mr. Kolomoisky has watched the events unfold from Ukraine, where he returned after Mr. Zelensky's victory. Initially he didn't believe that Mr. Parnas was all that connected, he said, but after Mr. Giuliani started going after him, "I was able to connect A to B."

He said he had since made peace with Mr. Parnas and had spoken to him several times, including the night before he was detained. In their conversations, he said, Mr. Parnas made no secret that he was helping Mr. Firtash with his legal case. And while Mr. Kolomoisky insisted that neither Mr. Parnas nor Mr. Fruman had mentioned his own legal travails, he added:

"Had they, I would have said: 'Let's watch Firtash and train on Firtash. When Firtash comes back here, and everything is O.K., I will be your next client.'"

Engel, Steven A. (OLC)

From: Engel, Steven A. (OLC)
Sent: Thursday, November 21, 2019 6:42 PM
To: Colborn, Paul P (OLC); Gannon, Curtis E. (OLC)
Subject: RE: (b) (5)

Thanks.

From: Colborn, Paul P (OLC) <(b) (6)>
Sent: Thursday, November 21, 2019 6:11 PM
To: Engel, Steven A. (OLC) <(b) (6)> Gannon, Curtis E. (OLC) <(b) (6)>
Subject: FW: (b) (5)

Below please find some preliminary analysis by your oversight/impeachment team concerning issues (b) (5).

From: Colborn, Paul P (OLC)
Sent: Thursday, November 21, 2019 5:56 PM
To: (b) (6) (OLC) <(b) (6)>; (b) (6) (OLC) <(b) (6)>
(b) (6) (OLC) <(b) (6)>
Subject: RE: (b) (5)

Well, I think the main initial question for us might be (b) (5)

_____.

From: (b) (6) (OLC) <(b) (6)>
Sent: Thursday, November 21, 2019 5:48 PM
To: (b) (6) (OLC) <(b) (6)> Colborn, Paul P (OLC) <(b) (6)>
(b) (6) (OLC) <(b) (6)>
Subject: RE: (b) (5)

Agreed. (b) (5)

From: (b) (6) (OLC) <(b) (6)>
Sent: Thursday, November 21, 2019 5:42 PM
To: Colborn, Paul P (OLC) <(b) (6)> (b) (6) (OLC) <(b) (6)>
(b) (6) (OLC) <(b) (6)>
Subject: RE: (b) (5)

(b) (5)

Also, a few additional thoughts to complement (b) (6)'s earlier analysis. (b) (5)

(b) (5)

From: Colborn, Paul P (OLC) <(b) (6)>

Sent: Thursday, November 21, 2019 5:39 PM

To: (b) (6) (OLC) <(b) (6)> (b) (6) (OLC) <(b) (6)>
(b) (6) (OLC) <(b) (6)>

Subject: RE: (b) (5)

(b) (5)

From: (b) (6) (OLC) <(b) (6)>

Sent: Thursday, November 21, 2019 5:23 PM

To: Colborn, Paul P (OLC) <(b) (6)> (b) (6) (OLC) <(b) (6)>
(b) (6) (OLC) <(b) (6)>

Subject: RE: (b) (5)

Agree with (b) (6) re (b) (5)

From: Colborn, Paul P (OLC) <(b) (6)>

Sent: Thursday, November 21, 2019 5:14 PM

To: (b) (6) (OLC) <(b) (6)> (b) (6) (OLC) <(b) (6)>
(b) (6) (OLC) <(b) (6)>

Subject: RE: (b) (5)

(b) (5)

From: (b) (6) (OLC) <(b) (6)>

Sent: Thursday, November 21, 2019 5:06 PM

To: Colborn, Paul P (OLC) <(b) (6)> (b) (6) (OLC) <(b) (6)>
(b) (6) (OLC) <(b) (6)>

Subject: RE: (b) (5)

(b) (5)

(b) (5)

From: Colborn, Paul P (OLC) <(b) (6)>

Sent: Thursday, November 21, 2019 5:03 PM

To: (b) (6) (OLC) <(b) (6)> (b) (6) (OLC) <(b) (6)>

(b) (6) (OLC) <(b) (6)>

Subject: RE: (b) (5)

(b) (5)

From: (b) (6) (OLC) <(b) (6)>

Sent: Thursday, November 21, 2019 5:00 PM

To: Colborn, Paul P (OLC) <(b) (6)> (b) (6) (OLC) <(b) (6)>

(b) (6) (OLC) <(b) (6)>

Subject: RE: (b) (5)

(b) (5)

From: Colborn, Paul P (OLC) <(b) (6)>

Sent: Thursday, November 21, 2019 4:44 PM

To: (b) (6) (OLC) <(b) (6)> (b) (6) (OLC) <(b) (6)>

(b) (6) (OLC) <(b) (6)>

Subject: RE: (b) (5)

P.S. I should have noted, as Megan does below, (b) (5)

From: Colborn, Paul P (OLC)

Sent: Thursday, November 21, 2019 4:43 PM

To: (b) (6) (OLC) <(b) (6)> (b) (6) (OLC) <(b) (6)>

(b) (6) (OLC) <(b) (6)>

Subject: FW: (b) (5)

Thoughts on (b) (5) ?

From: Greer, Megan L. (OLA) <mlgreer@jmd.usdoj.gov>
Sent: Thursday, November 21, 2019 4:31 PM
To: Colborn, Paul P (OLC) <[REDACTED] (b) (6)>
Subject: FW: [REDACTED] (b) (5)

From: Greer, Megan L. (OLA)
Sent: Thursday, November 21, 2019 4:31 PM
To: Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>
Subject: [REDACTED] (b) (5)

As HPSCI's hearings wrapped, Chairman Graham issued a document request to the State Department regarding Burisma and Hunter Biden. **The letter does not reference impeachment**, but instead requests three categories of documents from 2016 to "assist in answering questions regarding allegations that Vice President Biden played a role in the termination of Prosecutor General Shokin in an effort to end the investigation of the company employing his son":

1. All documents and communications, including call transcripts or summaries, related to the Vice President's phone calls with President Poroshenko on February 11, 18, and 19 and March 22 of 2016, especially with respect to whether Vice President Biden mentioned the Prosecutor General's investigation into Burisma.
2. All documents and communications between the Vice President and his office and President Poroshenko and his office after the raid on Mr. Zlochevsky's home on February 2, 2016, until the dismissal of the Prosecutor General on March 29, 2016.
3. All documents and communications related to a meeting between Devon Archer, a business partner of Hunter Biden, and Secretary of State John Kerry on March 2, 2016.

Megan L. Greer
Office of Legislative Affairs
202.353.9085 office
[REDACTED] (b)(6) mobile

Benczkowski, Brian (CRM)

From: Carr, Peter (OPA)
Sent: Wednesday, November 20, 2019 1:48 PM
To: Benczkowski, Brian (CRM); Driscoll, Kevin (CRM); Amundson, Corey (CRM); Keller, John (CRM); Mann, James (CRM)
Subject: RE: NBC: "FBI seeks to interview the whistleblower"

WSJ: "FBI Seeks Interview With Ukraine Whistleblower," Dustin Volz and Byron Tau, November 20, 2019
<https://www.wsj.com/articles/fbi-seeks-interview-with-ukraine-whistleblower-11574271572>

The Federal Bureau of Investigation has requested an interview with the whistleblower whose complaint concerning President Trump's July call with his Ukrainian counterpart triggered the House's impeachment inquiry, according to people familiar with the matter.

The FBI appears to be seeking the whistleblower's cooperation in an investigation that is in the early stages, suggesting that he isn't himself under investigation. No interview has been scheduled yet, the people said.

It wasn't immediately known why the FBI has sought to interview the whistleblower, who has sought to remain anonymous.

The FBI declined to comment. Yahoo News earlier reported the FBI's interview request.

The legal team representing the individual, who works for the Central Intelligence Agency, has offered to answer written questions for congressional investigators but resisted Republican demands that he appear in person, citing concerns that his identity would leak and jeopardize his personal safety.

Democrats have called Republican attempts to get details on the whistleblower potentially dangerous. Republicans have used the public impeachment hearings to say they are in the dark about an important aspect of how concerns about Mr. Trump's call with Ukrainian President Volodymyr Zelensky surfaced. In the call, Mr. Trump pressed for investigations related to Democratic presidential candidate Joe Biden and the 2016 election.

While the identity of the whistleblower hasn't been reported by major news organizations, some conservative websites and Republican lawmakers have circulated the name of an individual they suspect to be the whistleblower.

The legal team representing him has received multiple death threats that have led to at least one law-enforcement investigation, The Wall Street Journal has previously reported.

After receiving the complaint from the whistleblower, the Justice Department examined whether Mr. Trump violated any campaign finance laws and concluded that he hadn't.

But the Justice Department didn't examine the broader issue of whether any laws were broken. The FBI's interest in the source of the complaint suggests that the bureau may be looking at other aspects of the complaint and whether they triggered any legal concerns beyond the campaign-finance issue.

From: Carr, Peter (OPA)
Sent: Wednesday, November 20, 2019 11:26 AM
To: Benczkowski, Brian (CRM) <(b) (6) Per CRM@CRM.USDOJ.GOV>; Driscoll, Kevin (CRM) <(b) (6) Per CRM@CRM.USDOJ.GOV>; Amundson, Corey (CRM) <(b) (6) Per CRM@CRM.USDOJ.GOV>; Keller, John (CRM)

(b) (6) Per CRM@CRM.USDOJ.GOV>; Mann, James (CRM) (b) (6) Per CRM@CRM.USDOJ.GOV>

Subject: RE: NBC: "FBI seeks to interview the whistleblower"

Story matched by Yahoo News as well: <https://news.yahoo.com/fbi-seeks-interview-with-cia-whistleblower-121637359.html>

From: Carr, Peter (OPA)

Sent: Wednesday, November 20, 2019 10:37 AM

To: Benczkowski, Brian (CRM) (b) (6) Per CRM@CRM.USDOJ.GOV>; Driscoll, Kevin (CRM)

(b) (6) Per CRM@CRM.USDOJ.GOV>; Amundson, Corey (CRM) <(b) (6) Per CRM@CRM.USDOJ.GOV>; Keller, John (CRM)

(b) (6) Per CRM@CRM.USDOJ.GOV>; Mann, James (CRM) <(b) (6) Per CRM@CRM.USDOJ.GOV>

Subject: FW: NBC: "FBI seeks to interview the whistleblower"

FYI

NBC: "FBI seeks to interview the whistleblower," Ken Dilanian and Julia Ainsley, November 20, 2019
<https://www.nbcnews.com/politics/donald-trump/fbi-seeks-interview-whistleblower-n1086691>

The FBI has asked to interview the CIA whistleblower whose complaint touched off the Ukraine impeachment investigation, a source directly familiar with the matter told NBC News.

The whistleblower has not yet agreed to an interview, the source said.

The FBI request was first reported by Yahoo News, which said that some FBI officials were disturbed that the Justice Department declined to investigate the whistleblower's complaint after a criminal referral was sent over from the inspector general of the Intelligence Community.

Spokespeople for the FBI and the Justice Department did not immediately respond to requests for comment.

Justice Department officials said they examined the criminal referral based on the whistleblower's complaint, and decided that there should be no investigation. They said they only examine the question of whether a campaign finance crime occurred, and they have never explained why they did not consider questions of bribery, extortion or other possible crimes.

The whistleblower was not on the July 25 call between President Donald Trump and the Ukrainian president, and is not considered a first-hand witness to any of the key moments in the Ukraine saga. The whistleblower aggregated the concerns passed on by other colleagues on the National Security Council, and forwarded them in a written complaint to the inspector general for the intelligence community.

Because the whistleblower is not a first-hand witness, congressional Democrats have decided they do not need the person's testimony and the ongoing impeachment hearings. Republicans, on the other hand, have urged that the whistleblower be brought in to testify, in what critics see as a bid to expose the person's identity.

Greer, Megan L. (OLA)

From: Greer, Megan L. (OLA)
Sent: Tuesday, November 12, 2019 11:28 AM
To: Boyd, Stephen E. (OLA); Lasseter, David F. (OLA); Hankey, Mary Blanche (OLA)
Subject: Minority Staff Memo re Impeachment
Attachments: 2019-11-12.memo.to.members.re.impeachment.inquiry.pdf

Attached is the minority's staff memo regarding impeachment.

Megan L. Greer
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202.353.9085 office
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Congress of the United States

House of Representatives

Washington, DC 20515

MEMORANDUM

November 12, 2019

To: Republican Members of the Permanent Select Committee on Intelligence, Committee on Oversight and Reform, and Committee on Foreign Affairs

From: Republican Staff of the Permanent Select Committee on Intelligence, Committee on Oversight and Reform, and Committee on Foreign Affairs

Subject: Key points of evidence from the Democrats' closed-door "impeachment inquiry"

On September 24, 2019, Speaker Pelosi unilaterally announced that the House of Representatives would initiate an inquiry into impeaching President Donald J. Trump concerning the President's telephone conversation with Ukrainian President Volodymyr Zelensky on July 25.¹ Democrats allege that President Trump "jeopardized U.S. national security by pressuring Ukraine to initiate politically-motivated investigations that could interfere in U.S. domestic politics."² The evidence, however, does not support this allegation.

In the 49 days since Speaker Pelosi's announcement, Rep. Adam Schiff, Chairman of the Permanent Select Committee on Intelligence, has been leading this inquiry from his Capitol basement bunker. The fact-finding is all unclassified, so the closed-door process is purely for information control. This arrangement has allowed Chairman Schiff—who has already publicly fabricated evidence and misled Americans about his interactions with the anonymous whistleblower³—to selectively leak cherry-picked information to help paint misleading public narratives while, at the same time, placing a gag order on Republican Members present.

Speaker Pelosi promised the "impeachment inquiry" would "treat the President with fairness."⁴ Chairman Schiff has broken this promise. In the course of the inquiry to date, Chairman Schiff has denied fundamental fairness and minority rights. He directed witnesses called by the Democrats not to answer Republican questions. He withheld deposition transcripts

¹ Speaker Nancy Pelosi, Pelosi Remarks Announcing Impeachment Inquiry (Sept. 24, 2019).

² H. Rpt. 116-266, 116th Cong. 2-3 (2019).

³ "Whistleblower Disclosure": *Hearing of the H. Perm. Sel. Comm. on Intelligence*, 116th Cong. (2019) (statement of Rep. Adam Schiff, Chairman); Glenn Kessler, *Schiff's false claim his committee had not spoken to the whistleblower*, WASH. POST, Oct. 4, 2019 (awarding Chairman Schiff "four Pinnochios" for "clearly mak[ing] a statement that was false").

⁴ Speaker Nancy Pelosi, Transcript of Pelosi Weekly Press Conference Today (Oct. 2, 2019).

Memorandum to Republican Members
November 12, 2019

from Republican members. He broke with precedent and offered no due process protections for the President.

As Chairman Schiff now moves his inquiry from his basement bunker to public hearings, this memorandum updates Republican Members about the key points of evidence learned to date in the Democrats' "impeachment inquiry." The body of evidence to date does not support the Democrat allegation that President Trump pressured Ukraine to conduct investigations into the President's political rivals for his political benefit in the 2020 election. The body of evidence to date does not support the Democrat allegations that President Trump covered up misconduct or obstructed justice.

Democrats will allege, however, that President Trump abused his authority by leveraging a face-to-face meeting with President Zelensky and U.S. security assistance to Ukraine to force Ukraine to conduct two "political" investigations: one into the role of Vice President Biden's son, Hunter Biden, on the board of a Ukrainian energy company called Burisma, and the other into allegations of Ukrainian interference in the U.S. presidential election in 2016.

Four key pieces of evidence are fatal to the Democrats' allegations. Stripping away the hyperbole and hysteria, these indisputable pieces of evidence show that there was no "Treason, Bribery, or other high Crimes and Misdemeanors," as required by the U.S. Constitution. These facts are:

- The July 25 call summary—the best evidence of the conversation—shows no conditionality or evidence of pressure;
- President Zelensky and President Trump have both said there was no pressure on the call;
- The Ukrainian government was not aware of a hold on U.S. security assistance at the time of the July 25 call; and
- President Trump met with President Zelensky and U.S. security assistance flowed to Ukraine in September 2019—both of which occurred without Ukraine investigating President Trump's political rivals.

The body of evidence shows instead that President Trump holds a deep-seated, genuine, and reasonable skepticism of Ukraine due to its history of pervasive corruption. The President has also been vocal about his skepticism of U.S. foreign aid and the need for European allies to shoulder more of the financial burden for regional defense. Public reporting shows how senior Ukrainian officials interfered in the 2016 U.S. presidential campaign in favor of Secretary Clinton and in opposition to then-candidate Trump—including some officials who President Zelensky retained in his government. Seen in this light, any reluctance on the President's part to meet with President Zelensky or to provide taxpayer-funded assistance to Ukraine is entirely reasonable.

Democrats want to impeach President Trump because unelected and anonymous bureaucrats disagreed with the President's decisions and were discomfited by his telephone conversation with President Zelensky. The Democrat impeachment narrative flips our system of

government on its head. The federal bureaucracy works for the President. The President works for the American people. And President Trump is doing what Americans elected him to do.

BACKGROUND

To appropriately understand the events in question—and most importantly, assess the President’s state of mind during his interaction with President Zelensky—context is necessary. This context shows that President Trump has a deep-seated, genuine, and reasonable skepticism of Ukraine and U.S. taxpayer-funded foreign aid, independent of and preceding any mention of potential investigations of Ukraine’s interference in the 2016 elections or Hunter Biden’s involvement with Burisma, a notoriously corrupt company.

1. Ukraine has a long history of pervasive corruption.

Since it became an independent nation following the collapse of the Soviet Union, Ukraine has been plagued by systemic corruption. *The Guardian* has called Ukraine “the most corrupt nation in Europe”⁵ and Ernst & Young cites Ukraine among the three most-corrupt nations of the world.⁶ Corruption is so pervasive in Ukraine that in 2011, 68.8% of Ukrainian citizens reported that they had bribed a public official within the preceding twelve months.⁷ Pervasive corruption in Ukraine has been one of the primary impediments to Ukraine joining the European Union.⁸ Corruption-related concerns also figure prominently in the E.U.-Ukrainian Association Agreement, the document establishing a political and economic association between the E.U. and Ukraine.⁹

State Department witnesses called by the Democrats during the “impeachment inquiry” confirmed Ukraine’s reputation for corruption. Deputy Assistant Secretary of State for European and Eurasian Affairs George Kent described Ukraine’s corruption problem as “serious” and said corruption has long been “part of the high-level dialogue” between the United States and Ukraine.¹⁰ Ambassador Marie Yovanovitch, the former U.S. Ambassador to Ukraine, testified

⁵ Oliver Bullough, *Welcome to Ukraine, the Most Corrupt Nation in Europe*, GUARDIAN, Feb. 6, 2015.

⁶ *14th Global Fraud Survey*, ERNST & YOUNG, (2016), [https://www.ey.com/Publication/vwLUAssets/EY-corporate-misconduct-individual-consequences/\\$FILE/EY-corporate-misconduct-individual-consequences.pdf](https://www.ey.com/Publication/vwLUAssets/EY-corporate-misconduct-individual-consequences/$FILE/EY-corporate-misconduct-individual-consequences.pdf) (noting that 88% of Ukrainian’s agree that “bribery/corrupt practices happen widely in business in [Ukraine]”). See also Viktor Tkachuk, *People First: The Latest in the Watch on Ukrainian Democracy*, KYIV POST, (Sept. 11, 2012), <https://www.kyivpost.com/article/opinion/op-ed/people-first-the-latest-in-the-watch-on-ukrainian-democracy-5-312797.html>.

⁷ *Fighting Corruption in Ukraine: Ukrainian Style*, GORSHENIN INST. (Mar. 7, 2011), http://gpf-europe.com/upload/iblock/333/round_table_eng.pdf.

⁸ See, e.g., Vladimir Isachenkov, *Ukraine’s integration into West dashed by war and corruption*, ASSOC. PRESS, Mar. 26, 2019.

⁹ E.U.-Ukraine Ass’n Agreement, art. 14, Mar. 21, 2014, 57 Off. J. of the E.U. L161/3 (“In their cooperation on justice, freedom and security, the Parties shall attach particular importance to the consolidation of the rule of law and the reinforcement of institutions at all levels in the areas of administration in general and law enforcement and the administration of justice in particular. Cooperation will, in particular, aim at strengthening the judiciary, improving its efficiency, safeguarding its independence and impartiality, and combating corruption. Respect for human rights and fundamental freedoms will guide all cooperation on justice, freedom and security.”).

¹⁰ Deposition of George Kent, in Wash., D.C., at 105, 151 (Oct. 15, 2019) [hereinafter “Kent deposition”].

that in Ukraine “corruption is not just prevalent, but frankly is the system.”¹¹ Ambassador Bill Taylor, the current chargé d’affaires in Kyiv, said corruption in Ukraine is a “big issue.”¹² Ambassador Kurt Volker, the former Special Representative for Ukraine Negotiations, testified that “Ukraine has a long history of pervasive corruption throughout the economy[,] throughout the country, and it has been incredibly difficult for Ukraine as a country to deal with this, to investigate it, to prosecute it.”¹³ He later elaborated:

Ukraine had for decades a reputation of being just a corrupt place. There are a handful of people who own a disproportionate amount of the economy. Oligarchs, they use corruption as kind of the coin of the realm to get what they want, including influencing the Parliament, the judiciary, the government, state-owned industries. And so businessmen generally don’t want to invest in Ukraine, even to this day, because they just fear that it’s a horrible environment to be working in, and they don’t want to put – expose themselves to that risk. I would have to believe that President Trump would be aware of that general climate.¹⁴

2. President Trump has a deep-seated, genuine, and reasonable skepticism about Ukraine due to its history of pervasive corruption.

President Trump’s views on Ukraine have been colored by the country’s history of pervasive corruption. The Democrats’ witnesses described how President Trump holds a deep-seated skepticism of Ukraine, a view that witnesses said was genuine and reasonable given the country’s history of corruption.

Multiple Democrat witnesses offered firsthand testimony of President Trump’s skeptical view of Ukraine, going as far back as the President’s first year in office. Ambassador Volker explained that “President Trump demonstrated that he had a very deeply rooted negative view of Ukraine based on past corruption. And that’s a reasonable position. Most people who would know anything about Ukraine would think that.”¹⁵ He elaborated that the President’s concern about Ukraine was genuine, and that this concern caused a delay in the meeting with President Zelensky.¹⁶ Ambassador Volker explained:

So the issue as I understood it was this deep-rooted, skeptical view of Ukraine, a negative view of Ukraine, preexisting 2019, you know, going back. When I started this, I had one other meeting with

¹¹ Deposition of Ambassador Marie L. Yovanovitch, in Wash., D.C., at 18 (Oct. 11, 2019) [hereinafter “Yovanovitch deposition”].

¹² Deposition of Ambassador William B. Taylor, in Wash., D.C., at 86 (Oct. 22, 2019) [hereinafter “Taylor deposition”].

¹³ Transcribed interview of Ambassador Kurt Volker, in Wash., D.C., at 76 (Oct. 3, 2019) [hereinafter “Volker transcribed interview”].

¹⁴ *Id.* at 148-49.

¹⁵ *Id.* at 30.

¹⁶ *Id.* at 41, 295.

President Trump and [then-Ukrainian] President Poroshenko. It was in September of 2017. And at that time he had a very skeptical view of Ukraine. So I know he had a very deep-rooted skeptical view. And my understanding at the time was that even though he agreed in the meeting that we had with him, say, okay, I'll invite him, he didn't really want to do it. And that's why the meeting kept being delayed and delayed.¹⁷

Other testimony confirms Ambassador Volker's assessment. Ambassador Yovanovitch recalled the President's skepticism, saying that she also observed it firsthand during President Trump's meeting with President Poroshenko in September 2017.¹⁸ She testified:

Q. Were you aware of the President's deep-rooted skepticism about Ukraine's business environment?

A. Yes.

Q. And what did you know about that?

A. That he—I mean, he shared that concern directly with President Poroshenko in their first meeting in the Oval Office.¹⁹

Dr. Fiona Hill, former senior director at the National Security Council, also confirmed President Trump's skepticism. She testified:

I think the President has actually quite publicly said that he was very skeptical about corruption in Ukraine. And, in fact, he's not alone, because everyone has expressed great concerns about corruption in Ukraine.²⁰

Catherine Croft, Ambassador Volker's deputy at the State Department, likewise confirmed that President Trump was skeptical of Ukraine due to its history of corruption, explaining: “[H]e described his concerns being that Ukraine was corrupt, that it was capable of being a very rich country, and that the United States shouldn't pay for it, but instead, we should be providing aid through loans.”²¹

3. Senior Ukrainian government officials interfered in the 2016 U.S. presidential election in opposition to President Trump.

President Trump's skepticism about Ukraine was compounded by statements made by senior Ukrainian government officials in 2016 that were critical of then-candidate Trump and

¹⁷ *Id.* at 41.

¹⁸ Yovanovitch deposition, *supra* note 11, at 142.

¹⁹ *Id.*

²⁰ Deposition of Dr. Fiona Hill, in Wash., D.C., at 118 (Oct. 14, 2019) [hereinafter “Hill deposition”].

²¹ Deposition of Catherine Croft, in Wash., D.C., at 31 (Oct. 30, 2019) [hereinafter “Croft deposition”].

supportive of his opponent, former Secretary of State Hillary Clinton. Although Democrats have attempted to discredit these assertions as “debunked,” the publicly available statements by Ukrainian leaders speak for themselves.

In August 2016, less than three months before the election, Valeriy Chaly, then-Ukrainian Ambassador to the United States, authored an op-ed in a U.S. newspaper criticizing candidate Trump for comments he made about Russia’s occupation of Crimea.²² Ambassador Chaly wrote that candidate Trump’s comments “have raised serious concerns in [Kyiv] and beyond Ukraine.”²³ Although President Zelensky dismissed Ambassador Chaly on July 19, 2019,²⁴ the ambassador’s op-ed still remains on the website of the Ukrainian Embassy in the United States.²⁵

Later that month, the *Financial Times* published an article asserting that President Trump’s candidacy led “Kyiv’s wider political leadership to do something they would never have attempted before: intervene, however indirectly, in a US election.”²⁶ The article quoted Serhiy Leshchenko, a Ukrainian Member of Parliament, to detail how the Ukrainian government was supporting Secretary Clinton’s candidacy.²⁷ The article explained:

Though most Ukrainians are disillusioned with the country’s current leadership for stalled reforms and lackluster anti-corruption efforts, Mr. Leshchenko said events of the past two years had locked Ukraine on to a pro-western course. **The majority of Ukraine’s politicians, he added, are “on Hillary Clinton’s side.”**²⁸

The *Financial Times* reported that during the U.S. presidential campaign, former Ukrainian Prime Minister Arseniy Yatsenyuk had warned on Facebook that candidate Trump “challenged the very values of the free world.”²⁹ On Twitter, Ukrainian Internal Affairs Minister Arsen Avakov called Trump a “clown” who is “an even bigger danger to the US than terrorism.”³⁰ In a Facebook post, Minister Avakov called Trump “dangerous for Ukraine and the US” and said that Trump’s Crimea comments were the “diagnosis of a dangerous misfit.”³¹ Minister Avakov continues to serve in President Zelensky’s government.

²² See Valeriy Chaly, *Ukraine’s ambassador: Trump’s comments send wrong message to world*, THE HILL, Aug. 4, 2016.

²³ *Id.*

²⁴ *Zelensky dismisses Valeriy Chaly from post of Ukraine’s envoy to US*, KYIV POST (July 19, 2019).

²⁵ Embassy of Ukraine in the United States of America, *Op-ed by Ambassador of Ukraine to the USA Valeriy Chaly for the Hill: “Trump’s comments send wrong message to world,”* <https://usa.mfa.gov.ua/en/press-center/publications/4744-posol-ukrajini-vislovyuvannya-trampa-nadsilajuty-nevirnij-signal-svitu>.

²⁶ Roman Olearchyk, *Ukraine’s leaders campaign against ‘pro-Putin’ Trump*, FINANCIAL TIMES, Aug. 28, 2016.

²⁷ *Id.*

²⁸ *Id.* (emphasis added).

²⁹ *Id.*

³⁰ Kenneth P. Vogel & David Stern, *Ukrainian efforts to sabotage Trump backfire*, POLITICO, Jan. 11, 2017.

³¹ *Id.*

In January 2017, a *Politico* article by current-*New York Times* reporter Ken Vogel detailed the Ukrainian effort to “sabotage” the Trump campaign.³² According to Vogel’s reporting, the Ukrainian government worked with a Democrat operative and the media in 2016 to boost Secretary Clinton’s candidacy and hurt then-candidate Trump. The article reported:

Ukrainian government officials tried to help Hillary Clinton and undermine Trump by publicly questioning his fitness for office. They also disseminated documents implicating a top Trump aide in corruption and suggested they were investigating the matter, only to back away after the election. And they helped Clinton’s allies research damaging information on Trump and his advisers, a *Politico* investigation found.³³

The *Politico* article detailed how a Democrat operative “traded information and leads” with staff at the Ukrainian embassy and how the Ukrainian embassy “worked directly with reporters researching Trump, [Trump campaign manager Paul] Manafort, and Russia to point them in the right directions.”³⁴ The article quoted a Ukrainian political officer at the embassy as saying that he was instructed not to speak to the Trump campaign “because [candidate Trump] was critical of Ukraine” and “Hillary is going to win.”³⁵

In addition, testimony from a 2018 transcribed interview of Nellie Ohr, a contractor for Fusion GPS, the political intelligence firm hired to gather information about candidate Trump, shows that Ukrainian parliamentarian Leshchenko—the same politician who said that Ukraine was “on Hillary Clinton’s side” in 2016—was a Fusion GPS source for information about Trump campaign manager Paul Manafort.³⁶

Multiple witnesses called by the Democrats testified that these Ukrainian actions during the 2016 election campaign likely colored President Trump’s views of Ukraine. Ambassador Volker said:

Q. And you mentioned that the President was skeptical, had a deep-rooted view of the Ukraine. Is that correct?

A. That is correct.

Q. And that, whether fair or unfair, he believed there were officials in Ukraine that were out to get him in the run-up to his election?

³² *Id.* Although Democrats reflexively dismissed the information presented in this article during closed-door depositions, neither *Politico* nor Vogel have retracted the story.

³³ *Id.*

³⁴ *Id.* In April 2019, two years after the *Politico* article, then-Ambassador Chalys issued a statement to *The Hill* denying that the Ukrainian embassy sought to interfere in the election. See *Official April 25, 2019 statement of the Ukrainian embassy in Washington to The Hill concerning the activities of Democratic National Committee Alexandra Chalupa during the 2016 U.S. election*, <https://www.scribd.com/document/432699412/Ukraine-Chalys-Statement-on-Chalupa-042519>.

³⁵ *Id.*

³⁶ See Transcribed Interview of Nellie Ohr, in Wash., D.C., at 113-15 (Oct. 19, 2018).

A. That is correct.

Q. So, to the extent there are allegations lodged, credible or uncredible, if the president was made aware of those allegations, whether it was via *The Hill* or, you know, via Mr. Giuliani or via cable news, if the President was made aware of these allegations, isn't it fair to say that he may, in fact, have believed they were credible?

A. Yes, I believe so.³⁷

Ambassador Sondland testified:

Q. Did [President Trump] mention anything about Ukraine's involvement in the 2016 election?

A. I think he said: They tried to take me down. He kept saying that over and over.

Q. In connection with the 2016 election?

A. Probably, yeah.

Q. That was what your understanding was?

A. That was my understanding, yeah.³⁸

Ambassador Taylor testified:

Q. So isn't it possible that Trump administration officials might have a good-founded belief, whether true or untrue, that there were forces in the Ukraine that were operating against them?

A. [B]ased on this [January 2017] *Politico* article, which, again, surprises me, disappoints me because I think it's a mistake for any diplomat or any government official in one country to interfere in the political life of another country. That's disappointing.³⁹

4. President Trump has been clear and consistent in his view that Europe should pay its fair share for regional defense.

Since his 2016 presidential campaign, President Trump has emphasized his view that U.S. taxpayer-funded foreign assistance should be spent wisely and cautiously. As President, he

³⁷ Volker transcribed interview, *supra* note 13, at 70-71.

³⁸ Deposition of Ambassador Gordon D. Sondland, in Wash., D.C. at 75 (Oct. 17, 2019).

³⁹ Taylor deposition, *supra* note 12, at 101.

has continued to be critical of sending U.S. taxpayer dollars to foreign countries and has asked our allies to share the financial burden for international stewardship.

In a March 2016 interview with the *New York Times*, then-candidate Trump said: “Now, I’m a person that—you notice I talk about economics quite a bit [in foreign policy] because it is about economics, because we don’t have money anymore because we’ve been taking care of so many people in so many different forms that we don’t have money.”⁴⁰ That same month, candidate Trump spoke to CBS News about U.S. spending to the North Atlantic Treaty Organization (NATO), a collective defense alliance between the U.S., Canada, and European countries. He said then:

NATO was set up when we were a richer country. We’re not a rich country anymore. We’re borrowing, we’re borrowing all of this money . . . NATO is costing us a fortune and yes, we’re protecting Europe with NATO but we’re spending a lot of money. Number one, I think the distribution of costs has to be changed.⁴¹

As president, President Trump has continued to press European allies to contribute more to NATO defense. Jens Stoltenberg, the NATO Secretary-General, acknowledged that President Trump’s stance has helped NATO member countries to increase defense spending, commending the President on “his strong message on burden sharing.”⁴²

* * *

Members cannot properly assess President Trump’s mindset during his July 25 phone conversation with President Zelensky without understanding this context. President Trump has generally been skeptical of foreign assistance, believing that European allies should contribute their fair share to regional defense. President Trump has had, for years preceding the call, a deep-seated, genuine, and reasonable skepticism toward Ukraine due to its pervasive corruption. President Trump was well aware of actions by senior Ukrainian government officials to work for his defeat in the 2016 election. These experiences colored President Trump’s interaction with President Zelensky.

KEY POINTS OF EVIDENCE

At its core, the Democrats’ “impeachment inquiry” centers on the interaction between two individuals: President Trump and President Zelensky. The summary of their July 25 call shows no conditionality, and both presidents have said they felt no pressure. President Trump never raised the issue of security assistance during the call, even though evidence suggests it had been delayed by that time. Ultimately, the delay on the security assistance cleared and President Trump and President Zelensky met face-to-face without Ukraine investigating the President’s political rivals. These facts undercut the Democrat allegations.

⁴⁰ Maggie Haberman & David Sanger, *Transcript: Donald Trump Expounds on His Foreign Policy Views*, N.Y. TIMES, Mar. 26, 2016.

⁴¹ Shayna Freisleben, *A Guide to Trump’s Past Comments about NATO*, CBS NEWS, Apr. 12, 2017.

⁴² David Greene, *After Trump’s NATO Criticism, Countries Spend More on Defense*, NPR.ORG, May 18, 2018.

1. The summary of the July 25 phone conversation showed no conditionality or pressure on Ukraine to investigate the President’s political rivals.

The best evidence of the telephone conversation between President Trump and President Zelensky is the contemporaneous summary prepared by White House Situation Room staff. As transcribed, the call summary denotes laughter, pleasantries, and compliments exchanged between President Trump and President Zelensky. The summary does not evince any threats, coercion, intimidation, or indication of a *quid pro quo*—as even Democrats have acknowledged.⁴³ The summary bears absolutely no resemblance to Chairman Schiff’s self-described “parody” interpretation of the call.⁴⁴

Democrats have seized on the President’s phrasing—“I would like you to do us a favor though”⁴⁵—to accuse the President of pressuring President Zelensky to target his political rivals for his political benefit.⁴⁶ Democrats omit, however, the remainder of his sentence. The full sentence shows that President Trump was not asking President Zelensky to investigate his political rivals, but rather asking him to assist in “get[ting] to the bottom” of foreign interference in the 2016 election.⁴⁷ This reading is supported by President Trump’s subsequent reference to Special Counsel Robert Mueller, who had testified the day before about his findings,⁴⁸ and to Attorney General William Barr, who has initiated an official inquiry into the origins of the Russian collusion hoax.⁴⁹ Also undercutting the Democrat allegation of pressure, President Zelensky did not express any concern that President Trump had raised the allegations about foreign interference in the 2016 election.

In fact, the Democrats’ witnesses testified that it would be appropriate for Ukraine to investigate allegations of corruption, including allegations about 2016 election interference. Ambassador Volker testified that he “always thought [it] was fine” for Ukraine to investigate allegations about 2016 election interference.⁵⁰ Dr. Hill similarly testified that it is “not actually completely ridiculous” for President Zelensky’s administration to investigate allegations of corruption arising from prior Ukrainian administrations.⁵¹

Democrats have also seized on the President’s passing reference to former Vice President Joe Biden and his son, Hunter Biden, referring to Hunter Biden’s position on the board of

⁴³ See, e.g., *MSNBC Live with Craig Melvin* (MSNBC television broadcast Sept. 25, 2019) (interview with Rep. Ro Khanna) (calling evidence of a *quid pro quo* “irrelevant”).

⁴⁴ *Whistleblower Disclosure*, *supra* note 3.

⁴⁵ The White House, *Memorandum of Telephone Conversation 3* (July 25, 2019).

⁴⁶ See, e.g., *Whistleblower Disclosure*, *supra* note 3 (statement of Rep. Adam Schiff).

⁴⁷ *Memorandum of Telephone Conversation*, *supra* note 45, at 3.

⁴⁸ “*Oversight of the Report on the Investigation into Russian Interference in the 2016 Presidential Election: Former Special Counsel Robert S. Mueller, III*”: Hearing before the H. Comm. on the Judiciary, 116th Cong. (2019).

⁴⁹ See, e.g., Adam Goldman et al., *Barr assigns U.S. Attorney in Connecticut to review origins of Russia inquiry*, N.Y. TIMES, May 13, 2019.

⁵⁰ Volker transcribed interview, *supra* note 13, at 146.

⁵¹ Hill deposition, *supra* note 20, at 394.

Burisma, a Ukrainian company known for its corruption.⁵² The call summary shows, however, that President Trump and President Zelensky did not discuss Hunter Biden substantively.⁵³ President Zelensky did not even reply to President Trump's passing reference before the conversation continued to a different subject.⁵⁴

Nonetheless, there are legitimate questions about Hunter Biden's position on Burisma's board. Burisma was founded by Mykola Zlochevsky, who served as Ukraine's Minister of Ecology and Natural Resources from 2010 to 2012.⁵⁵ During Zlochevsky's tenure in the Ukrainian government, Burisma received oil exploration licenses without public auctions.⁵⁶ According to the *New York Times*, Hunter Biden and two other well-connected Democrats—Christopher Heinz, then-Secretary of State John Kerry's stepson, and Devon Archer—“were part of a broad effort by Burisma to bring in well-connected Democrats during a period when the company was facing investigations backed not just by domestic Ukrainian forces but by officials in the Obama administration.”⁵⁷ In 2016, the Obama Justice Department fined a Hong Kong subsidiary of a multinational bank for a similar scheme, with then-Assistant Attorney General Leslie Caldwell explaining that “[a]warding prestigious employment opportunities to unqualified individuals in order to influence government officials is corruption, plain and simple.”⁵⁸

Evidence suggests that Hunter Biden's role on Burisma's board was a concern during the Obama Administration. In May 2014, the *Washington Post* reported that “[t]he appointment of the vice president's son to a Ukrainian oil board looks nepotistic at best, nefarious at worst. No matter how qualified Biden is, it ties into the idea that U.S. foreign policy is self-interested, and that's a narrative Vladimir Putin has pushed during Ukraine's crisis.”⁵⁹ Deputy Assistant Secretary George Kent testified that while he served as acting Deputy Chief of Mission in Kyiv in early 2015, he raised concerns directly to Vice President Biden's office that Hunter Biden's role on Burisma's board “could create the perception of a conflict of interest.”⁶⁰ Kent said that the “message” he received back was that because Vice President Biden's elder son, Beau, was dying of cancer there was no “bandwidth” to deal with any other family issues.⁶¹ Ambassador Yovanovitch similarly testified that the Obama State Department actually prepared her to address Hunter Biden's role on Burisma if she received a question about it during her Senate confirmation hearing to be ambassador to Ukraine in June 2016. She explained:

⁵² *Memorandum of Telephone Conversation*, *supra* note 45, at 4.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Paul Sonne & Laura Mills, *Ukrainians see conflict in Biden's anticorruption message*, WALL ST. J., Dec. 7, 2015.

⁵⁶ *Id.*

⁵⁷ Kenneth P. Vogel & Iuliia Mendel, *Biden faces conflicts of interest questions that are being promoted by Trump and allies*, N.Y. TIMES, May 1, 2019.

⁵⁸ Press Release, U.S. Dep't of Justice, JPMorgan's Investment Bank in Hong Kong Agrees to Pay \$72 Million Penalty for Corrupt Hiring Scheme in China (Nov. 17, 2016), <https://www.justice.gov/opa/pr/jpmorgan-s-investment-bank-hong-kong-agrees-pay-72-million-penalty-corrupt-hiring-scheme>.

⁵⁹ Adam Taylor, *Hunter Biden's new job at a Ukrainian gas company is a problem for U.S. soft power*, WASH. POST, May 14, 2014.

⁶⁰ Kent deposition, *supra* note 10, at 227.

⁶¹ *Id.*

- Q. And you may have mentioned this when we were speaking before lunch, but when did the issues related to Burisma first get to your attention? Was that as soon as you arrived in country?
- A. Not really. I first became aware of it when I was being prepared for my Senate confirmation hearing. So I'm sure you're familiar with the concept of questions and answer and various other things. And so there was one there about Burisma, and so, you know, that's when I first heard that word.
- Q. Were there any other companies that were mentioned in connection with Burisma?
- A. I don't recall.
- Q. And was it in the general sense of corruption, there was a company bereft with corruption?
- A. The way the question was phrased in this model Q&A was, what can you tell us about Hunter Biden's, you know, being named to the board of Burisma.

- Q. Did anyone at the State Department – when you were coming on board as the new ambassador, did anyone at the State Department brief you about this tricky issue, that Hunter Biden was on the board of this company and the company suffered from allegations of corruption, and provide you guidance?
- A. Well, there was that Q&A that I mentioned.⁶²

The call summary itself shows no indication of conflict, intimidation, or pressure. President Trump never conditioned a face-to-face meeting on any action by President Zelensky. President Trump never mentioned U.S. security assistance to Ukraine. President Zelensky never verbalized any disagreement, discomfort, or concern about any facet of the U.S.-Ukrainian relationship or President Trump's comments.

2. Both President Zelensky and President Trump have publicly and repeatedly said there was no pressure to investigate the President's political rivals.

Since President Trump voluntarily released the content of the July 25 phone conversation, both President Zelensky and President Trump have said publicly and repeatedly there was no pressure to investigate President Trump's political rivals. President Zelensky's

⁶² Yovanovitch deposition, *supra* note 11, at 150-53.

statements are particularly important, as Democrats allege that he was the target of the pressure campaign. President Zelensky has variously asserted that “nobody pushed . . . me,” “I was never pressured,” and there was no “blackmail.”

On September 25, President Zelensky and President Trump met face-to-face for a bilateral meeting during the United Nations (U.N.) General Assembly in New York. The presidents jointly participated in a media availability, during which President Zelensky asserted that he felt no pressure.⁶³ President Zelensky said:

Q. President Zelensky, have you felt any pressure from President Trump to investigate Joe Biden and Hunter Biden?

A. I think you read everything. So I think you read text. I’m sorry, but I don’t want to be involved to democratic, open elections — elections of USA. **No, you heard that we had, I think, good phone call. It was normal. We spoke about many things. And I — so I think, and you read it, that nobody pushed — pushed me.**⁶⁴

President Zelensky again reiterated that he was not pressured to investigate President Trump’s political rivals during an interview with *Kyodo News*, a Japanese media outlet, published on October 6. *Kyodo News* quoted President Zelensky as saying, “I was never pressured and there were no conditions being imposed” on a face-to-face meeting or U.S. security assistance to Ukraine.⁶⁵ President Zelensky denied “reports by U.S. media that [President] Trump’s requests were conditions” for a face-to-face meeting or U.S. security assistance.⁶⁶

On October 10, during an all-day media availability in Kyiv, President Zelensky again emphasized that he felt no pressure to investigate President Trump’s political rivals. President Zelensky said there was “no blackmail” during the conversation, explaining: “This is not corruption. It was just a call.”⁶⁷

In addition, on September 21—before President Trump had even declassified and released the call summary—Ukrainian Foreign Minister Vadym Prystaiko denied that President Trump had pressured President Zelensky to investigate President Trump’s political rivals.⁶⁸ Foreign Minister Prystaiko said:

⁶³ Press Release, The White House, Remarks by President Trump and President Zelensky of Ukraine Before Bilateral Meeting (Sept. 25, 2019), available at <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-president-zelensky-ukraine-bilateral-meeting-new-york-ny/>.

⁶⁴ *Id.* (emphasis added).

⁶⁵ *Ukraine president denies being pushed by Trump to investigate Biden*, *Kyodo News*, Oct. 6, 2019.

⁶⁶ *Id.*

⁶⁷ *Ukraine’s president says ‘no blackmail’ in Trump call*, *BBC*, Oct. 10, 2019.

⁶⁸ “*Trump did not pressure Zelenskyy, Ukraine is independent state*” — *Foreign Minister Prystaiko*, *Hromadske*, Sept. 21, 2019.

I know what the conversation was about and I think there was no pressure. There was talk, conversations are different, leaders have the right to discuss any problems that exist. This conversation was long, friendly, and it touched on a lot of questions, including those requiring serious answers.⁶⁹

Similarly, Ambassador Taylor testified that he had dinner with Oleksandr Danylyuk, then-Secretary of the National Security and Defence Council of Ukraine, on the night of the phone conversation between President Trump and President Zelensky.⁷⁰ He testified that Danylyuk said that the Ukrainian government “seemed to think that the call went fine, the call went well. He wasn’t disturbed by anything. He wasn’t disturbed that he told us about the phone call.”⁷¹

Like President Zelensky, President Trump has repeatedly and publicly denied that he pressured President Zelensky to investigate his political rivals. During the September 25 bilateral meeting with President Zelensky, President Trump said to the assembled members of the media: “There was no pressure. And you know there was—and, by the way, you know there was no pressure. All you have to do it see it, what went on the call.”⁷² When asked whether he wanted President Zelensky to “do more” to investigate Vice President Biden, President Trump responded: “No. I want him to do whatever he can. This was not his fault; he wasn’t there. He’s just been here recently. But whatever he can do in terms of corruption, because the corruption is massive.”⁷³

Democrats will assert that due to the power imbalance between the United States and Ukraine, Ukraine’s ongoing war with Russia, and Ukraine’s need for U.S. support to repel the Russian threat, President Zelensky would not dare state any issue or concern he may have had with President Trump’s remarks. However, there is no evidence that President Zelensky ordered the opening of an investigation related to any of the matters discussed on the July 25 phone call, thus undercutting this Democrat assertion. In addition, Democrat witnesses explained that President Trump has more strongly assisted and equipped Ukraine to deter Russian aggression than President Obama did. Most notably, President Trump finally provided Ukraine with lethal defensive weapons instead of just blankets.⁷⁴

3. The Ukrainian government was not aware that U.S. security assistance was delayed at the time of the July 25 phone call.

Evidence also suggests that the Ukrainian government never even knew that U.S. security assistance was delayed until some point in August 2019, long after the July 25 phone call between President Trump and President Zelensky. Although the assistance was delayed at the

⁶⁹ *Id.*

⁷⁰ Taylor deposition, *supra* note 12, at 80.

⁷¹ *Id.*

⁷² Remarks by President Trump and President Zelensky of Ukraine Before Bilateral Meeting, *supra* note 63.

⁷³ *Id.*

⁷⁴ *See, e.g.*, Hill deposition, *supra* note 20, at 196; Yovanovitch deposition, *supra* note 11, at 140-41; Volker transcribed interview; Volker transcribed interview, *supra* note 13, at 84-87.

time of the July 25 call, President Trump never raised the assistance with President Zelensky or implied that the aid was in danger. As Ambassador Volker testified, because Ukrainian officials were unaware of the hold, “there was no leverage implied.”⁷⁵ This evidence undercuts the allegation that the President withheld U.S. security assistance to pressure President Zelensky to investigate his political rivals.

Most of the Democrat witnesses, including Ambassador Taylor, traced their knowledge of a hold to a July 18 interagency conference call, during which the Office of Management and Budget (OMB) announced a hold on security assistance to Ukraine.⁷⁶ However, the two U.S. diplomats closest to the Ukrainian government—Ambassador Volker and Ambassador Taylor—testified that Ukraine did not know about the delay “until the end of August,” six weeks later, after it was reported publicly on August 28.⁷⁷

Ambassador Volker, the chief interlocutor with the Ukrainian government, testified that he never informed the Ukrainians about the delay.⁷⁸ The Ukrainian government only raised the issue with Ambassador Volker after reading about the delay in *Politico* in late August.⁷⁹ Explaining why the delay was “not significant,” Ambassador Volker testified:

- Q. Looking back on it now, is [the delayed security assistance] something, in the grand scheme of things, that’s very significant? I mean, is this worthy of investigating, or is this just another chapter in the rough and tumble world of diplomacy and foreign assistance?
- A. In my view, **this hold on security assistance was not significant. I don’t believe – in fact, I am quite sure that at least I, Secretary Pompeo, the official representatives of the U.S., never communicated to Ukrainians that it is being held for a reason.** We never had a reason. And I tried to avoid talking to Ukrainians about it for as long as I could until it came out in *Politico* a month

⁷⁵ Volker transcribed interview, *supra* note 13, at 124-25.

⁷⁶ See, e.g., Taylor deposition, *supra* note 12, at 27.

⁷⁷ Volker transcribed interview, *supra* note 13, at 125, 266-67; Taylor deposition, *supra* note 12, at 119-20. While a couple of sources have suggested without specificity that Ukrainian officials were aware of the hold before then, none alleges Ukrainian awareness before August. Lt. Col. Vindman recalled receiving “light queries” from his Ukrainian embassy counterparts about the aid in either early- or mid-August, but he was unable to pinpoint specific dates, or even the week, that he had such conversations. Deposition of Lt. Col. Alexander Vindman at 135-37, 189-90 (Oct. 29, 2019). Lt. Col. Vindman testified that Ukrainian questions about the delay were not “substantive” or “definitive” until around the time of the Warsaw summit, on September 1. *Id.* at 189-90. Croft testified that two individuals from the Ukrainian embassy approached her about a hold on security assistance at some point before August 28, but Croft told them she “was confident that any issues in process would get resolved.” Croft deposition, *supra* note 21, at 86-87. A *New York Times* story claimed that unidentified Ukrainian officials were aware of a delay in “early August” 2019 but said there was no stated link between that delay and any investigative demands. Andrew E. Kramer & Kenneth P. Vogel, *Ukraine knew of aid freeze by early August, undermining Trump defense*, N.Y. TIMES, Oct. 23, 2019.

⁷⁸ Volker transcribed interview, *supra* note 13, at 80.

⁷⁹ *Id.*; see Caitlin Emma & Connor O’Brien, *Trump holds up Ukraine military aid meant to confront Russia*, POLITICO, Aug. 28, 2019.

later because I was confident we were going to get it fixed internally.⁸⁰

Ambassador Taylor similarly testified that the Ukrainian government was not aware of the delay of U.S. security assistance until late August 2019. He explained:

Q. So, based on your knowledge, nobody in the Ukrainian government became aware of a hold on military aid until 2 days later, on August 29th.

A. That's my understanding.

Q. That's your understanding. And that would have been well over a month after the July 25th call between President Trump and President Zelensky

A. Correct

Q. So you're not a lawyer, are you, Ambassador Taylor?

A. I am not.

Q. Okay. So the idea of a *quid pro quo* is it's a concept where there is a demand for an action or an attempt to influence action in exchange for something else. And in this case, when people are talking about a *quid pro quo*, that something else is military aid. So, if nobody in the Ukrainian government is aware of a military hold at the time of the Trump-Zelensky call, then, as a matter of law and as a matter of fact, there can be no *quid pro quo* based on military aid. I just want to be real clear that, again, as of July 25th, you have no knowledge of a *quid pro quo* involving military aid.

A. July 25th is a week after the hold was put on the security assistance. And July 25th, they had a conversation between the two presidents where it was not discussed.

Q. And to your knowledge, nobody in the Ukrainian government was aware of the hold?

A. That is correct.⁸¹

Other testimony from the Democrats' witnesses in closed-door depositions, still unreleased by Chairman Schiff and therefore unavailable to the American public, supports the point that U.S.

⁸⁰ Volker transcribed interview, *supra* note 13, at 80.

⁸¹ Taylor deposition, *supra* note 12, at 119-20.

officials did not convey to Ukraine that security assistance was delayed, much less the notion that the delay was due to President Trump seeking political investigations.

4. The United States provided security assistance to Ukraine and President Trump met with President Zelensky without Ukraine ever investigating President Trump's political rivals.

Evidence also shows that U.S. security assistance to Ukraine was released and President Zelensky met with President Trump without Ukraine investigating President Trump's political rivals. These facts significantly undermine the Democrat allegation that President Trump used either as leverage to pressure Ukraine to investigate his political rivals.

On September 11, 2019, OMB released the U.S. security assistance to Ukraine.⁸² Ukraine subsequently received this assistance. The U.S. disbursed this assistance without Ukraine ever acting to investigate President Trump's political rivals.

On September 25, President Trump and President Zelensky met during the U.N. General Assembly in New York.⁸³ President Trump and President Zelensky were scheduled to meet nearly a month earlier, on September 1 in Warsaw, but Hurricane Dorian forced President Trump to change his plans.⁸⁴ President Trump and President Zelensky met publicly without Ukraine ever investigating President Trump's political rivals.

Ambassador Volker said that President Trump and President Zelensky had a "positive" meeting. He testified:

Q. Turning back to President Trump's skepticism of Ukraine and the corruption there, do you think you made any inroads in convincing him that Zelensky was a good partner?

A. I do. I do. I attended the President's meeting with President Zelensky in New York on, I guess it was the 25th of September. And I could see the body language and the chemistry between them was positive, and I felt that this is what we needed all along.⁸⁵

Ambassador Taylor testified that the meeting was "good" and President Trump "left pleased that they had finally met face to face."⁸⁶ Ambassador Taylor said there was no discussion about investigations during the September 25 meeting.⁸⁷

* * *

⁸² *Id.* at 40.

⁸³ Remarks by President Trump and President Zelensky of Ukraine Before Bilateral Meeting, *supra* note 63.

⁸⁴ Volker transcribed interview, *supra* note 13, at 130.

⁸⁵ *Id.* at 87-88.

⁸⁶ Taylor deposition, *supra* note 12, at 288.

⁸⁷ *Id.*

These four key points undercut the Democrat impeachment narrative that President Trump leveraged U.S. security assistance and a presidential meeting to force Ukraine to investigate the President's political rivals. The summary of the presidential conversation showed no pressure; President Zelensky, the target of the alleged pressure campaign, felt no pressure; Ukraine did not know of the alleged leverage, the delayed security assistance, at the time of the presidential conversation; and, finally, Ukraine received what it wanted without doing anything in return.

CONCLUSION

The Democrats' closed-door "impeachment inquiry" has generated over a hundred hours of testimony from 15 witnesses. The American people observed none of that closed-door testimony, only learning about developments from selective leaks of cherry-picked information. The subsequently released transcripts did not—and could not—convey tone, body language, and other nonverbal signs used to assess a witness's credibility. The transcripts cannot be a substitute for live witness testimony.

Now as the Democrats move their proceedings into open hearings, their process is still one-sided, partisan, and fundamentally unfair. There is no co-equal subpoena power. There are no due process protections for the President. There is no guarantee that Chairman Schiff will call witnesses put forward by Republicans. In fact, Chairman Schiff has already denied the minority's request to call the anonymous whistleblower whose complaint initiated the inquiry.⁸⁸

Notwithstanding this unprecedented partisanship, the evidence shows that President Trump had a deep-seated, genuine, and reasonable skepticism toward Ukraine, and a vocal position that Europe should contribute more to regional defense. The summary of President Trump's conversation with President Zelensky reflects no conditionality or pressure, and President Zelensky himself said he felt no pressure. President Trump never raised U.S. security assistance to President Zelensky, and ultimately the assistance was released and a presidential meeting occurred without Ukraine investigating the President's political rivals. Simply put, the evidence gathered to date does not support the Democrat allegation that President Trump pressured Ukraine to investigate the President's political rivals for his benefit in the 2020 presidential campaign. The evidence gathered does not establish an impeachable offense.

#

⁸⁸ Letter from Adam Schiff, Chairman, H. Perm. Select Comm. on Intel., to Devin Nunes, Ranking Member, H. Perm. Select Comm. on Intel. (Nov. 9, 2019) ("The whistleblower's testimony is therefore redundant and unnecessary.").

Engel, Steven A. (OLC)

From: Engel, Steven A. (OLC)
Sent: Friday, October 25, 2019 2:21 PM
To: Rosen, Jeffrey A. (ODAG); Rabbitt, Brian (OAG); O'Callaghan, Edward C. (ODAG); Hovakimian, Patrick (ODAG); Boyd, Stephen E. (OLA); Kupec, Kerri (OPA); Demers, John C. (NSD)
Cc: Gannon, Curtis E. (OLC)
Subject: FW: Providing letter to Congress/posting
Attachments: OLC Letter to ICIG and CIGIE 10-25-19.pdf

Thanks to everyone for the assistance. I understand that Kerri will distribute to the press.

Stephen, [REDACTED] (b)(5) per OLC [REDACTED]
[REDACTED]?

From: Engel, Steven A. (OLC)
Sent: Friday, October 25, 2019 2:18 PM
To: Horowitz, Michael E. (OIG) (b)(6)
Cc: Michael Atkinson (b)(3), (b)(6)
Subject: RE: Providing letter to Congress/posting

Michael and Michael,

Thank you for your views on OLC's recent opinion, as expressed in your letters and in the dialogue we have had over the past few weeks. I attach our response to your letters, which addresses what I believe to be certain misconceptions concerning our conclusions. I trust you will distribute the response within the inspector general community.

Because DOJ has received a number of press inquiries concerning CIGIE's letter, I expect that our OPA will release our letter this afternoon.

Best,

Steve

Steven A. Engel
Assistant Attorney General
Office of Legal Counsel
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530
Office: (b)(6)
[REDACTED]

From: Horowitz, Michael E. (OIG) (b)(6)

Sent: Wednesday, October 23, 2019 3:46 PM
To: Engel, Steven A. (OLC) (b)(6)
Cc: Michael Atkinson (b)(3), (b)(6)
Subject: Providing letter to Congress/posting

Steve,

I've attached a replacement letter because we inadvertently listed one IG as an Acting IG but apparently the person's time to serve as Acting has run under the vacancies act so they've reverted to the Deputy IG title and we've changed their title in the attached letter to the correct title. There are no other changes. I'd appreciate it if you'd use the attached letter instead.

Also, our practice at CIGIE is to send to our oversight committees (in this case Senate Homeland Security and Government Affairs Committee, and House Committee on Oversight and Reform) a copy of a letter such as this one, (b)(5)

[REDACTED]

[REDACTED] Let us know if you have any questions or want to discuss this planned process.

Thanks,
Michael

O'Callaghan, Edward C. (ODAG)

From: O'Callaghan, Edward C. (ODAG)
Sent: Thursday, October 24, 2019 3:59 PM
To: Weinsheimer, Bradley (ODAG)
Subject: Fwd: Providing letter to Congress/posting
Attachments: OLC Whistleblower Opinion_October 22 2019 FINAL v4_PDF.PDF; ATT00001.htm

Edward C. O'Callaghan
202-514-2105

Begin forwarded message:

From: "Engel, Steven A. (OLC)" (b)(6)
Date: October 24, 2019 at 7:43:11 AM EDT
To: "Rabbitt, Brian (OAG)" <brrabbitt@jmd.usdoj.gov>, "O'Callaghan, Edward C. (ODAG)" <ecocallaghan@jmd.usdoj.gov>
Subject: **Fwd: Providing letter to Congress/posting**

FYI.

Sent from my iPhone

Begin forwarded message:

From: "Horowitz, Michael E.(OIG)" (b)(6)
Date: October 23, 2019 at 3:46:23 PM EDT
To: "Engel, Steven A. (OLC)" (b)(6)
Cc: Michael Atkinson (b)(3), (b)(6)
Subject: **Providing letter to Congress/posting**

Duplicative Material



Engel, Steven A. (OLC)

From: Engel, Steven A. (OLC)
Sent: Thursday, October 24, 2019 9:16 AM
To: O'Callaghan, Edward C. (ODAG)
Cc: Rabbitt, Brian (OAG)
Subject: RE: Providing letter to Congress/posting

There's a draft response, but (b)(5) Will seek to expedite.

From: O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>
Sent: Thursday, October 24, 2019 9:15 AM
To: Engel, Steven A. (OLC) (b)(6)
Cc: Rabbitt, Brian (OAG) <brrabbitt@jmd.usdoj.gov>
Subject: Re: Providing letter to Congress/posting

Thanks Steve. Do you have draft of response that is far along? Would be good to get out quickly.

Edward C. O'Callaghan
202-514-2105

On Oct 24, 2019, at 7:43 AM, Engel, Steven A. (OLC) (b)(6) wrote:

Duplicative Material



Boyd, Stephen E. (OLA)

From: Boyd, Stephen E. (OLA)
Sent: Thursday, October 24, 2019 9:15 AM
To: Lasseter, David F. (OLA); Escalona, Prim F. (OLA); Hankey, Mary Blanche (OLA)
Subject: Fwd: Providing letter to Congress/posting
Attachments: OLC Whistleblower Opinion_October 22 2019 FINAL v4_PDF.PDF; ATT00001.htm

Begin forwarded message:

From: "O'Callaghan, Edward C. (ODAG)" <ecocallaghan@jmd.usdoj.gov>
Date: October 24, 2019 at 8:33:10 AM EDT
To: "Kupec, Kerri (OPA)" <kkupec@jmd.usdoj.gov>, "Boyd, Stephen E. (OLA)" <seboyd@jmd.usdoj.gov>
Subject: **FW: Providing letter to Congress/posting**

This will inevitably become public.

Edward C. O'Callaghan
202-514-2105

From: Engel, Steven A. (OLC) (b)(6)
Sent: Thursday, October 24, 2019 7:43 AM
To: Rabbitt, Brian (OAG) <brrabbitt@jmd.usdoj.gov>; O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>
Subject: Fwd: Providing letter to Congress/posting

Duplicative Material



Kupec, Kerri (OPA)

From: Kupec, Kerri (OPA)
Sent: Thursday, October 24, 2019 8:49 AM
To: O'Callaghan, Edward C. (ODAG)
Cc: Boyd, Stephen E. (OLA)
Subject: Re: Providing letter to Congress/posting

Wow.

On Oct 24, 2019, at 8:33 AM, O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov> wrote:

Duplicative Material



O'Callaghan, Edward C. (ODAG)

From: O'Callaghan, Edward C. (ODAG)
Sent: Thursday, October 24, 2019 8:04 AM
To: Rosen, Jeffrey A. (ODAG); Hovakimian, Patrick (ODAG)
Subject: Fwd: Providing letter to Congress/posting
Attachments: OLC Whistleblower Opinion_October 22 2019 FINAL v4_PDF.PDF; ATT00001.htm

Edward C. O'Callaghan
202-514-2105

Begin forwarded message:

From: "Engel, Steven A. (OLC)" (b)(6)
Date: October 24, 2019 at 7:43:11 AM EDT
To: "Rabbitt, Brian (OAG)" <brrabbitt@jmd.usdoj.gov>, "O'Callaghan, Edward C. (ODAG)" <ecocallaghan@jmd.usdoj.gov>
Subject: Fwd: Providing letter to Congress/posting

Duplicative Material



Gannon, Curtis E. (OLC)

From: Gannon, Curtis E. (OLC)
Sent: Friday, October 25, 2019 2:00 PM
To: Engel, Steven A. (OLC); Rosen, Jeffrey A. (ODAG); O'Callaghan, Edward C. (ODAG); Hovakimian, Patrick (ODAG); Rabbitt, Brian (OAG); Kupec, Kerri (OPA); Boyd, Stephen E. (OLA); Demers, John C. (NSD)
Subject: RE: Updated Draft
Attachments: Draft Response to ICIG and CIGIE 10-25-19.docx

This corrects a few more nits and, barring any further comment, is what Steve will sign when he gets back from a meeting with the AG.

From: Engel, Steven A. (OLC) (b)(6)
Sent: Friday, October 25, 2019 1:17 PM
To: Rosen, Jeffrey A. (ODAG) (b)(6); O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>; Hovakimian, Patrick (ODAG) <phovakimian4@jmd.usdoj.gov>; Rabbitt, Brian (OAG) <brrabbitt@jmd.usdoj.gov>; Kupec, Kerri (OPA) <kkupec@jmd.usdoj.gov>; Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>; Demers, John C. (NSD) (b)(6); Gannon, Curtis E. (OLC) (b)(6)
Subject: RE: Updated Draft

The attached incorporates and synthesizes the edits from the DAG, Ed, and within OLC. (b)(5) per OLC
Please let me know ASAP if there are any additional comments. Steve

From: Rosen, Jeffrey A. (ODAG) (b)(6)
Sent: Friday, October 25, 2019 12:29 PM
To: Engel, Steven A. (OLC) (b)(6); O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>; Hovakimian, Patrick (ODAG) <phovakimian4@jmd.usdoj.gov>; Rabbitt, Brian (OAG) <brrabbitt@jmd.usdoj.gov>; Kupec, Kerri (OPA) <kkupec@jmd.usdoj.gov>; Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>; Demers, John C. (NSD) (b)(6); Gannon, Curtis E. (OLC) (b)(6)
Subject: RE: Updated Draft

I think this is better. I have added some edits for consideration in the attached draft. Thanks.

From: Engel, Steven A. (OLC) (b)(6)
Sent: Friday, October 25, 2019 11:58 AM
To: Rosen, Jeffrey A. (ODAG) (b)(6); O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>; Hovakimian, Patrick (ODAG) <phovakimian4@jmd.usdoj.gov>; Rabbitt, Brian (OAG) <brrabbitt@jmd.usdoj.gov>; Kupec, Kerri (OPA) <kkupec@jmd.usdoj.gov>; Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>; Demers, John C. (NSD) (b)(6); Gannon, Curtis E. (OLC) (b)(6)
Subject: Updated Draft

Here's an update reflecting our discussion. (b)(5) per OLC

let me know

WHAT YOU THINK.

O'Callaghan, Edward C. (ODAG)

From: O'Callaghan, Edward C. (ODAG)
Sent: Friday, October 25, 2019 12:28 PM
To: Engel, Steven A. (OLC); Rosen, Jeffrey A. (ODAG); Hovakimian, Patrick (ODAG); Rabbitt, Brian (OAG); Kupec, Kerri (OPA); Boyd, Stephen E. (OLA); Demers, John C. (NSD); Gannon, Curtis E. (OLC)
Subject: RE: Updated Draft
Attachments: Draft Response to ICI and CIGIE 10-25-19 eoc.docx

Some edits/suggestions.

Edward C. O'Callaghan
202-514-2105

From: Engel, Steven A. (OLC) (b)(6)
Sent: Friday, October 25, 2019 11:58 AM
To: Rosen, Jeffrey A. (ODAG) (b)(6); O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>; Hovakimian, Patrick (ODAG) <phovakimian4@jmd.usdoj.gov>; Rabbitt, Brian (OAG) <brrabbitt@jmd.usdoj.gov>; Kupec, Kerri (OPA) <kkupec@jmd.usdoj.gov>; Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>; Demers, John C. (NSD) (b)(6); Gannon, Curtis E. (OLC) (b)(6)
Subject: Updated Draft

Here's an update reflecting our discussion. (b)(5) per OLC
let me know what you think.

Engel, Steven A. (OLC)

From: Engel, Steven A. (OLC)
Sent: Thursday, October 24, 2019 8:04 PM
To: Rosen, Jeffrey A. (ODAG); Rabbitt, Brian (OAG); O'Callaghan, Edward C. (ODAG); Kupec, Kerri (OPA)
Subject: OLC response to IGs
Attachments: Draft Response to ICIG and CIGIE 10-24-19.docx

Attached is the current draft of our response to the IGs. Let us know if you have comments/edits. Steve

Steven A. Engel
Assistant Attorney General
Office of Legal Counsel
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530
Office: (b)(6)
[REDACTED]

O'Callaghan, Edward C. (ODAG)

From: O'Callaghan, Edward C. (ODAG)
Sent: Thursday, October 10, 2019 9:08 AM
To: Hovakimian, Patrick (ODAG)
Subject: Fwd: (no subject)

Thought I had sorry

Edward C. O'Callaghan
202-514-2105

Begin forwarded message:

From: "Bowdich, David L. (DO) (FBI)" (b)(7)(E)
Date: October 10, 2019 at 7:37:19 AM EDT
To: "O'Callaghan, Edward C. (ODAG) (JMD)" <Edward.C.O'Callaghan@usdoj.gov>
Subject: Fwd: (no subject)

FYSA

-

----- Forwarded message -----

From: "Wade, Terry (CID) (FBI)" (b)(7)(E)
Date: Oct 10, 2019 6:27 AM
Subject: Fwd: (no subject)
To: "Bowdich, David L. (DO) (FBI)" (b)(7)(E), "Abbate, Paul M. (DO) (FBI)" (b)(7)(E), "Jimenez, John (CID) (FBI)" (b)(7)(E), "Thompson, Regina E. (INSD) (FBI)" (b)(7)(E), "Spencer, Charles P. (IOD) (FBI)" (b)(7)(E)
Cc:

-

----- Forwarded message -----

From: "Sweeney, William F. Jr. (NY) (FBI)" (b)(7)(E)
Date: Oct 10, 2019 6:10 AM
Subject: Fwd: (no subject)
To: "Wade, Terry (CID) (FBI)" (b)(7)(E)
Cc:

William F. Sweeney, Jr.
Assistant Director in Charge

Assistant Director in Charge

FBI New York Office

(b)(7)(E) (office)

----- Forwarded message -----

From: (b)(6), (b)(7)(C) (NY) (FBI)" (b)(6), (b)(7)(C), (b)(7)(E)

Date: Oct 10, 2019 06:00

Subject:

To: "Sweeney, William F. Jr. (NY) (FBI)" (b)(7)(E), "Driscoll, Michael J. (NY) (FBI)" (b)(7)(E)

Cc:

Gents,

Please see below summary of the 10/9 and 10/10 events the GEP investigation:

Arrested:

Igor Fruman - In Custody. Dulles Airport. (b)(7)(E) Initial appearance 10/10

Lev Parnas - In Custody. Dulles Airport. (b)(7)(E) Initial Appearance 10/10

Andrey Kukushkin - In Custody.

San Francisco. (b)(7)(E) Initial appearance 10/10

Outstanding:

David Correia - (b)(7)(E)
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Searches:

(b)(6), (b)(7)(C)
(b)(7)(E)
[Redacted]
[Redacted]

(b)(7)(E)
[Redacted]
[Redacted]

(b)(7)(E)
[Redacted]
[Redacted]

(b)(7)(E)
[Redacted]
[Redacted]

(b)(6), (b)(7)(C), (b)(7)(E)

Thank you

(b)(6), (b)(7)(C)

O'Callaghan, Edward C. (ODAG)

From: O'Callaghan, Edward C. (ODAG)
Sent: Wednesday, October 9, 2019 6:23 PM
To: Bowdich, David L. (DO) (FBI)
Subject: Re: FYSA, see below

Thanks Dave. Do you know of plan for other two defendants?

Edward C. O'Callaghan
202-514-2105

On Oct 9, 2019, at 6:18 PM, Bowdich, David L. (DO) (FBI) (b)(7)(E) wrote:

----- Forwarded message -----

From: "Wade, Terry (CID) (FBI)" (b)(7)(E)
Date: Oct 9, 2019 5:51 PM
Subject: Fwd: (no subject)
To: "Bowdich, David L. (DO) (FBI)" (b)(7)(E), "Abbate, Paul M. (DO) (FBI)" (b)(7)(E), "Spencer, Charles P. (IOD) (FBI)" (b)(7)(E)
Cc:

----- Forwarded message -----

From: (b)(6), (b)(7)(C) (NY) (FBI) (b)(6), (b)(7)(C), (b)(7)(E)
Date: Oct 9, 2019 5:49 PM
Subject:
To: (b)(6), (b)(7)(C) (CID) (FBI) (b)(6), (b)(7)(C), (b)(7)(E) "Jimenez, John (CID) (FBI)" (b)(7)(E), "Wade, Terry (CID) (FBI)" (b)(7)(E)
Cc:

Parnas and fruhman in custody

(b)(7)(E)

Engel, Steven A. (OLC)

From: Engel, Steven A. (OLC)
Sent: Monday, October 7, 2019 4:30 PM
To: Colborn, Paul P (OLC); Gannon, Curtis E. (OLC); (b) (6) (OLC); (b) (6) (OLC); (b) (6) (OLC)
Subject: RE: House Subpoenas to OMB, DOD re Ukraine

Sorry, my bad. I meant the Mulvaney subpoena.

From: Colborn, Paul P (OLC) <(b) (6)>
Sent: Monday, October 7, 2019 4:29 PM
To: Engel, Steven A. (OLC) <(b) (6)> Gannon, Curtis E. (OLC) <(b) (6)>
(b) (6) (OLC) <(b) (6)> (b) (6) (OLC) <(b) (6)> (b) (6)
(OLC) <(b) (6)>
Subject: RE: House Subpoenas to OMB, DOD re Ukraine

Attached are the letter and the schedule portion of the subpoena. We don't have the subpoena form (but the letter includes the key information: return date of October 15th) or the subpoena instructions.

From: Engel, Steven A. (OLC) <(b) (6)>
Sent: Monday, October 07, 2019 4:22 PM
To: Colborn, Paul P (OLC) <(b) (6)> Gannon, Curtis E. (OLC) <(b) (6)>
(b) (6) (OLC) <(b) (6)> (b) (6) (OLC) <(b) (6)> (b) (6)
(OLC) <(b) (6)>
Subject: RE: House Subpoenas to OMB, DOD re Ukraine

Do we have a copy of the OMB subpoena and letter?

From: Colborn, Paul P (OLC) <(b) (6)>
Sent: Monday, October 7, 2019 1:40 PM
To: Engel, Steven A. (OLC) <(b) (6)> Gannon, Curtis E. (OLC) <(b) (6)>
(b) (6) (OLC) <(b) (6)> (b) (6) (OLC) <(b) (6)> (b) (6)
(OLC) <(b) (6)>
Subject: House Subpoenas to OMB, DOD re Ukraine

fyi

From: Greer, Megan L. (OLA) <mlgreer@jmd.usdoj.gov>
Sent: Monday, October 07, 2019 1:37 PM
To: Colborn, Paul P (OLC) <(b) (6)>
Subject: FW: New House Subpoenas to OMB, DOD

An 8 day document subpoena deadline...

From: Greer, Megan L. (OLA)
Sent: Monday, October 7, 2019 1:29 PM
To: Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>; Lasseter, David F. (OLA) <dlasseter@jmd.usdoj.gov>;

Mary Blanche Hankey (OLA) (mhankey@jmd.usdoj.gov) <mhankey@jmd.usdoj.gov>

Cc: Reuss, Alexis (OLA) <alreuss@jmd.usdoj.gov>

Subject: New House Subpoenas to OMB, DOD

The House has just issued subpoenas to OMB and DOD. The subpoenas were issued by HPSCI, and the cover letters were signed by Chairmen Schiff, Cummings, and Engel. Like the requests sent to VP Pence and Giuliani, the deadline for today's subpoenas is next Tuesday, October 15.

Two of the requests relate directly to the AG/Department, both of which mirror prior requests/subpoenas:

DOD Request 2(b): "Communications between or among current or former officials of [the Department of Justice] relating to the July 25, 2019, telephone conversations"; and

DOD Request 9/OMB Request 5: "Opinions, advice, counsel, approvals, or concurrences provided by OMB, the National Security Council (NSC), the White House, DOJ, DOD, or DOS on the legality of using apportionments to withhold or defer the obligation of congressionally appropriated funds to Ukraine."

Megan L. Greer

Office of Legislative Affairs

202.353.9085 *office*

(b)(6) *mobile*

Cronan, John (CRM)

From: Carr, Peter (OPA)
Sent: Friday, October 4, 2019 5:37 PM
To: Benczkowski, Brian (CRM); Driscoll, Kevin (CRM); Cronan, John (CRM); Wong, Candice (CRM)
Subject: Fwd: NBC: CIA's top lawyer made criminal referral on whistleblower's complaint about Trump conduct

FYI - I'm at (b)(5) if you'd like to discuss.

Begin forwarded message:

From: "Raimondi, Marc (OPA)" <mraimondi@jmd.usdoj.gov>
Date: October 4, 2019 at 5:32:59 PM EDT
To: "Carr, Peter (OPA)" <pcarr@jmd.usdoj.gov>, "Kupec, Kerri (OPA)" <kkupec@jmd.usdoj.gov>, "Lloyd, Matt (PAO)" <mlloyd@jmd.usdoj.gov>
Subject: RE: NBC: CIA's top lawyer made criminal referral on whistleblower's complaint about Trump conduct

Peter, (b)(5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: Carr, Peter (OPA) <pcarr@jmd.usdoj.gov>
Sent: Friday, October 04, 2019 4:47 PM
To: Kupec, Kerri (OPA) <kkupec@jmd.usdoj.gov>; Lloyd, Matt (PAO) <mlloyd@jmd.usdoj.gov>; Raimondi, Marc (OPA) <mraimondi@jmd.usdoj.gov>
Subject: NBC: CIA's top lawyer made criminal referral on whistleblower's complaint about Trump conduct

NBC: CIA's top lawyer made criminal referral on whistleblower's complaint about Trump conduct

<https://www.nbcnews.com/politics/trump-impeachment-inquiry/cia-s-top-lawyer-made-criminal-referral-whistleblower-s-complaint-n1062481>

By Ken Dilanian and Julia Ainsley
October 4, 2019

WASHINGTON — Weeks before the whistleblower's complaint became public, the CIA's top lawyer made what she considered a criminal referral to the Justice Department about the

whistleblower's allegations that President Donald Trump abused his office in pressuring the Ukrainian president, U.S. officials familiar with the matter tell NBC News.

The move by the CIA's general counsel, Trump appointee Courtney Simmons Elwood, meant she and other senior officials had concluded a potential crime had been committed, raising more questions about why the Justice Department later closed the case without conducting an investigation.

In the days since an anonymous whistleblower complaint was made public accusing him of wrongdoing, President Trump has lashed out at his accuser and other insiders who provided the accuser with information, suggesting they were improperly spying on what was a "perfect" call between him and the Ukrainian president. But a timeline provided by U.S. officials familiar with the matter shows that multiple senior government officials appointed by Trump found the whistleblower's complaints credible, troubling, and worthy of further inquiry starting soon after the president's July phone call.

While that timeline and the CIA general counsel's contact with the DOJ has been previously disclosed, it has not been reported that the CIA's top lawyer intended the call to be to make a criminal referral about the president's conduct, acting under rules set forth in a memo governing how intelligence agencies should report allegations of federal crimes.

The fact that she and other top Trump administration political appointees saw potential misconduct in the whistleblower's early account of alleged presidential abuses puts a new spotlight on the Justice Department's later decision to decline to open a criminal investigation — a decision that the Justice Department said publicly was based purely on an analysis of whether the president committed a campaign finance law violation.

"They didn't do any of the sort of bread and butter type investigatory steps that would flush out what potential crimes may have been committed," said Berit Berger, a former federal prosecutor who heads the Center for the Advancement of Public Integrity at Columbia Law School. "I don't understand the rationale for that and it's just so contrary to how normal prosecutors work. We have started investigations on far less."

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On that call, Elwood and John Eisenberg, the top legal adviser to the White House National Security Council, told the top Justice Department national security lawyer, John Demers, that the allegations merited examination by the DOJ, officials said.

According to the officials, Elwood was acting under rules that a report must occur if there is a reasonable basis to the allegations, defined as "facts and circumstances...that would cause a person of reasonable caution to believe that a crime has been, is being, or will be committed." A DOJ official said Attorney General William Barr was made aware of the conversation with Elwood and Eisenberg, and their concerns about the president's behavior, in the days that followed.

Justice Department officials now say they didn't consider the phone conversation a formal criminal referral because it was in written form. A separate criminal referral came later from the Office of the Director of National Intelligence, which was based solely on the whistleblower's official written complaint.

When Elwood and Eisenberg spoke with DOJ, no one on the phone had seen the whistleblower's formal complaint to the inspector general of the intelligence community, which had been submitted two days before the call and was still a secret. The issue of campaign finance law was not part of their deliberations, the officials said.

A 'thing of value'

It is illegal for Americans to solicit foreign contributions to political campaigns. Justice Department officials said they decided there was no criminal case after determining that Trump didn't violate campaign finance law by asking the Ukrainian president to investigate his political rival, because such a request did not meet the test for a "thing of value" under the law.

Justice Department officials have said they only investigated the president's Ukraine call for violations of campaign finance law because it was the only statute mentioned in the whistleblower's complaint. Former federal prosecutors contend that the conduct could have fit other criminal statutes, including those involving extortion, bribery, conflict of interest or fraud, that might apply to the president or those close to him.

The decision not to open an investigation meant there was no FBI examination of documents or interviews of witnesses to the phone call, participants in the White House decision to withhold military funding from Ukraine, the president's lawyer, Rudy Giuliani, and Ukrainian officials who were the target of Trump and Giuliani's entreaties.

Text messages turned over to Congress Thursday night, in which diplomats appear to suggest there was a linkage between aid and Ukraine's willingness to investigate a case involving Joe Biden, were not examined as part of the Justice Department's review, officials said, adding that they conducted purely a legal analysis.

Justice Department spokeswoman Kerri Kupec told NBC News that the decision not to open an investigation was made by the head of the criminal division, Brian Benczkowski, in consultation with career lawyers at the public integrity section. She and other officials declined to say whether anyone dissented.

The operative DOJ standard that the president can't be indicted while in office was not a factor, she said. Attorney General William Barr has said he believes the president can be investigated and prosecutors can make a determination whether he committed criminal conduct.

"Relying on established procedures set forth in the Justice Manual, the Department's Criminal Division reviewed the official record of the call and determined, based on the facts and applicable law, that there was no campaign finance violation and that no further action was warranted," said Kupec.

Kupec declined to comment on whether the Justice Department was investigating any other aspect of the Ukraine matter. There has been no public indication, however, of any such investigation.

Some legal experts are puzzled by Justice Department's narrow approach

"They are not by any stretch of the imagination limited to the referral," said Chuck Rosenberg, an NBC News contributor and former U.S. Attorney. "They have the authority — in fact, they have the obligation — to look more deeply and more broadly and bring whatever charges are appropriate."

Berger added, "When you get a criminal referral, you don't go into it saying, 'This is the criminal violation and now I'm going to see if the facts prove it.' You start with the facts and the evidence and then you see what potential crimes those facts support. It seems backwards to say, 'We are going to look at this just as a campaign finance violation and oops, we don't see it — case closed.'"

In a case in which a government official is allegedly using his office for personal gain, and pressuring someone to extract a favor, the bribery and extortion statutes are usually considered, Berger said. The Foreign Corrupt Practices Act, which prohibits bribery of foreign officials, may also have been implicated, she said.

'I have received information'

In his written complaint, the CIA officer who became the whistleblower framed his allegations this way: "I have received information from multiple U.S. government officials that the President

of the United States is using the power of his office to solicit interference from a foreign country in the 2020 election."

But when he first passed on his concerns, they were not so specific, officials said. He first complained at his own agency, sending word through a colleague to a CIA lawyer. The complaint eventually reached the spy agency's top lawyer, Elwood, officials said.

She was told there were concerns about the president's conduct on a call with a foreign leader, but not which leader, officials said.

She also was told that others at the National Security Council shared the concerns, so she called Eisenberg, the top NSC lawyer, officials said. He was already aware that people inside his agency believed something improper had occurred on the July 25 call with the Ukrainian president, officials said.

After consulting with others at their respective agencies and learning more details about the complaint, Elwood and Eisenberg alerted the DOJ's Demers, during the Aug. 14 phone call, in what Elwood considered to be a criminal referral. Demers read the transcript of the July 25 call, officials said, on August 15.

What the DOJ did next is not entirely clear. A DOJ official said it was the department's perspective that a phone call did not constitute a formal criminal referral that allowed them to consider an investigation, and that a referral needed to be in writing.

The whistleblower was already taking separate action. On Aug. 12, he filed a complaint with the inspector general of the intelligence community, after consulting with a staff member on the House Intelligence Committee, officials said.

At the end of August, the acting director of national intelligence, Joseph Maguire, sent the Justice Department his own criminal referral based on the whistleblower complaint, he has confirmed.

Kupec says career prosecutors in the Public Integrity Section, which works on corruption cases, were involved in deciding how to proceed, as was the national security division and the Office of Legal Counsel.

A senior DOJ lawyer who briefed reporters said they had no basis on which to open a criminal investigation because Trump's request of Ukrainian President Volodymyr Zelenskyy to investigate a case involving his political opponent couldn't amount to a quantifiable "thing of value" under campaign finance law.

DOJ officials said they focused on campaign finance law because that was how the allegations were framed in the whistleblower complaint.

"All relevant components of the department agreed with this legal conclusion," the DOJ's Kupec said.

Paul Seamus Ryan, vice president of policy and litigation at Common Cause, is among those questioning even the narrow campaign finance analysis. Common Cause has filed a complaint with the Justice Department and the Federal Election Commission accusing Trump of violating campaign law.

It wouldn't have been difficult for the government to determine how much money Ukraine would have spent in an investigation of Joe Biden and his son, he said,

"That would give them a dollar amount to show that Trump solicited 'something of value,'" Ryan said.

Benczkowski, Brian (CRM)

From: Carr, Peter (OPA)
Sent: Friday, October 4, 2019 4:47 PM
To: Benczkowski, Brian (CRM); Cronan, John (CRM); Wong, Candice (CRM); Driscoll, Kevin (CRM); Amundson, Corey (CRM)
Subject: NBC: CIA's top lawyer made criminal referral on whistleblower's complaint about Trump conduct

NBC: CIA's top lawyer made criminal referral on whistleblower's complaint about Trump conduct [https://www.nbcnews.com/politics/trump-impeachment-inquiry/cia-s-top-lawyer-made-criminal-referral- whistleblower-s-complaint-n1062481](https://www.nbcnews.com/politics/trump-impeachment-inquiry/cia-s-top-lawyer-made-criminal-referral-
whistleblower-s-complaint-n1062481)

By Ken Dilanian and Julia Ainsley
October 4, 2019

WASHINGTON — Weeks before the whistleblower's complaint became public, the CIA's top lawyer made what she considered a criminal referral to the Justice Department about the whistleblower's allegations that President Donald Trump abused his office in pressuring the Ukrainian president, U.S. officials familiar with the matter tell NBC News.

The move by the CIA's general counsel, Trump appointee Courtney Simmons Elwood, meant she and other senior officials had concluded a potential crime had been committed, raising more questions about why the Justice Department later closed the case without conducting an investigation.

In the days since an anonymous whistleblower complaint was made public accusing him of wrongdoing, President Trump has lashed out at his accuser and other insiders who provided the accuser with information, suggesting they were improperly spying on what was a "perfect" call between him and the Ukrainian president. But a timeline provided by U.S. officials familiar with the matter shows that multiple senior government officials appointed by Trump found the whistleblower's complaints credible, troubling, and worthy of further inquiry starting soon after the president's July phone call.

While that timeline and the CIA general counsel's contact with the DOJ has been previously disclosed, it has not been reported that the CIA's top lawyer intended the call to be to make a criminal referral about the president's conduct, acting under rules set forth in a memo governing how intelligence agencies should report allegations of federal crimes.

The fact that she and other top Trump administration political appointees saw potential misconduct in the whistleblower's early account of alleged presidential abuses puts a new spotlight on the Justice Department's later decision to decline to open a criminal investigation — a decision that the Justice Department said publicly was based purely on an analysis of whether the president committed a campaign finance law violation.

"They didn't do any of the sort of bread and butter type investigatory steps that would flush out what potential crimes may have been committed," said Berit Berger, a former federal prosecutor who heads the Center for the Advancement of Public Integrity at Columbia Law School. "I don't understand the rationale for that and it's just so contrary to how normal prosecutors work. We have started investigations on far less."

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Justice Department officials have said they only investigated the president's Ukraine call for violations of campaign finance law because it was the only statute mentioned in the whistleblower's complaint. Former federal prosecutors contend that the conduct could have fit other criminal statutes, including those involving extortion, bribery, conflict of interest or fraud, that might apply to the president or those close to him. The decision not to open an investigation meant there was no FBI examination of documents or interviews of witnesses to the phone call, participants in the White House decision to withhold military funding from Ukraine, the president's lawyer, Rudy Giuliani, and Ukrainian officials who were the target of Trump and Giuliani's entreaties.

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"They are not by any stretch of the imagination limited to the referral," said Chuck Rosenberg, an NBC News contributor and former U.S. Attorney. "They have the authority — in fact, they have the obligation — to look more deeply and more broadly and bring whatever charges are appropriate."

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Cronan, John (CRM)

From: Amundson, Corey (CRM)
Sent: Wednesday, October 2, 2019 12:35 PM
To: Benczkowski, Brian (CRM)
Cc: Carr, Peter (OPA); Cronan, John (CRM); Wong, Candice (CRM); Driscoll, Kevin (CRM)
Subject: Re: NYT op-ed: Was There Another Cover-Up In Response to the Whistle-Blower?

Kevin and I are on it.

On Oct 2, 2019, at 12:13 PM, Benczkowski, Brian (CRM) <(b) (6) Per CRM@crm.usdoj.gov> wrote:

Kevin and Corey should work w Richard Pilger on the substance.

On Oct 2, 2019, at 10:55 AM, Carr, Peter (OPA) <pcarr@jmd.usdoj.gov> wrote:

If someone can help me with the substance for a response, I can work with Kerri (b)(5)

From: Benczkowski, Brian (CRM) <(b) (6) Per CRM@CRM.USDOJ.GOV>
Sent: Wednesday, October 2, 2019 11:53 AM
To: Carr, Peter (OPA) <pcarr@jmd.usdoj.gov>
Cc: Cronan, John (CRM) <(b) (6) Per CRM@CRM.USDOJ.GOV>; Wong, Candice (CRM) <(b) (6) Per CRM@CRM.USDOJ.GOV>; Driscoll, Kevin (CRM) <(b) (6) Per CRM@CRM.USDOJ.GOV>; Amundson, Corey (CRM) <(b) (6) Per CRM@CRM.USDOJ.GOV>
Subject: Re: NYT op-ed: Was There Another Cover-Up In Response to the Whistle-Blower?

Can we please work up a response (b)(5) ?

On Oct 2, 2019, at 8:12 AM, Carr, Peter (OPA) <pcarr@jmd.usdoj.gov> wrote:

NYT op-ed: Was There Another Cover-Up In Response to the Whistle-Blower?

The Justice Department should have shared a campaign-finance investigation with the Federal Election Commission.

By Neal Katyal and Joshua Geltzer

Oct. 2, 2019

One of the first things new prosecutors at the Justice Department learn is that cover-ups are rarely singular. There is often a cover-up of the cover-up.

Allegations of one cover-up, then another, emerged last week. Officials in the Trump administration tried to “lock down” the phone call memo between President Trump and Volodymyr Zelensky of Ukraine (the first cover-up), and then officials in the executive branch made efforts to keep this information from reaching Congress (the second cover-up).

Now we have discovered what may be a third cover-up. In its handling of the investigation and a potential campaign-finance violation, the Department of

Justice appears to have ignored a rule that a matter under investigation must be referred to the Federal Election Commission. Critically, if the department had followed the rule, the Ukraine affair would have been disclosed to the American public.

Were it not for the efforts of the whistle-blower, everything about this would have been hidden from the F.E.C. and the American people.

Here's how the Justice Department failed to follow the rule. As part of the scramble in the executive branch caused by the whistle-blower's complaint, the Justice Department secretly investigated Mr. Trump for a potential campaign-finance violation. The department reportedly cleared him because the contributions solicited from a foreign government to his campaign were not quantifiable "things of value." That's the key phrase in one of the most important campaign-finance laws.

Remember that Mr. Trump's own intelligence community inspector general — a former federal prosecutor — determined that the whistle-blower complaint was an "urgent concern." Further, the complaint set out facts suggesting that Mr. Trump had indeed violated the federal statute that criminalizes soliciting any "thing of value" from a foreign citizen in connection with an election. A thorough investigation seemed warranted.

After it looked into the complaint, the Justice Department disagreed — it said that because the amount of the contribution couldn't be quantified, the department would not even bother opening a criminal investigation (which would still have been short of bringing an actual prosecution).

To date, the criticism of the Justice Department has focused on its seemingly hasty judgment that a federal crime had not been committed and on Attorney General William Barr's decision not to recuse himself from a matter directly implicating him.

Those are indeed valid criticisms, but an overlooked problem is that a federal government memorandum required the Justice Department to refer this complaint to the Federal Election Commission. And by all publicly available information, the department failed to do so.

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Underlying this F.E.C. enforcement mechanism is a deep desire for transparency: When candidates break the rules, they need to be held accountable. Reflecting that, a Justice Department publication from December 2017 notes that the F.E.C.'s enforcement jurisdiction over noncriminal violations of the Federal Election Campaign Act "cannot be compromised or waived by the Department of Justice."

So what went wrong at the Justice Department? It's possible that it simply didn't do a civil analysis, which the memorandum requires it to do in order to

determine whether there was a “probable violation” that must be referred to the F.E.C. Or it’s possible that the department did do a civil analysis and inexplicably decided that Mr. Trump’s phone conversation with the Ukrainian president didn’t rise to even a *probable* violation of election law under the much lower *civil* standards. It’s hard to know which would be more damning.

It’s worth emphasizing that this memorandum remains in full effect, though there have been discussions between the Justice Department and the F.E.C. about augmenting it with specific details on exactly how each agency should follow the memorandum’s guidance in situations like this one — discussions that seem well worth resuming when, in years to come, the Justice Department begins to care again about enforcing such laws.

One indication that the memo’s dictates remain required protocol? Just six years ago, it was cited in a public memorandum written by the F.E.C.’s vice chairman at the time.

His name? Mr. Trump’s own former White House counsel — Don McGahn.

Benczkowski, Brian (CRM)

From: Benczkowski, Brian (CRM)
Sent: Wednesday, October 2, 2019 10:20 AM
To: Carr, Peter (OPA)
Cc: Cronan, John (CRM); Wong, Candice (CRM); Driscoll, Kevin (CRM); Amundson, Corey (CRM)
Subject: Re: NYT op-ed: Was There Another Cover-Up In Response to the Whistle-Blower?

(b) (6) Per CRM

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Engel, Steven A. (OLC)

From: Engel, Steven A. (OLC)
Sent: Monday, September 30, 2019 4:34 PM
To: Colborn, Paul P (OLC); Gannon, Curtis E. (OLC)
Subject: RE: Giuliani Subpoena/Requests

(b) (5)

From: Colborn, Paul P (OLC) <(b) (6)>
Sent: Monday, September 30, 2019 4:30 PM
To: Engel, Steven A. (OLC) <(b) (6)> Gannon, Curtis E. (OLC) <(b) (6)>
Subject: FW: Giuliani Subpoena/Requests

fyi

From: Greer, Megan L. (OLA) <mjgreer@jmd.usdoj.gov>
Sent: Monday, September 30, 2019 4:26 PM
To: Colborn, Paul P (OLC) <(b) (6)>
Subject: FW: Giuliani Subpoena/Requests

From: Greer, Megan L. (OLA)
Sent: Monday, September 30, 2019 4:22 PM
To: Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>; Lasseter, David F. (OLA) <dlasseter@jmd.usdoj.gov>
Subject: Giuliani Subpoena/Requests

Attached, FYSA. The three joint committees (Intel, Oversight, and Foreign Affairs) sent a subpoena to Giuliani and document/deposition requests to three of Giuliani's business associates. The return date on Giuliani's subpoena is October 15.

Please note that two of the document requests in the Giuliani subpoena relate to DOJ and/or AG Barr:

- **Request 7.** Meetings or telephone communications between President Trump and President Zelensky, including but not limited to an April 21, 2019 call ("April 21 Call") and a July 25, 2019 call ("July 25 Call"), as well as any communications with the White House, the Department of Justice, the Federal Bureau of Investigation, the Department of Energy, the Office of the Director of National Intelligence, and the Office of the Inspector General of the Intelligence Community relating or referring to the April 21 Call or the July 25 Call;
- **Request 9.** Communications or meetings with Attorney General William Barr or any persons or entities associated with or acting in any capacity as a representative, agent, or proxy for Attorney General Barr;

In addition, the requests to Giuliani's associates include the following:

- **Request 4.** [All communications relating to] The White House, President Donald Trump, Attorney General William Barr, Donald Trump Jr., Rudolph ("Rudy") Giuliani, former Ambassador Kurt Volker, State Department counselor T. Ulrich Brechbuhl, State Department Deputy Assistant Secretary

State Department counselor, former embassy, State Department Deputy Assistant Secretary, George Kent, Assistant Secretary of State for European Affairs A. Wess Mitchell, or anyone in or associated with the Trump Administration;

The Committees' press release is below. Please let me know if anything else would be helpful.

###

Washington, D.C. (Sept. 30, 2019)—Today, Rep. Adam Schiff, the Chairman of the Permanent Select Committee on Intelligence, Rep. Eliot L. Engel, the Chairman of the Committee on Foreign Affairs, and Rep. Elijah E. Cummings, the Chairman of the Committee on Oversight and Reform, sent a [letter](#) conveying a subpoena to Rudy Giuliani, the President's agent, for key documents as a part of the House of Representatives' impeachment inquiry of President Donald Trump.

"Pursuant to the House of Representatives' impeachment inquiry, we are hereby transmitting a subpoena that compels you to produce the documents set forth in the accompanying schedule by October 15, 2019," the Chairmen wrote.

The Committees are investigating the extent to which President Trump jeopardized national security by pressing Ukraine to interfere with our 2020 election and by withholding security assistance provided by Congress to help Ukraine counter Russian aggression, as well as any efforts to cover up these matters.

Giuliani [admitted on national television](#) that, while serving as the President's personal attorney, he asked the government of Ukraine to target former Vice President Joe Biden.

"In addition to this stark admission, you stated more recently that you are in possession of evidence—in the form of text messages, phone records, and other communications—indicating that you were not acting alone and that other Trump Administration officials may have been involved in this scheme," the Chairmen wrote to Giuliani.

The subpoena, which was issued by the Permanent Select Committee on Intelligence after consultation with the Committee on Foreign Affairs and the Committee on Oversight and Reform, requires Giuliani to produce several categories of documents by October 15, 2019.

The Chairmen also sent separate letters today seeking documents and noticing depositions with three of Giuliani's business associates on the following dates:

- October 10, 2019: Lev Parnas
- October 11, 2019: Igor Fruman
- October 14, 2019: Semyon "Sam" Kislin

"A growing public record indicates that the President, his agent Rudy Giuliani, and others appear to have pressed the Ukrainian government to pursue two politically-motivated investigations," the Chairmen wrote. "The Committees have reason to believe that you have information and documents relevant to these matters."

Megan L. Greer
Office of Legislative Affairs
202.353.9085 office
(b)(6) mobile


Benczkowski, Brian (CRM)

From: Benczkowski, Brian (CRM)
Sent: Saturday, September 28, 2019 10:56 AM
To: Rabbitt, Brian (OAG)
Subject: Re: DRAFT Letter to HJC

Received. Will review.

On Sep 28, 2019, at 10:44 AM, Rabbitt, Brian (OAG) <brrabbitt@jmd.usdoj.gov> wrote:

Duplicative Material - See December 10 Production, Bates Stamp Page
20200330-0000561



From: [Benczkowski, Brian \(CRM\)](#)
To: [Driscoll, Kevin \(CRM\)](#)
Subject: Fwd: DRAFT Letter to HJC
Date: Saturday, September 28, 2019 10:54:50 AM
Attachments: [Ltr to HJC re July 25 Matter \[DRAFT\].docx](#)
[ATT00001.htm](#)

FYI and for discussion.

Begin forwarded message:

From: "Rabbitt, Brian (OAG)" <brrabbitt@jmd.usdoj.gov>
Date: September 28, 2019 at 10:44:27 AM EDT
To: "Benczkowski, Brian (CRM)" (b)(6)
Subject: FW: DRAFT Letter to HJC

Duplicative Material - See December 10 Production, Bates Stamp Page
20200330-0000561

Engel, Steven A. (OLC)

From: Engel, Steven A. (OLC)
Sent: Thursday, September 26, 2019 9:52 AM
To: Kupec, Kerri (OPA)
Subject: FW: OLC Opinion
Attachments: Urgent Concern Op (Sept 3 declassified).pdf

From: Gannon, Curtis E. (OLC) <(b) (6)>
Sent: Thursday, September 26, 2019 9:26 AM
To: Engel, Steven A. (OLC) <(b) (6)> Whitaker, Henry C. (OLC) <(b) (6)>
Subject: RE: OLC Opinion

Here's a scan of what Brad sent. Nothing remains classified. On JWICS, Steve has asked ODNI to send us the Word version, with classification markings removed, on the low side.

From: Engel, Steven A. (OLC) <(b) (6)>
Sent: Thursday, September 26, 2019 8:37 AM
To: Gannon, Curtis E. (OLC) <(b) (6)> Whitaker, Henry C. (OLC) <(b) (6)>
Subject: RE: OLC Opinion

Right.

Hankey, Mary Blanche (OLA)

From: Hankey, Mary Blanche (OLA)
Sent: Wednesday, September 25, 2019 10:38 AM
To: Gourdikian, Alexandra
Cc: Meyer, Katie; Bonner, Lee; Dunham, Will; Carr, Machalagh; Meyer, Dan
Subject: RE: contact information for Leader McCarthy
Attachments: 2019-09-24 - AAG Engel - Urgent Concern Determination by IC IG (slip op) - FINAL.pdf; Transcript - Unclassified.pdf

All-- Thanks for your help with this request. The White House is handling the formal release of the transcript, but we wanted to share it with your office as a courtesy. I have also included the unclassified OLC opinion which was discussed on today's call with the DAG. Finally, below you will find a statement from DOJ.

The following was released by Kerri Kupec, spokesperson for the Department of Justice:

Ukraine Statement

The Attorney General was first notified of the President's conversation with Ukrainian President Zelensky several weeks after the call took place, when the Department of Justice learned of a potential referral. The President has not spoken with the Attorney General about having Ukraine investigate anything relating to former Vice President Biden or his son. The President has not asked the Attorney General to contact Ukraine – on this or any other matter. The Attorney General has not communicated with Ukraine – on this or any other subject. Nor has the Attorney General discussed this matter, or anything relating to Ukraine, with Rudy Giuliani.

A Department of Justice team led by U.S. Attorney John Durham is separately exploring the extent to which a number of countries, including Ukraine, played a role in the counterintelligence investigation directed at the Trump campaign during the 2016 election. While the Attorney General has yet to contact Ukraine in connection with this investigation, certain Ukrainians who are not members of the government have volunteered information to Mr. Durham, which he is evaluating.

Referral Statement

In August, the Department of Justice was referred a matter relating to a letter the Director of National Intelligence had received from the Inspector General for the Intelligence Community regarding a purported whistleblower complaint. The Inspector General's letter cited a conversation between the President and Ukrainian President Zelensky as a potential violation of federal campaign finance law, while acknowledging that neither the Inspector General nor the complainant had firsthand knowledge of the conversation. Relying on established procedures set forth in the Justice Manual, the Department's Criminal Division reviewed the official record of the call and determined, based on the facts and applicable law, that there was no campaign finance violation and that no further action was warranted. All relevant components of the Department agreed with this legal conclusion, and the Department has concluded the matter.

From: Gourdikian, Alexandra (b)(6) - Congressional Email
Sent: Wednesday, September 25, 2019 9:13 AM
To: Hankey, Mary Blanche (OLA) <mhankey@jmd.usdoj.gov>
Cc: Meyer, Katie (b)(6) - Congressional Email; Bonner, Lee (b)(6) - Congressional Email; Dunham, Will (b)(6) - Congressional Email; Carr, Machalagh (b)(6) - Congressional Email; Meyer, Dan (b)(6) - Congressional Email
Subject: RE: contact information for Leader McCarthy

Thanks, Mary. Dan is happy to take the call. Please have the Deputy AG call Dan's cell at (b)(6).
Thanks!

Alexandra Gourdikian
Director of Operations and Scheduling
Republican Leader Kevin McCarthy (CA-23)
202-225-(b)(6) - Cong

From: Hankey, Mary Blanche (OLA) <Mary.Blanche.Hankey2@usdoj.gov>
Sent: Wednesday, September 25, 2019 8:56 AM
To: Gourdikian, Alexandra (b)(6) - Congressional Email
Cc: Meyer, Katie (b)(6) - Congressional Email; Bonner, Lee (b)(6) - Congressional Email; Dunham, Will (b)(6) - Congressional Email; Carr, Machalagh (b)(6) - Congressional Email
Subject: Re: contact information for Leader McCarthy

The DAG will be calling and we understand the Leader is tied up until 10. Would Dan be available for a preview sometime before hand?

On Sep 24, 2019, at 9:38 PM, Hankey, Mary Blanche (OLA) <mhankey@jmd.usdoj.gov> wrote:

Many thanks Alexandra. We will try to make 10 am work on our side.

On Sep 24, 2019, at 9:37 PM, Gourdikian, Alexandra (b)(6) - Congressional Email wrote:

Best number is my direct line: 202-226-(b)(6) The Leader will be in meetings from 8am-10am tomorrow. Closer to 10am would likely work better for him. Thank you!

Sent from my iPhone

On Sep 24, 2019, at 9:01 PM, Hankey, Mary Blanche (OLA) <Mary.Blanche.Hankey2@usdoj.gov> wrote:

Hi All-Just checking back. The Department would like to provide advance notice of an announcement that is expected around 10 am. Thanks for your consideration!

On Sep 24, 2019, at 6:31 PM, Meyer, Katie (b)(6) - Congressional Email wrote:

Hi Mary Blanche. Thanks for reaching out. I'm looping in the Leader's scheduling team (Alex and Lee) and the relevant policy team contacts (Will and Machalagh).

From: Hankey, Mary Blanche (OLA)
<Mary.Blanche.Hankey2@usdoj.gov>
Sent: Tuesday, September 24, 2019 6:30 PM
To: Loraine, Jennifer
(b)(6) - Congressional Email; Meyer, Katie
(b)(6) - Congressional Email
Subject: contact information for Leader McCarthy

Hi Jennifer and Katie,

We are anticipating that the AG or DAG will be reaching out to Leader McCarthy in the morning (likely between 8:30 and 10). We are looking for the best number to reach him during that time. You are the only contacts I have for his office, so please feel free to direct me to someone else.

Thanks,

Mary Blanche

Mary Blanche Hankey
Chief of Staff and Counselor
Office of Legislative Affairs
Office: 202-305-0149
Cell: (b)(6)

Hankey, Mary Blanche (OLA)

From: Hankey, Mary Blanche (OLA)
Sent: Wednesday, September 25, 2019 10:36 AM
To: Hughes, Bill
Subject: RE: contact info
Attachments: 2019-09-24 - AAG Engel - Urgent Concern Determination by IC IG (slip op) - FINAL.pdf; Transcript - Unclassified.pdf

Thanks for your help Bill. The White House is handling the formal release of the transcript, but we wanted to share it with your office as a courtesy. I have also included the unclassified OLC opinion which was discussed on today's call with the DAG. Finally, below you will find a statement from DOJ.

The following was released by Kerri Kupec, spokesperson for the Department of Justice:

Ukraine Statement

The Attorney General was first notified of the President's conversation with Ukrainian President Zelensky several weeks after the call took place, when the Department of Justice learned of a potential referral. The President has not spoken with the Attorney General about having Ukraine investigate anything relating to former Vice President Biden or his son. The President has not asked the Attorney General to contact Ukraine – on this or any other matter. The Attorney General has not communicated with Ukraine – on this or any other subject. Nor has the Attorney General discussed this matter, or anything relating to Ukraine, with Rudy Giuliani.

A Department of Justice team led by U.S. Attorney John Durham is separately exploring the extent to which a number of countries, including Ukraine, played a role in the counterintelligence investigation directed at the Trump campaign during the 2016 election. While the Attorney General has yet to contact Ukraine in connection with this investigation, certain Ukrainians who are not members of the government have volunteered information to Mr. Durham, which he is evaluating.

Referral Statement

In August, the Department of Justice was referred a matter relating to a letter the Director of National Intelligence had received from the Inspector General for the Intelligence Community regarding a purported whistleblower complaint. The Inspector General's letter cited a conversation between the President and Ukrainian President Zelensky as a potential violation of federal campaign finance law, while acknowledging that neither the Inspector General nor the complainant had firsthand knowledge of the conversation. Relying on established procedures set forth in the Justice Manual, the Department's Criminal Division reviewed the official record of the call and determined, based on the facts and applicable law, that there was no campaign finance violation and that no further action was warranted. All relevant components of the Department agreed with this legal conclusion, and the Department has concluded the matter.

From: Hughes, Bill (b)(6) - Congressional Email
Sent: Wednesday, September 25, 2019 9:10 AM
To: Hankey, Mary Blanche (OLA) <mhankey@jmd.usdoj.gov>
Subject: Re: contact info

Yes. I've heard same.

Sent from my iPhone

On Sep 25, 2019, at 8:57 AM, Hankey, Mary Blanche (OLA) <Mary.Blanche.Hankey2@usdoj.gov> wrote:

Success. Thanks!

On Sep 25, 2019, at 8:56 AM, Battaglia, Jacqueline (b)(6) - Congressional Email wrote:

Hi Mary,

Whip Scalise is available now. The best number to reach him at this time is his cell (b)(6).

Best

Jacqueline Battaglia | Scheduler
Republican Whip Steve Scalise
office: (b)(6)

From: Hankey, Mary Blanche (OLA) <Mary.Blanche.Hankey2@usdoj.gov>
Sent: Wednesday, September 25, 2019 8:47 AM
To: Hughes, Bill (b)(6) - Congressional Email
Cc: Battaglia, Jacqueline (b)(6) - Congressional Email; (b)(6) - Security Personnel; Horton, Brett (b)(6) - Congressional Email
Subject: Re: contact info

We should be calling soon.

On Sep 24, 2019, at 7:44 PM, Hankey, Mary Blanche (OLA) <mhankey@jmd.usdoj.gov> wrote:

Thanks so much Bill. I will try to give you all a heads up in the morning.

On Sep 24, 2019, at 7:27 PM, Hughes, Bill (b)(6) - Congressional Email wrote:

Mary Blanche,

Whip Scalise's cell is (b)(6) for a possible call from the AG. As I mentioned, he is in meetings in the WH and GOP conf from 8-10 and may not be able to pick

up. He will also have to travel from WH to Capitol Hill shortly before 9, which may provide a window. As I mentioned, any heads up call is coming would be useful, as he may not pick up a blocked number or may hand the phone to his body person (b)(6). (b)(6) (cc'd above) is aware call may happen and the cell # for his scheduler, Jacqueline (also cc'd above) is (b)(6). Either Jacqueline or I can also assist in getting information to them in the morning.

Bill

From: Hankey, Mary Blanche (OLA)
<Mary.Blanche.Hankey2@usdoj.gov>
Sent: Tuesday, September 24, 2019 6:23 PM
To: Hughes, Bill (b)(6) - Congressional Email
Subject: contact info

Hi Bill—Looking forward to speaking with you soon.
Thanks!

Mary Blanche Hankey
Chief of Staff and Counselor
Office of Legislative Affairs
Office: 202-305-0149
Cell: (b)(6)

Boyd, Stephen E. (OLA)

From: Boyd, Stephen E. (OLA)
Sent: Wednesday, September 25, 2019 8:46 AM
To: Watson, Theresa (OAG)
Subject: Fwd: TP for use tomorrow AM
Attachments: TPs for Member Calls v2.docx; ATT00001.htm

Would you please print this doc for rabbit and myself? I am on my way upstairs.

Begin forwarded message:

From: "Boyd, Stephen E. (OLA)" <seboyd@jmd.usdoj.gov>
Date: September 25, 2019 at 8:24:57 AM EDT
To: "Hovakimian, Patrick (ODAG)" <phovakimian4@jmd.usdoj.gov>, "Escalona, Prim F. (OLA)" <pfescalona@jmd.usdoj.gov>, "Hankey, Mary Blanche (OLA)" <mhankey@jmd.usdoj.gov>, "Lasseter, David F. (OLA) (dlasseter@jmd.usdoj.gov)" <dlasseter@jmd.usdoj.gov>, "Jessica E. Hart (OLA) (jehart@jmd.usdoj.gov)" <jehart@jmd.usdoj.gov>
Subject: RE: TP for use tomorrow AM

This incorporates the latest changes from Rabbit this AM. SB

From: Hovakimian, Patrick (ODAG) <phovakimian4@jmd.usdoj.gov>
Sent: Wednesday, September 25, 2019 8:21 AM
To: Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>; Escalona, Prim F. (OLA) <pfescalona@jmd.usdoj.gov>; Hankey, Mary Blanche (OLA) <mhankey@jmd.usdoj.gov>
Subject: Fwd: TP for use tomorrow AM

DAG asked us to forward for awareness. Thanks.

Patrick Hovakimian
202-532-3295

Begin forwarded message:

From: "Rosen, Jeffrey A. (ODAG)" (b)(6)
Date: September 25, 2019 at 8:10:53 AM EDT
To: "O'Callaghan, Edward C. (ODAG)" <ecocallaghan@jmd.usdoj.gov>
Cc: "Hovakimian, Patrick (ODAG)" <phovakimian4@jmd.usdoj.gov>
Subject: RE: TP for use tomorrow AM

I have marked some revisions in attached for my own use. Please share with OLA for awareness. Thanks.

From: Rosen, Jeffrey A. (ODAG) (b)(6)
Sent: Wednesday, September 25, 2019 7:51 AM
To: O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>
Cc: Hovakimian, Patrick (ODAG) <phovakimian4@jmd.usdoj.gov>

Ed. Novakimian, Patrick (ODAG) <enovakimian@jmd.usdoj.gov>

Subject: Re: TP for use tomorrow AM

I would suggest (b)(5)

[REDACTED]

Sent from my iPhone

On Sep 24, 2019, at 10:52 PM, O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov> wrote:

FYI

Edward C. O'Callaghan
202-514-2105

Begin forwarded message:

From: "Boyd, Stephen E. (OLA)" <seboyd@jmd.usdoj.gov>
Date: September 24, 2019 at 9:26:11 PM EDT
To: "Rabbitt, Brian (OAG)" <brrabbitt@jmd.usdoj.gov>, "Kupec, Kerri (OPA)" <kkupec@jmd.usdoj.gov>, "O'Callaghan, Edward C. (ODAG)" <ecocallaghan@jmd.usdoj.gov>
Subject: TP for use tomorrow AM

Lady and Gentlemen:

See attached for first draft of general use TPs for tomorrow's calls with members. Taken largely from the statement. Please edit and revise as you see fit. (b)(5)
[REDACTED] (By necessity, they will need to be pretty quick so we can work through the list.)

Callers will be the AG (doesn't really need TPs), the DAG, and some OLA folks.

I'd like to get these in good shape and then also compare with the briefing tomorrow.

Thanks -

Stephen

Stephen E. Boyd
Assistant Attorney General
U.S. Department of Justice
Washington, D.C.

(b)(6)

<TPs for Member Calls.docx>

Hovakimian, Patrick (ODAG)

From: Hovakimian, Patrick (ODAG)
Sent: Wednesday, September 25, 2019 8:30 AM
To: Rosen, Jeffrey A. (ODAG)
Cc: O'Callaghan, Edward C. (ODAG)
Subject: Fwd: TP for use tomorrow AM
Attachments: TPs for Member Calls v2.docx; ATT00001.htm

Rabbitt made some edits this morning. Will try to reconcile anything that might be a material difference from how you've edited yours, as appropriate.

Patrick Hovakimian
202-532-3295

Begin forwarded message:

From: "Boyd, Stephen E. (OLA)" <seboyd@jmd.usdoj.gov>
Date: September 25, 2019 at 8:24:57 AM EDT
To: "Hovakimian, Patrick (ODAG)" <phovakimian4@jmd.usdoj.gov>, "Escalona, Prim F. (OLA)" <pfescalona@jmd.usdoj.gov>, "Hankey, Mary Blanche (OLA)" <mhankey@jmd.usdoj.gov>, "Lasseter, David F. (OLA)" <dlasseter@jmd.usdoj.gov>, "Hart, Jessica E. (OLA)" <jehart@jmd.usdoj.gov>
Subject: RE: TP for use tomorrow AM

Duplicative Material - See Bates Stamp Page 20200330-0000698



Benczkowski, Brian (CRM)

From: Carr, Peter (OPA)
Sent: Wednesday, September 25, 2019 2:49 PM
To: Benczkowski, Brian (CRM)
Subject: RE: Justice Manual 9-85.210

Got it, thank you.

From: Benczkowski, Brian (CRM) (b) (6) Per CRM i@CRM.USDOJ.GOV>
Sent: Wednesday, September 25, 2019 2:48 PM
To: Carr, Peter (OPA) <pcarr@jmd.usdoj.gov>
Subject: Justice Manual 9-85.210

As we discussed, please see below. I've highlighted the relevant portions of the provision.

9-85.210 - Violations of Campaign Financing Laws, Federal Patronage Laws, and Corruption of the Electional Process—Consultation Requirement

Consultation with the Public Integrity Section of the Criminal Division is required in all federal criminal matters that focus on violations of federal or state campaign financing laws, federal patronage crimes, and corruption of the election process. These offenses include, but are not limited to, offenses described in: 18 U.S.C. §§ 241 to 242, 592 to 611; 42 U.S.C. §§ 1973i(c), 1973i(e), and 1973gg-10; 2 U.S.C. §§ 431 to 455; and prosecutive theories that focus on election fraud or campaign fund raising violations using 18 U.S.C. §§ 1341, 1343, and 1346; 18 U.S.C. § 1952; 18 U.S.C. §§ 1956 and 1957.

With regard to federal campaign financing matters arising under 52 U.S.C. §§ 30101-30145, United States Attorneys shall consult with the Public Integrity Section before any inquiry or preliminary investigation is requested or conducted. United States Attorneys shall also consult with the Public Integrity Section before instituting grand jury proceedings, filing an information, or seeking an indictment charging a campaign financing crime.

With regard to all other election crime matters (other than those described in JM 9-85.200 (Federally Protected Activities)), namely, alleged election fraud or patronage offenses, United States Attorneys shall consult with the Public Integrity Section before an investigation beyond a preliminary inquiry is requested or conducted. In this connection, the Department views any voter interviews in the preelection and balloting periods—other than interviews of a complainant and any witnesses he or she may identify—as beyond a preliminary investigation. Thus, the Public Integrity Section should be consulted before such interviews.

Finally, as with campaign financing matters, United States Attorneys also shall consult with the Public Integrity Section before instituting grand jury proceedings, filing an information, or seeking an indictment charging an election fraud or patronage offense.

Brian A. Benczkowski
Assistant Attorney General, Criminal Division
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
P: (b) (6) Per CRM
E: (b) (6) Per CRM i@usdoj.gov

Benczkowski, Brian (CRM)

From: Carr, Peter (OPA)
Sent: Wednesday, September 25, 2019 8:06 PM
To: Benczkowski, Brian (CRM); Cronan, John (CRM); Wong, Candice (CRM); Driscoll, Kevin (CRM)
Subject: Justice Dept. rejected investigation of Trump phone call just weeks after it began examining the matter - The Washington Post

https://www.washingtonpost.com/national-security/justice-dept-rejected-investigation-of-trump-phone-call-just-weeks-after-it-began-examining-the-matter/2019/09/25/6f7977ce-dfb5-11e9-8dc8-498eabc129a0_story.html

Cronan, John (CRM)

From: Carr, Peter (OPA)
Sent: Wednesday, September 25, 2019 10:22 AM
To: Benczkowski, Brian (CRM); Cronan, John (CRM); Driscoll, Kevin (CRM); Wong, Candice (CRM)
Subject: FW: OLC opinion and DOJ statements re: Ukraine
Attachments: 2019-09-24-urgent-concern.pdf

In case you didn't receive this.

-Peter

From: Kupec, Kerri (OPA) <kkupec@jmd.usdoj.gov>
Sent: Wednesday, September 25, 2019 10:01 AM
To: Kupec, Kerri (OPA) <kkupec@jmd.usdoj.gov>
Subject: OLC opinion and DOJ statements re: Ukraine

Statement on Ukraine – Attributable to Department of Justice Spokesperson Kerri Kupec

The Attorney General was first notified of the President's conversation with Ukrainian President Zelensky several weeks after the call took place, when the Department of Justice learned of a potential referral. The President has not spoken with the Attorney General about having Ukraine investigate anything relating to former Vice President Biden or his son. The President has not asked the Attorney General to contact Ukraine – on this or any other matter. The Attorney General has not communicated with Ukraine – on this or any other subject. Nor has the Attorney General discussed this matter, or anything relating to Ukraine, with Rudy Giuliani.

A Department of Justice team led by U.S. Attorney John Durham is separately exploring the extent to which a number of countries, including Ukraine, played a role in the counterintelligence investigation directed at the Trump campaign during the 2016 election. While the Attorney General has yet to contact Ukraine in connection with this investigation, certain Ukrainians who are not members of the government have volunteered information to Mr. Durham, which he is evaluating.

Statement on Referral –Attributable to Department of Justice Spokesperson Kerri Kupec

In August, the Department of Justice was referred a matter relating to a letter the Director of National Intelligence had received from the Inspector General for the Intelligence Community regarding a purported whistleblower complaint. The Inspector General's letter cited a conversation between the President and Ukrainian President Zelensky as a potential violation of federal campaign finance law, while acknowledging that neither the Inspector General nor the complainant had firsthand knowledge of the conversation. Relying on established procedures set forth in the Justice Manual, the Department's Criminal Division reviewed the official record of the call and determined, based on the facts and applicable law, that there was no campaign finance violation and that no further action was warranted. All relevant components of the Department agreed with this legal conclusion, and the Department has concluded the matter.

Kerri Kupec

Director

DOJ-19-1197, 19-1206, 19-1210, 19-1244-F₁ 19-1242, 19-1246-G, 19-1193-H, 19-1241-L-000088

Office of Public Affairs
U.S. Department of Justice
kerri.kupec@usdoj.gov
202.353.5132

Cronan, John (CRM)

From: Carr, Peter (OPA)
Sent: Wednesday, September 25, 2019 11:12 AM
To: Benczkowski, Brian (CRM); Cronan, John (CRM); Wong, Candice (CRM); Driscoll, Kevin (CRM)
Subject: FW: Bloomberg: "Trump Asked Ukraine to Work With Giuliani, Barr on Biden Probe"

FYI, see highlighted portion below.

From: DOJ Real Time News Clips <alert-doj@rendon.com>
Sent: Wednesday, September 25, 2019 10:56 AM
To: Carr, Peter (OPA) <pcarr@jmd.usdoj.gov>
Subject: Bloomberg: "Trump Asked Ukraine to Work With Giuliani, Barr on Biden Probe"

Bloomberg: "Trump Asked Ukraine to Work With Giuliani, Barr on Biden Probe," Chris Strohm and Justin Sink, September 25, 2019
<https://www.bloomberg.com/news/articles/2019-09-25/trump-asked-ukraine-to-work-with-giuliani-barr-on-biden-probe>

President Donald Trump asked the president of Ukraine to work with his personal lawyer, Rudy Giuliani, and the U.S. attorney general, William Barr, to "look into" his political rival, Joe Biden, according to a rough transcript of a call between the two leaders released Wednesday.

Trump also asked Ukraine President Volodymyr Zelenskiy to investigate whether his country could locate a hacked Democratic National Committee computer server that became an issue in Trump's 2016 campaign against Hillary Clinton, according to notes from the call.

Trump mentioned Biden several times during the call as he described allegations that, as vice president, Biden had pushed to oust Ukraine's top prosecutor to help a company his son was working for -- claims that have been discredited.

"There's a lot of talk about Biden's son, that Biden stopped the prosecution and a lot of people want to find out about that. So whatever you can do with the attorney general would be great," Trump said, referring to Barr.

Zelenskiy suggested that he wanted to accommodate Trump, replying that after he appoints a new chief prosecutor, "he or she will look into the situation, specifically to the company that you mentioned in this issue."

What Trump said during the July 25 exchange with Zelenskiy has become central to an impeachment inquiry House Speaker Nancy Pelosi announced on Tuesday. Lawmakers are probing whether Trump pressured Ukraine to re-open a criminal inquiry linked to Biden's family in exchange for restoring U.S. military aid that Trump halted prior to the call, according to a person familiar with the matter.

Trump agreed to release details about the phone call in the face of mounting pressure from Democrats, as well as some Republicans.

But the president doesn't explicitly say that future Ukrainian assistance from the U.S. would be conditioned on the investigation into Biden, and only raised the issue of investigating Biden after Zelenskiy first mentioned wanting to meet with Giuliani - two points the White House is certain to argue are exculpatory.

And while the president says the U.S. "does a lot for Ukraine," that comment was in the context of complaining about a lack of military assistance to Ukraine from Germany and he never specifically mentions a military aid package he froze in the days before his call with the Ukrainian leader.

It's not clear if Zelenskiy was aware that the U.S. aid had been frozen at the time of the call. Early in the call, Zelenskiy thanked Trump for previous U.S. support and said he was "almost ready" to buy additional Javelin anti-tank missiles. Trump responded by asking Zelenskiy for "a favor" -- to look into the disposition of a Democratic National Committee server.

"The server, they say Ukraine has it," Trump told him, according to the White House document. Trump spent more time talking about Biden. "Biden went around bragging that he stopped the prosecution so if you can look into it ... it sounds horrible to me," he said later in the call. Zelenskiy agreed to re-open an investigation. He asked for a favor "because our country has been through a lot and Ukraine knows a lot about it."

Trump also disparaged Special Counsel Robert Mueller's testimony on Capitol Hill as "an incompetent performance, but they say a lot of it started in Ukraine. Whatever you can do, it's very important that you do it if that's possible."

The White House document, labeled a "Memorandum of a Telephone Conversation," contains a note that it is "not a verbatim transcript."

"The text of this document records the notes and recollections of Situation Room Duty Officers and NSC policy staff assigned to listen and memorialize the conversations in written form as the conversation takes place," the note said.

Conversations between U.S. presidents and their foreign counterparts are generally confidential, and the memos documenting them are closely held secrets. This one was originally labeled "Secret" and "Eyes Only." Trump expressed reticence about releasing the Zelenskiy transcript out of concern about setting a precedent. Mounting pressure from Democrats as well as some Republicans led him to order the document declassified.

A whistle-blower complaint filed by an intelligence official over a sequence of events including the call led the inspector general for the intelligence community to suggest Trump may have violated campaign finance law and refer the matter to the Justice Department and FBI for an investigation into potential violations.

The Justice Department conducted an investigation and concluded last week that Trump didn't violate campaign finance laws in the course of the call, Justice Department spokeswoman Kerri Kupec said in a statement. But the Justice Department didn't take into consideration that Trump was withholding military aid to Ukraine at the time of the call, one official said. The official asked not to be identified because of the sensitivity of the matter.

The intelligence whistle-blower didn't have first-hand knowledge of the call, and the intelligence community's inspector general said there was some indication the person has a "political bias" in favor of one of Trump's political rivals, the Justice Department's legal opinion states.

The department's Office of Legal Counsel also determined that the complaint from the intelligence official didn't fall under a law requiring it to be provided to Congress.

Although Trump talked about involving Barr in an investigation into Biden, Barr has not recused himself from the matter, the official said. Kupec said Barr never discussed the matter with Trump or Giuliani and hasn't been in contact with Ukraine.

Lawmakers are still seeking additional information about Trump's actions, including the whistle-blower complaint.

But Republicans quickly said the transcript should exonerate Trump.

"There was no quid pro quo and nothing to justify the clamor House Democrats caused yesterday," House Judiciary top Republican Doug Collins of Georgia said of the transcript. "The real danger here is that Democrats keep using baseless accusations in hopes of crippling a successful presidency."

The president said Tuesday that he had withheld the military aid to Ukraine over a previously unknown dispute with Europe.

By releasing the transcript, Trump appears to be trying to defuse a ballooning controversy over allegations he sought foreign help to smear a political rival.

END

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Cronan, John (CRM)

From: Carr, Peter (OPA)
Sent: Wednesday, September 25, 2019 11:17 AM
To: Benczkowski, Brian (CRM); Cronan, John (CRM); Wong, Candice (CRM); Driscoll, Kevin (CRM)
Subject: FW: USA Today: "Trump administration releases transcript of call with Ukraine's President Zelensky amid impeachment inquiry"

See highlighted section below.

From: DOJ Real Time News Clips <alert-doj@rendon.com>
Sent: Wednesday, September 25, 2019 11:03 AM
To: Carr, Peter (OPA) <pcarr@jmd.usdoj.gov>
Subject: USA Today: "Trump administration releases transcript of call with Ukraine's President Zelensky amid impeachment inquiry"

USA Today: "Trump administration releases transcript of call with Ukraine's President Zelensky amid impeachment inquiry," Kevin Johnson, David Jackson, Bart Jansen, and John Fritze, September 25, 2019
<https://www.usatoday.com/story/news/politics/2019/09/25/trump-impeachment-transcript-call-ukrainian-president-biden/2431136001/>

President Donald Trump repeatedly pressed the president of Ukraine to re-open an investigation into a Ukrainian energy company to focus on any involvement by Democratic presidential candidate Joe Biden and his son, Hunter, according to the transcript of a July telephone call between the two leaders.

In the 30-minute call, reduced to a five-page transcript released by the administration Wednesday, Trump also told President Volodymyr Zelensky that he was directing his personal attorney, Rudy Giuliani, and Attorney General William Barr, to assist in the inquiry "to get to the bottom of it."

"There's a lot of talk about Biden's son – that Biden stopped the prosecution and a lot of people want to find out about that so whatever you can do with the attorney general would be great," Trump said.

The transcript was released the day after House Speaker Nancy Pelosi announced an impeachment inquiry.

Trump references Barr at least four times during the call, along with the potential help the attorney general and Giuliani could bring to re-starting an inquiry into the gas company, Burisma, where Hunter Biden once served on the company's board.

At one point, Trump tells Zelensky of the Biden matter: "If you can look into it ... it sounds horrible to me."

Officials could not explain the ellipsis, saying only that they are used when the conversation is inaudible and not picked up by voice recognition software.

It is the first time another administration official has emerged in Trump's effort to solicit a foreign power's help in damaging a political rival.

Despite the repeated references to Barr in Trump's call, Justice Department spokeswoman Kerri Kupec said the attorney general learned of the president's July 25 conversation "several weeks" after it took place and that Barr has not communicated with Ukrainian officials.

The matter is likely to raise serious questions, as Justice officials acknowledged Wednesday that Intelligence Community's inspector general referred Trump's call to the Justice Department and the FBI for possible criminal investigation related to a possible violation of campaign finance law after the president's contact with Ukraine became the subject of a whistleblower's complaint last month.

"The inspector general's letter cited a conversation between the president and Ukrainian President Zelensky as a potential violation of federal campaign finance law," Kupec said. "Relying on established procedures set forth, ... the department's Criminal Division reviewed the official record of the call and determined, based on the facts and applicable law, that there was no campaign finance violation and no further action was warranted."

Justice officials said Barr was aware of the inspector general's referral but did not make the final decision to reject the opening of a criminal investigation of the president.

The officials acknowledged, however, that the Justice Department review did not include interviews of potential witnesses to Trump's call or others with potential knowledge of it.

"All relevant components of the department agreed with this legal conclusions, and the department has concluded the matter," Kupec said.

The decision not to open a criminal investigation was made just last week, Justice officials said.

Nevertheless, Trump seemed eager to offer Barr's help to Zelensky on both the Burisma inquiry and another long-time obsession of the president's: missing emails and the hack of the server at the Democratic National Committee.

"The server, they say Ukraine has it," Trump told his counterpart. "There are a lot of things that went on, the whole situation... I would like to have the attorney general call you or your people and I would like you to get to the bottom of it."

Justice officials maintained Wednesday that the attorney general had not spoken with the president about Trump's interest in targeting Biden or his son, despite the repeated references to Barr on the call.

"The president has not asked the attorney general to contact Ukraine – on this or any other matter," Kupec said. "The attorney general has not communicated with Ukraine –on this or any other subject. Nor has the attorney general discussed this matter, or anything related to Ukraine with Rudy Giuliani."

Democrats have argued that asking a foreign government to investigate a political rival would be a crime.

Hillary Clinton, Trump's opponent in the 2016 election, called for his impeachment shortly after the release.

"The president of the United States has betrayed our country," she tweeted. "That's not a political statement – it's a harsh reality, and we must act. He is a clear and present danger to the things that keep us strong and free. I support impeachment."

Trump, who has defended the conversation with Zelensky, said the transcript would show "a very friendly and totally appropriate call" with the Ukraine leader. He described the impeachment drive in a tweet as "nothing more than a continuation of the Greatest and most Destructive Witch Hunt of all time!"

The White House is also weighing whether to give Congress a whistleblower report that outlines concerns about Trump's interaction with a foreign leader, according to two administration sources speaking on the condition of anonymity to discuss internal deliberations.

Trump remained in New York on Wednesday for the United Nations General Assembly – and one of his meetings is with Ukraine president Zelensky.

The whistleblower complaint, which triggered the impeachment inquiry, is undergoing a classification review and should be provided to Congress by Thursday, the day the acting director of national security is scheduled to appear before lawmakers. They are also preparing to release an inspector general's report on the complaint which reportedly makes several accusations against Trump.

Attorneys are also negotiating possible testimony of the whistleblower to Congress, officials said.

Critics had expressed skepticism that the Trump team would provide a complete transcript of his conversation with Zelensky and have insisted on release of the whistleblower's complaint.

Some legal analysts were aghast, saying Trump's casual talk about assistance to Ukraine in a conversation that also touched on investigating Biden looks like nothing less bribery.

"Even as summarized by this White House, and what we know about the freeze on Ukraine aid before the call, any competent federal prosecutor would charge this as a quid pro quo," said Mimi Rocah, a former federal prosecutor in New York. "This is bribery."

In calling for impeachment, Democrats cited evidence that Trump demanded that Zelensky investigate Biden and his son Hunter Biden over the latter's business activities in Ukraine. They also questioned whether Trump threatened to withhold foreign aid from Ukraine if it refused to investigate the U.S. president's political rival.

While acknowledging he discussed Biden on the call, Trump said he only wanted to make sure Ukraine was thoroughly investigating claims of corruption.

Trump also said in recent days that he held up U.S. assistance to payments to Ukraine before his phone call with Zelensky. He said he did so because allies like France and Germany weren't contributing enough foreign aid to the country.

Other shoes are likely to drop soon in the investigation.

Rep. Adam Schiff, R-Calif., chairman of the House Intelligence Committee, said the whistleblower has asked to speak with that committee, and attorneys are negotiating the ground rules for such an appearance.

"We're in touch with counsel and look forward to the whistleblower's testimony as soon as this week," Schiff tweeted.

The scandal erupted over an Aug. 12 complaint from an unnamed official in the intelligence community who had called attention to Trump's contacts with Ukraine and perhaps other countries. On July 25, had a phone call with Zelensky to urge the Ukrainian leader to fight corruption.

Trump had acknowledged bringing up Biden in the conversation.

Trump and Giuliani have been pushing Ukraine to investigate Burisma Group, a Ukrainian energy company. Hunter Biden, the former vice president's son, served on Burisma's board of directors.

Critics have accused Trump of using foreign aid to leverage Ukraine into investigating Biden. At the time Trump and Zelensky spoke, the Trump administration was holding up hundreds of millions of dollars in military aid approved by Congress.

While Trump never explicitly threatened to withhold aid, the president made a point to play up the United States' commitment to support Ukraine while bashing much of Europe.

"I will say that we do a lot for Ukraine," Trump said. "We spend a lot of effort and a lot of time. Much more than the European countries are doing and they should be helping you more than they are. Germany does almost nothing for you."

Zelensky responded, not only by assuring Trump that a new prosecutor would look into the Burisma matter but also broaching the country's continuing need for defense assistance.

"I would also like to thank you for your great support in the area of defense," Zelensky said. "We are ready to continue to cooperate for the next steps specifically we are almost ready to buy more (anti-tank missiles) from the United States for defense purposes."

END

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Cronan, John (CRM)

From: Carr, Peter (OPA)
Sent: Wednesday, September 25, 2019 4:56 PM
To: Benczkowski, Brian (CRM); Cronan, John (CRM); Wong, Candice (CRM); Driscoll, Kevin (CRM)
Subject: CNN: How the Justice Department handled the criminal referrals in the Ukraine call controversy

CNN: How the Justice Department handled the criminal referrals in the Ukraine call controversy

<https://www.cnn.com/2019/09/25/politics/justice-fbi-referral/index.html>

By Katelyn Polantz
September 25, 2019

Three times in total in the last month, the Justice Department and the FBI heard from top intelligence community officials about President Donald Trump's call with the Ukrainian president.

Those referrals prompted prosecutors to consider whether to open a full-blown campaign finance criminal investigation. DOJ decided not to, yet the intelligence community's inspector general and the Director of National Intelligence had thought the whistleblower's allegation was credible enough to seek legal backup.

So what happened?

The information in the Justice Department moved quickly beginning at the end of August. Two weeks after Intelligence Community Inspector General Michael Atkinson received the whistleblower's complaint about Trump's July phone call, he notified his superior, the acting Director of National Intelligence Joseph Maguire. Atkinson believed it to be a credible complaint and found it worthy to be handled by the intelligence community and referred to Congress under the law.

But instead of the route to Congress, the whistleblower's allegation wound its way across the Justice Department.

In that final week of August, Maguire's team reached out to the Justice Department. The intel office had a question for Justice's Office of Legal Counsel on whether the office needed to alert Congress. That was the first time DOJ was alerted about the situation, senior officials said. The Office of Legal Counsel later said the complaint could be looked at as a possible criminal matter, sending it along to the department's Criminal Division, according to a legal memo released Wednesday.

Around the same time, Atkinson, who had first heard from the whistleblower, also referred the matter to the Justice Department.

Together, those notifications kicked off the Justice Department's probe of whether there was a possible violation of a campaign finance criminal statute.

Justice's Criminal Division took the lead. Prosecutors obtained the summary transcript of the call from the White House, and prosecutors confirmed with knowledgeable people at the White House that the five-page document was the best evidence available, according to the officials. They did not interview any to gather more facts.

On the day after Labor Day, the Office of Legal Counsel had its answer for Maguire. The whistleblower's complaint shouldn't be considered of "urgent concern" and require disclosure to Congress, Steven Engel, the assistant attorney general for the Office of Legal Counsel wrote.

Engel reasoned that preventing foreign campaign contributions that could influence an election was not in the "operational responsibility" of the Director of National Intelligence. The DOJ also noted that the President is not a member of the intelligence community, and Trump's phone call itself wasn't an intelligence activity.

"The [whistleblower] complainant describes a hearsay report that the President, who is not a member of the intelligence community, abused his authority or acted unlawfully in connection with foreign diplomacy," Engel

wrote. But the whistleblower's allegations "do not arise in connection with any such intelligence activity at all" that's handled by the Office of the Director of National Intelligence.

The follow day, September 4, inspector general Atkinson spoke up again, this time to the FBI. With the Criminal Division at work, the FBI deferred to the prosecutors.

Two more weeks went by, with career public integrity prosecutors looking at the matter, according to the officials. Then sometime last week, the Justice Department made its final determination: no reason for a full-blown criminal investigation. What the President asked of Ukrainian President Volodymyr Zelensky couldn't amount to a quantifiable "thing of value" under campaign finance law, top administration officials determined.

Criminal Division assistant attorney general Brian Benczkowski made the final call, the senior DOJ officials said. The Office of Deputy Attorney General Jeffrey Rosen was also involved with the legal analysis, as were the heads of the National Security Division and the Office of Legal Counsel, the officials said.

"All relevant components of the Department agreed with this legal conclusion," Justice Department spokesperson Kerri Kupec said.

Attorney General William Barr, for his part, had "minimal involvement" in the Justice Department's handling of the referral, an official briefed on the matter said.

Lasseter, David F. (OLA)

From: Lasseter, David F. (OLA)
Sent: Wednesday, September 25, 2019 9:16 AM
To: Boyd, Stephen E. (OLA); Rabbitt, Brian (OAG); O'Callaghan, Edward C. (ODAG); Engel, Steven A. (OLC); Kupec, Kerri (OPA)
Subject: FW: Letter from Chairman Schiff
Attachments: 20190924 CMN Letter to Barr.pdf

FYSA....letter from Schiff concerning OLC opinion and additional questions related to communications about the issue.

From: Goldman, Daniel (b)(6)
Sent: Tuesday, September 24, 2019 11:50 PM
To: Lasseter, David F. (OLA) <dlasseter@jmd.usdoj.gov>
Cc: Letter, Douglas (b)(6) - Congressional Email; Bergreen, Timothy (b)(6) - Congressional Email; Bitar, Maher (b)(6) - Congressional Email
Subject: Letter from Chairman Schiff

David,

Please find attached a letter to the Attorney General related to the August 12 whistleblower complaint. A hard copy will follow tomorrow. Please confirm receipt.

We look forward to hearing from the Department on this important matter.

Best,
Dan

*Daniel S. Goldman
Sr. Advisor and Director of Investigations (Majority)
House Permanent Select Intelligence Committee
The Capitol (HVC-304)*

W: (b)(6)

C: (b)(6)



Permanent Select Committee
on Intelligence
U.S. House of Representatives

September 24, 2019

The Honorable William P. Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear General Barr:

Acting Director of National Intelligence (“DNI”) Joseph Maguire continues to withhold from the House Permanent Select Committee on Intelligence (“Committee”) a whistleblower complaint lawfully submitted to the Inspector General of the Intelligence Community (“IC IG”) by a member of the Intelligence Community (“IC”) on August 12, 2019 (“Complaint”). According to the Office of the Director of National Intelligence (“ODNI”), the Acting DNI withheld the complaint from the Committee after “consulting” with the Department of Justice (“DOJ” or “Department”).¹

In a September 17 letter to the Committee, IC IG Michael Atkinson informed the Committee that he disagreed with the determination, and “*particularly DOJ’s conclusion*,”² that “no statute requires disclosure of the complaint to the intelligence committees” because, per DOJ’s position, “the disclosure in this case did not concern allegations of conduct by a member of the Intelligence Community or involve an intelligence activity under the DNI’s supervision.”³ DOJ’s conclusion overruled a determination by the independent IC IG, after a preliminary review, that the Complaint met statutory criteria and appeared credible. The statute makes no provision for the DNI to refuse to transmit such a Complaint to the relevant congressional committees.

DOJ’s intervention in the Intelligence Community whistleblower complaint process, as set forth in 50 U.S.C. § 3033(k)(5), is improper and contrary to both a clear, categorical statutory

¹ Letter from Office of Director of National Intelligence General Counsel Jason Klitenic to Chairman Burr, Chairman Schiff, Vice Chairman Warner, and Ranking Member Nunes, September 13, 2019.

² Letter from IC IG Atkinson to Chairman Schiff and Ranking Member Nunes, September 17, 2019. (Emphasis added.)

³ Letter from Office of Director of National Intelligence General Counsel Jason Klitenic to Chairman Burr, Chairman Schiff, Vice Chairman Warner, and Ranking Member Nunes, September 13, 2019.

directive and longstanding IC whistleblowing practices. If permitted to stand, moreover, the Department's view, which the Acting DNI cited in overruling the IC IG, could have serious and corrosive consequences for whistleblowing within the IC and the Committee's exercise of its lawful oversight duties. The Committee therefore demands that you produce the relevant legal opinion, among other materials described below.

By letter dated September 13, 2019,⁴ and then through a second letter dated September 17, 2019,⁵ the ODNI refused to comply with the Committee's request and subsequent subpoena for all documents and materials related to the Complaint, which a member of the IC submitted to the IC IG in accordance with procedures permitting IC whistleblowers to report "serious or flagrant" misconduct of an "urgent concern" to the congressional intelligence committees.⁶

The ODNI explained its deviation from consistent past practice of disclosure by asserting that the complaint did not relate to "the funding, administration or operation of an intelligence activity within the responsibility or supervision of the DNI."⁷ As a result, ODNI, based on DOJ's legal opinion, determined that "no statute"—including 50 U.S.C. § 3033(k)(5)—required the complaint's transmittal to the congressional intelligence committees.

This determination was based on "consultation" with the Department, which, the Committee has learned, in fact involved a formal opinion—likely from the Office of Legal Counsel—based on a fact-specific analysis of the Complaint, yet without the benefit of the preliminary investigation conducted by the IC IG. In effect, the Department appears to have usurped the IC IG's fact-finding role in an unprecedented manner, and then disguised its reversal of the IC IG's findings in a purportedly non-partisan legal opinion from OLC.

To the contrary, the IC IG, who, unlike DOJ, routinely reviews this type of whistleblower complaint, found that the Complaint "not only falls within the DNI's jurisdiction, but relates to one of the most significant and important of the DNI's responsibilities to the American people."⁸

The statute, moreover, does not allow for this sort of *ex post facto* factual analysis or legal assessment of the underlying complaint by either ODNI, DOJ, or, per reports, the White House Counsel's Office. Instead, the statute requires that, if the IC IG finds that an urgent concern complaint is credible following a preliminary investigation, ODNI "shall" transmit the

⁴ Letter from ODNI General Counsel Jason Klitenic to Chairman Adam B. Schiff, dated September 13, 2019 ("ODNI Sept. 13 Letter").

⁵ Letter from ODNI General Counsel Jason Klitenic to Chairman Adam B. Schiff, dated September 17, 2019 ("ODNI Sept. 17 Letter").

⁶ 50 U.S. Code § 3033(k)(5).

⁷ The Sept. 13 Letter also cited the fact that the subject of the complaint is not a member of the Intelligence Community, but that is not a requirement of the statute and therefore is irrelevant to the "urgent concern" inquiry. See ODNI Sept. 13 Letter, p. 1, 2.

⁸ Letter from Inspector General for the Intelligence Community Michael K. Atkinson to Chairman Adam Schiff and Ranking Member Devin Nunes, dated September 17, 2019 ("IC IG Sept. 17 Letter"), at p. 2.

complaint to the congressional intelligence committees as requested by the whistleblower.⁹ Indeed, the Committee understands that this is the first complaint—credible or not—that ODNI has withheld from the congressional intelligence committees *at least* since the IC IG’s establishment by statute in 2010.

In support of its decision to overrule the IC IG, ODNI cited to several Executive Branch statements or opinions to support the notion that the statute permits the ODNI to review—and potentially withhold—information that is either classified or relates to “potentially privileged communications.”¹⁰ Yet neither classification nor privilege considerations formed the basis of ODNI’s decision, as informed by DOJ’s opinion, to withhold the Complaint from the congressional intelligence committees. In fact, the IC IG, who has reviewed the OLC opinion, explained to the Committee that ODNI’s decision to withhold the Complaint was “for reasons other than awaiting a classification review or asserting appropriate privileges.”¹¹ In fact, there has been no assertion of any privilege.

If permitted to stand, the Department’s flawed advice—particularly its factual conclusion that the complaint does not constitute an “urgent concern” under the statute and thus need not be transmitted to the committees—could have serious and far-reaching implications. The most serious relate to this whistleblower, who acted in good faith, in full compliance with statutory procedures, and with a reasonable expectation that, by adhering to such procedures, protections from reprisal would automatically apply as provided by law. DOJ’s radical interpretation of the law could result in a subsequent finding that a whistleblower who followed the law to protect classified information might not benefit from the important whistleblower protections included in the statute.

The potential chilling effect of this bait-and-switch could have widespread ramifications, both to this individual and to lawful whistleblowers inside and outside of the Intelligence Community. As a proud former member of the Department of Justice, I cannot underscore enough how alarmed I am that DOJ, whether through OLC or another component, would be complicit in such a distorted interpretation of a straight-forward statute in order to facilitate concealing from Congress information about serious or flagrant wrongdoing.

Other serious consequences could follow if DOJ’s position, which ODNI perceives to be binding, holds. Among other things, DOJ’s view appears to remove the Complaint from the jurisdiction of the IC IG, who therefore cannot conduct his own investigation into the underlying conduct.

⁹ 50 U.S. Code § 3033(k)(5)(C).

¹⁰ ODNI Sept. 13 Letter, p. 3.

¹¹ IC IG Sept. 17 Letter, p. 3. The IC IG also informed the Committee that every “urgent concern” complaint undergoes a classification review within the 21-day period between submission of the Complaint and the date by which the DNI must transmit a complaint. The Committee does not understand that a classification review forms any of the basis for withholding the Complaint by the ODNI.

These consequences raise the specter that the Department has participated in a dangerous cover-up to protect the President.¹²

Finally, the Committee also requests that the Department abide by its own “best practices” and produce the OLC opinion in order to bolster transparency and accountability.¹³ Applying this approach, OLC recently has released legally controversial opinions, including another opinion which, like this one, conferred discretion on the Executive Branch to ignore a clear statutory command to make information available to a congressional committee.¹⁴ The questionable foundation for the the Department’s advice to ODNI, and the harms that advice risk causing, require at least that the Department’s opinion be furnished to the Committee so that the Department’s actions can be evaluated fully.

Accordingly, pursuant to its constitutional oversight and legislative authority, its statutory authority to be kept fully and currently informed of all counterintelligence and foreign intelligence matters, and authority vested in the Committee as part of the House of Representatives’ formal impeachment inquiry, the Committee requests the following:

1. Any legal opinion, legal analysis, or factual analysis, by OLC or another element of the Department, related to the Complaint;
2. Any information related to an investigation or other form of assessment or inquiry by the Federal Bureau of Investigation into the underlying conduct of the Complaint, including but not limited to confirmation or denial of the existence of an open assessment, preliminary inquiry, and/or investigation;
3. Any and all DOJ communications, correspondence, and consultation with ODNI or the IC IG related to the Complaint;
4. Any and all DOJ communications, correspondence and consultation with the White House, including the White House Counsel’s office, related to the Complaint; and
5. Any and all documents and information about DOJ involvement, analysis, review and participation related to any previous whistleblower complaint under the Intelligence

¹² Neither the ODNI nor the IC IG would inform the Committee as to whether the underlying conduct had been referred to the Federal Bureau of Investigation (FBI) for further investigation. As outlined in more detail below, the Committee therefore asks the Department to confirm whether the FBI has opened an investigation into the underlying conduct.

¹³ See Memorandum for Attorneys of the Office, *Re: Best Practices for OLC Legal Advice and Written Opinions* at 5 (July 16, 2010).

¹⁴ See generally Memorandum for the General Counsel, Department of the Treasury, *Congressional Committee’s Request for the President’s Tax Returns Under 26 U.S.C. § 6103(f)* (June 13, 2019) (clear statutory directive to produce tax return information to a congressional committee may be ignored if the Executive Branch decides that the committee’s “legislative purpose” in seeking such information is, in the Executive Branch’s view, pretextual and/or not “legitimate”).

Community Whistleblower Protection Act of 1998 or its companion provisions found at 50 U.S.C. § 3033 *et seq.*

Please produce the response to the request in paragraph 1 above no later than **Friday, September 27**. Please produce the remainder of the materials requested no later than **Tuesday, October 1**. If you have any questions, please contact Committee staff at (202) 225-7690.

Sincerely,



Adam B. Schiff
Chairman

Cc: The Honorable Christopher Wray
Director, Federal Bureau of Investigation

Michael Horowitz, Esq.
Inspector General, Department of Justice

United States Senate

WASHINGTON, DC 20510-0504

<http://feinstein.senate.gov>

September 20, 2019

The Honorable William P. Barr
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Ave. NW
Washington, D.C. 20530

Dear Attorney General Barr:

This letter requests that you ensure that the whistleblower report provided to Director of National Intelligence Maguire by Inspector General Atkinson is transmitted to the relevant Committees of Congress.

The Intelligence Community Whistleblower Protection Act provides that the Director of National Intelligence “shall transmit” to relevant committees any whistleblower report from the Inspector General involving “a serious or flagrant problem, abuse, violation of law or Executive order, or deficiency relating to the funding, administration, or operation of an intelligence activity.” (50 U.S.C. § 3033(k)(5)(G)).

It has now been reported that the Department of Justice advised the Director of National Intelligence on whether to transmit the whistleblower report to Congress. Accordingly, please also provide any advice or guidance that was offered by the Justice Department to the DNI regarding the transmittal of this report.

Thank you for your prompt attention to my request.

Sincerely,



Dianne Feinstein
United States Senator

cc: The Honorable Lindsey O. Graham
Chairman, Senate Committee on Judiciary

O'Callaghan, Edward C. (ODAG)

From: O'Callaghan, Edward C. (ODAG)
Sent: Tuesday, September 24, 2019 4:34 PM
To: Rosen, Jeffrey A. (ODAG); Hovakimian, Patrick (ODAG)
Subject: FW: Statements (tomorrow)
Attachments: Unclassified Call Record.pdf; Urgent Concern Op (unclassified, signed).pdf

FYI.

Edward C. O'Callaghan
202-514-2105

From: Engel, Steven A. (OLC) (b)(6)
Sent: Tuesday, September 24, 2019 4:23 PM
To: Kupec, Kerri (OPA) <kkupec@jmd.usdoj.gov>; O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>; Rabbitt, Brian (OAG) <brrabbitt@jmd.usdoj.gov>; Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>
Cc: Gannon, Curtis E. (OLC) (b)(6)
Subject: RE: Statements (tomorrow)

Attached is the unclassified record of the call and the unclassified OLC opinion.

In the statement below, we should change (b)(5)

[REDACTED]



U.S. Department of Justice
Office of Legal Counsel

Office of the Assistant Attorney General

Washington, D.C. 20530

September 24, 2019

MEMORANDUM FOR JASON KLITENIC
GENERAL COUNSEL, OFFICE OF
THE DIRECTOR OF NATIONAL INTELLIGENCE

Re: "Urgent Concern" Determination
by the Inspector General of the Intelligence Community

On August 26, 2019, the Inspector General of the Intelligence Community ("ICIG") forwarded to the Acting Director of National Intelligence ("DNI") a complaint from an employee within the intelligence community.* The complainant alleged that unnamed "White House officials" had expressed concern about the content of a telephone call between the President and a foreign leader. According to the ICIG, statements made by the President during the call could be viewed as soliciting a foreign campaign contribution in violation of the campaign-finance laws. In the ICIG's view, the complaint addresses an "urgent concern" for purposes of triggering statutory procedures that require expedited reporting of agency misconduct to the congressional intelligence committees. Under the applicable statute, if the ICIG transmits such a complaint to the DNI, the DNI has seven days to forward it to the intelligence committees. *See* 50 U.S.C. § 3033(k)(5)(C).

The complaint does not arise in connection with the operation of any U.S. government intelligence activity, and the alleged misconduct does not involve any member of the intelligence community. Rather, the complaint arises out of a confidential diplomatic communication between the President and a foreign leader that the intelligence-community complainant received secondhand. The question is whether such a complaint falls within the statutory definition of "urgent concern" that the law requires the DNI to forward to the intelligence committees. We conclude that it does not. The alleged misconduct is not an "urgent concern" within the meaning of the statute because it does not concern "the funding, administration, or operation of an intelligence activity" under the authority of the DNI. *Id.* § 3033(k)(5)(G)(i). That phrase includes matters relating to intelligence activities subject to the DNI's supervision, but it does not include allegations of wrongdoing arising outside of any intelligence activity or outside the intelligence community itself.

Our conclusion that the "urgent concern" requirement is inapplicable does not mean that the DNI or the ICIG must leave such allegations unaddressed. To the contrary, the ICIG statute, 50 U.S.C. § 3033(k)(6), makes clear that the ICIG remains subject to 28 U.S.C. § 535, which broadly requires reporting to the Attorney General of "[a]ny information, allegation, matter, or complaint witnessed, discovered, or received in a department or agency . . . relating to violations

* This memorandum is an unclassified version of the memorandum with the same title that we provided on September 3, 2019. We have changed the prior version to avoid references to certain details that remain classified.

of Federal criminal law involving Government officers and employees.” 28 U.S.C. § 535(b). Accordingly, should the DNI or the ICIG receive a credible complaint of alleged criminal conduct that does not involve an “urgent concern,” the appropriate action is to refer the matter to the Department of Justice, rather than to report to the intelligence committees under section 3033(k)(5). Consistent with 28 U.S.C. § 535, the ICIG’s letter and the attached complaint have been referred to the Criminal Division of the Department of Justice for appropriate review.

I.

An “employee of an element of the intelligence community” (or an intelligence-community contractor) “who intends to report to Congress a complaint or information with respect to an urgent concern may report such complaint or information to the” ICIG. 50 U.S.C. § 3033(k)(5)(A).¹ On August 12, 2019, the Office of the ICIG received a complaint purporting to invoke this provision. The complainant alleged that he or she had heard reports from “White House officials” that, in the course of a routine diplomatic communication between the President and a foreign leader, the President had made statements that the complainant viewed as seeking to pressure that leader to take an official action to help the President’s 2020 re-election campaign. The complainant described this communication as arising during a scheduled call with the foreign leader that, consistent with usual practice, was monitored by a number of U.S. officials. Having heard about the President’s reported statements, the complainant expressed an intent to report this information to the intelligence committees.

When the ICIG receives a complaint about an “urgent concern,” the statute provides that the ICIG then has 14 days to “determine whether the complaint or information appears credible.” 50 U.S.C. § 3033(k)(5)(B). The ICIG determined that the complaint here involved an “urgent concern” under section 3033(k)(5) and that it appeared credible. As relevant here, the statutory definition of an “urgent concern” includes “[a] serious or flagrant problem, abuse, [or] violation of law . . . relating to the funding, administration, or operation of an intelligence activity within the responsibility and authority of the Director of National Intelligence involving classified information.” *Id.* § 3033(k)(5)(G)(i). According to the ICIG, the President’s actions could involve a “serious or flagrant problem,” “abuse,” or violation of law, and the ICIG observed that federal law prohibits any person from soliciting or accepting a campaign contribution or donation from a foreign national. *See, e.g.*, 52 U.S.C. § 30121(a).² The ICIG further noted that alleged misconduct by a senior U.S. official to seek foreign assistance to interfere in or influence a federal election could potentially expose the official to serious national security and counterintelligence risks. Although the ICIG’s preliminary review found “some indicia of an arguable political bias on the part of the Complainant in favor of a rival political candidate,” the ICIG concluded that the complaint’s allegations nonetheless appeared credible.

¹ Section 8H of the Inspector General Act of 1978 (“IG Act”), 5 U.S.C. app., parallels the urgent-concern provision of the ICIG statute, 50 U.S.C. § 3033(k)(5), and appears to provide another pathway to report an urgent concern to the ICIG or an appropriate inspector general. Because the complainant and the ICIG in this instance invoked only section 3033(k)(5), we address that provision in our opinion, but as discussed below, the DNI’s reporting obligation would be the same under either provision. *See infra* Part II.A & n.4.

² The ICIG determined that the allegation “appears credible” without conducting any detailed legal analysis concerning whether the allegation, if true, would amount to an unlawful solicitation of a campaign contribution. We likewise do not express a view on the matter in this opinion.

The ICIG concluded that the matter concerns an intelligence activity within the DNI's responsibility and authority. He reasoned that the DNI is the head of the intelligence community, acts as the principal adviser for intelligence matters related to national security, and oversees the National Intelligence Program and its budget. In addition, the intelligence community, under the DNI's direction, protects against intelligence activities directed against the United States, including foreign efforts to interfere in our elections. The ICIG also found it relevant that the President has directed the DNI to issue a report, within 45 days of a federal election, assessing any information indicating that a foreign government interfered in that election. *See* Exec. Order No. 13848, § 1(a) (Sept. 12, 2018). For these reasons, the ICIG concluded that the complaint involves an intelligence activity within the responsibility and authority of the DNI. He thus transmitted the complaint to the DNI on August 26, 2019.

II.

You have asked whether the DNI has a statutory obligation to forward the complaint to the intelligence committees. We conclude that he does not. To constitute an “urgent concern,” the alleged misconduct must involve “the funding, administration, or operation of an intelligence activity within the responsibility and authority” of the DNI. 50 U.S.C. § 3033(k)(5)(G)(i). Similar to other aspects of the ICIG's responsibilities, the urgent-concern provision permits employees to bring to the intelligence committees' attention credible allegations of serious abuses arising from within the U.S. intelligence community.³ This provision, however, does not cover every alleged violation of federal law or other abuse that comes to the attention of a member of the intelligence community. Where, as here, the report concerns alleged misconduct by someone from outside the intelligence community, separate from any “intelligence activity” within the DNI's purview, the matter is not an “urgent concern” under the statute.

A.

Congress has specified certain procedures by which an intelligence-community employee may submit a complaint to Congress. Those procedures, which involve the ICIG, require that the subject of the complaint present an “urgent concern.” In relevant part, an “urgent concern” is:

A serious or flagrant problem, abuse, violation of law or Executive order, or deficiency relating to *the funding, administration, or operation of an intelligence activity* within the responsibility and authority of the Director of National Intelligence involving classified information, but does not include differences of opinions concerning public policy matters.

³ We have recognized constitutional concerns with statutory requirements that subordinate executive officials disclose classified information to congressional committees. *See, e.g., Whistleblower Protections for Classified Disclosures*, 22 Op. O.L.C. 92, 100 (1998). In addition, the materials here concern diplomatic communications, and as Attorney General Janet Reno recognized, “[h]istory is replete with examples of the Executive's refusal to produce to Congress diplomatic communications and related documents because of the prejudicial impact such disclosure could have on the President's ability to conduct foreign relations.” *Assertion of Executive Privilege for Documents Concerning Conduct of Foreign Affairs with Respect to Haiti*, 20 Op. O.L.C. 5, 6 (1996) (opinion of Attorney General Janet Reno). Addressing the statutory question in this opinion, however, does not require us to consider constitutional limits on congressional reporting requirements.

50 U.S.C. § 3033(k)(5)(G)(i) (emphasis added). The Inspector General Act contains a parallel provision that applies to complaints submitted to inspectors general within the intelligence community. *See* IG Act § 8H(i)(1)(A), 5 U.S.C. app. (“A serious or flagrant problem, abuse, violation of law or Executive order, or deficiency relating to *the funding, administration, or operations of an intelligence activity* involving classified information, but does not include differences of opinions concerning public policy matters.” (emphasis added)).⁴

That definition undergirds the urgent-concern framework that applies when “[a]n employee of an element of the intelligence community . . . intends to report to Congress a complaint or information with respect to an urgent concern.” 50 U.S.C. § 3033(k)(5)(A). The provision contemplates, as relevant here, that the employee first “report[s] such complaint or information to the [ICIG].” *Id.* The ICIG then has 14 days to evaluate the credibility of the complaint “under subparagraph (A)” and determine whether to transmit it to the DNI. *Id.* § 3033(k)(5)(B). If the ICIG transmits the complaint to the DNI “under subparagraph (B),” then the DNI “shall, within 7 calendar days of such receipt, forward such transmittal to the congressional intelligence committees, together with any comments the [DNI] considers appropriate.” *Id.* § 3033(k)(5)(C).

Each of those steps builds on the previous one, but they all must rest on a sound jurisdictional foundation. If the complaint does not involve an “urgent concern,” as defined in the statute, then the remaining procedures are inapplicable. When the ICIG receives a complaint that is not an “urgent concern,” then he has not received a report “under subparagraph (A)” and section 3033(k)(5)(B) does not trigger a reporting obligation. And when the DNI receives a transmittal that does not present an urgent concern, then the DNI is not required to forward it to the congressional committees, because the complaint is not one “under subparagraph (B).” *Id.* § 3033(k)(5)(C).

B.

The complainant describes a hearsay report that the President, who is not a member of the intelligence community, abused his authority or acted unlawfully in connection with foreign diplomacy. In the ICIG’s view, those allegations fall within the urgent-concern provision because the DNI has operational responsibility to prevent election interference.⁵ But even if so,

⁴ The definition of “urgent concern” in the IG Act is not limited to intelligence activities that are specifically “within the responsibility and authority of the” DNI because the complaint procedures in section 8H are written to apply to multiple inspectors general within the intelligence community. *See* IG Act § 8H(a)(1)(A)–(D), 5 U.S.C. app. (including separate provisions for the Inspectors General for the Department of Defense, for the Intelligence Community, for the Central Intelligence Agency, and for the Department of Justice).

⁵ The ICIG cites no statute or executive order charging the DNI with operational responsibility for preventing foreign election interference. The DNI serves as the head of the intelligence community, the principal intelligence adviser to the President, and the official responsible for supervising the National Intelligence Program, who sets general objectives, priorities, and policies for the intelligence community. 50 U.S.C. §§ 3023(b), 3024(f)(1)(A), (f)(3)(A). The DNI thus surely has responsibility to coordinate the activities of the intelligence community and the provision of intelligence to the President and other senior policymakers concerning foreign intelligence matters. But the complaint does not suggest any misconduct by the DNI or any of his subordinates in connection with their duties. Moreover, even if the DNI had general oversight responsibility for preventing foreign election interference, the DNI’s oversight responsibilities do not appear to extend to the President. By statute, the DNI exercises his authority subject to the direction of the President, *see id.* §§ 3023(b), 3024(f)(1)(B)(i), (j), and the

it does not follow that the alleged misconduct by the President concerns “the funding, administration, or operation of an intelligence activity within the responsibility and authority” of the DNI because the allegations do not arise in connection with any such intelligence activity at all. 50 U.S.C. § 3033(k)(5)(G)(i). The complaint therefore does not state an “urgent concern.”

We begin with the words of the statute. Section 3033(k)(5)(G) does not expressly define “intelligence activity,” but the meaning of the phrase seems clear from context. The “intelligence activit[ies]” in question are ones over which the DNI has “responsibility and authority,” which points to intelligence-gathering, counterintelligence, and intelligence operations undertaken by the intelligence community under the supervision of the DNI. *Id.* The National Security Act of 1947 commonly refers to “intelligence activities” as authorized activities undertaken by the intelligence community. Section 3024(c)(4), for instance, requires the DNI to “ensure the effective execution of the annual budget for intelligence and intelligence-related activities.” *Id.* § 3024(c)(4). Section 3023(b)(3) authorizes the DNI to “oversee and direct the implementation of the National Intelligence Program,” *id.* § 3023(b)(3), which itself is defined to include “all programs, projects, and *activities* of the intelligence community,” *id.* § 3003(6) (emphasis added). Section 3094 conditions the use of appropriated funds “available to an intelligence agency . . . for an *intelligence or intelligence-related activity*,” and defines an “intelligence agency” as “any department, agency, or other entity of the United States involved in intelligence or intelligence-related activities.” *Id.* § 3094(a), (e)(1) (emphasis added). Sections 3091 and 3092 similarly contemplate the reporting to Congress of “intelligence activities” carried out by the U.S. government. *See id.* §§ 3091(a), 3092(a). In addition, in establishing the Office of the DNI, Congress was aware of the long-standing definition set forth in Executive Order 12333, which defines “[i]ntelligence activities” to “mean[] all activities that elements of the Intelligence Community are authorized to conduct pursuant to this order.” Exec. Order No. 12333, § 3.5(g) (Dec. 4, 1981) (as amended). The “urgent concern” statute thus naturally addresses complaints arising out of the “funding, administration, or operation” of activities carried out by the intelligence community.

This meaning of “intelligence activities” is also consistent with the ICIG’s authorities under other portions of section 3033. Just as an “urgent concern” must arise in connection with “an intelligence activity within the responsibility and authority” of the DNI, the ICIG’s jurisdiction and reporting obligations are keyed to those “programs and activities within the responsibility and authority of” the DNI. 50 U.S.C. § 3033(b)(1), (b)(3)(A), (b)(4)(A), (d)(1), (e)(1), (e)(2), (g)(2)(A), (k)(1)(B)(vii), (k)(2)(A). That language parallels the language that commonly defines the purview of inspectors general. *See* IG Act § 4(a)(1), 5 U.S.C. app. (generally authorizing inspectors general to conduct investigations “relating to the programs and operations” of the agency). Such language has been consistently construed to permit inspectors general to oversee an agency’s implementation of its statutory mission, but not to extend to

statute’s definition of “intelligence community” conspicuously omits the Executive Office of the President, *see id.* § 3003(4). The DNI’s charge to “ensure compliance with the Constitution and laws of the United States” applies to overseeing the “Central Intelligence Agency” and “other elements of the intelligence community.” *Id.* § 3024(f)(4). Nevertheless, we need not reach any definitive conclusion on these matters, because even if foreign election interference would generally fall within the DNI’s purview, the complaint does not concern an “intelligence activity within the responsibility and authority” of the DNI under section 3033(k)(5).

performing the agency’s mission itself. *See Inspector General Authority to Conduct Regulatory Investigations*, 13 Op. O.L.C. 54, 58–67 (1989).

Consistent with that view, the D.C. Circuit concluded that the Department of Transportation’s inspector general exceeded his authority when he “involved himself in a routine agency investigation” as opposed to “an investigation relating to abuse and mismanagement in the administration of the DOT or an audit of agency enforcement procedures or policies.” *Truckers United for Safety v. Mead*, 251 F.3d 183, 189–90 (D.C. Cir. 2001). The Fifth Circuit reached a similar conclusion regarding an inspector general’s authority to engage in regulatory compliance investigations, expressly endorsing the approach taken by this Office’s 1989 opinion. *See Burlington N. R.R. Co. v. Office of Inspector General*, 983 F.2d 631, 642–43 (5th Cir. 1993). Similarly here, the ICIG has the authority to review the DNI’s exercise of his responsibility to coordinate and oversee the activities of the intelligence community—including, for instance, reviewing whether the DNI has appropriately discharged any authorities concerning preventing foreign election interference. But the ICIG does not himself have the authority to investigate election interference by foreign actors, because such an investigation would not involve an activity or program of the intelligence community under the DNI’s supervision. We do not believe that the subjects of “urgent concern” reports to the ICIG are broader than other matters that fall within the investigative and reporting authority of the ICIG.

In establishing the office of the ICIG, Congress created an accountable and independent investigator who, subject to the general supervision of the DNI, would review the activities of members of the intelligence community. The ICIG is charged with “conduct[ing] independent investigations, inspections, audits, and reviews on programs and activities within the responsibility and authority” of the DNI. 50 U.S.C. § 3033(b)(1). The ICIG is also charged with overseeing and uncovering wrongdoing in the operations of programs under the DNI’s supervision. But the ICIG’s responsibility “to promote economy, efficiency, and effectiveness” in the administration of such programs, and “to prevent and detect fraud and abuse,” *id.* § 3033(b)(2), must necessarily concern the programs themselves. Although the DNI and the intelligence community collect intelligence against foreign threats, the ICIG’s responsibility is to watch the watchers in the performance of their duties, not to investigate and review matters relating to the foreign intelligence threats themselves.⁶

Throughout section 3033, the assumption, sometimes explicit and sometimes tacit, is that the ICIG’s authority extends to the investigation of U.S. government intelligence activities, not to those foreign threats that are themselves the concerns of the intelligence community. Thus, the ICIG has a statutory right of “access to any employee, or any employee of a contractor, of any element of the intelligence community.” *Id.* § 3033(g)(2)(B). Similarly, the ICIG should inform the congressional intelligence committees when an investigation “focuses on any current

⁶ To the extent relevant, the legislative history and statutory findings confirm that the provision relates only to problems within the intelligence community. In giving the ICIG jurisdiction to investigate “intelligence activities” within the DNI’s purview, Congress explained that it “believe[d] that an IC/IG with full statutory authorities and independence can better ensure that the ODNI identifies problems and deficiencies *within* the Intelligence Community.” H.R. Rep. No. 111-186, at 70–71 (2009) (emphasis added). Similarly, in establishing the “urgent concern” procedures in the IG Act, Congress made clear that the provision was designed to address “wrongdoing *within* the Intelligence Community.” Intelligence Community Whistleblower Protection Act of 1998, Pub. L. No. 105-272, tit. VII, § 701(b)(4), 112 Stat. 2396, 2413, 2414 (emphasis added).

or former *intelligence community official* who” holds certain high-ranking positions, *id.* § 3033(k)(3)(A)(ii) (emphasis added), or when a matter requires a report to the Department of Justice of “possible criminal conduct by [such] a current or former [intelligence-community] official,” *id.* § 3033(k)(3)(A)(iii). The ICIG’s reporting responsibilities, however, do not concern officials outside the intelligence community, let alone the President.

In this case, the conduct that is the subject of the complaint does not relate to an “intelligence activity” under the DNI’s supervision. The complainant alleges that the President made an inappropriate or potentially unlawful request on a routine diplomatic call with a foreign leader. But the President is not a member of the intelligence community, *see id.* § 3003(4), and his communication with a foreign leader involved no intelligence operation or other activity aimed at collecting or analyzing foreign intelligence. To the extent that the complaint warrants further review, that review falls outside section 3033(k)(5), which does not charge the ICIG (let alone every intelligence-community employee) with reporting on every serious allegation that may be found in a classified document. To the contrary, where the ICIG learns of a credible allegation of a potential criminal matter outside the intelligence community, the ICIG should refer the matter to the Department of Justice, consistent with 28 U.S.C. § 535.

We recognize that conduct by individuals outside of the intelligence community, or outside the government, can sometimes relate to “the funding, administration, or operation of an intelligence activity.” 50 U.S.C. § 3033(k)(5)(G)(i). For instance, if an alleged violation of law involves a non-agency party who conspired with a member of the intelligence community or who perpetrated a fraud on an agency within the DNI’s authority, that may well relate to “the funding, administration, or operation of an intelligence activity” because it would directly impact the operations or funding of the agency or its personnel. In 1990, then-Acting Deputy Attorney General William Barr acknowledged similar instances in which inspectors general could investigate “external parties.” Letter for William M. Diefenderfer, Deputy Director, Office of Management and Budget, from William P. Barr, Acting Deputy Attorney General, at 2–3 (July 17, 1990). None of those circumstances, however, is present here. The alleged conduct at issue concerns actions by the President arising out of confidential diplomatic communications with a foreign leader. Such matters simply do not relate to “the funding, administration, or operation of an intelligence activity within the responsibility and authority” of the DNI. 50 U.S.C. § 3033(k)(5)(G)(i).

III.

For the reasons set forth above, we conclude that the complaint submitted to the ICIG does not involve an “urgent concern” as defined in 50 U.S.C. § 3033(k)(5)(G). As a result, the statute does not require that the DNI transmit the complaint to the intelligence committees. Consistent with 28 U.S.C. § 535, however, the ICIG’s letter and the attached complaint have been referred to the Criminal Division of the Department of Justice for appropriate review.

Please let us know if we may be of further assistance.



STEVEN A. ENGEL
Assistant Attorney General

O'Callaghan, Edward C. (ODAG)

From: O'Callaghan, Edward C. (ODAG)
Sent: Tuesday, September 24, 2019 7:38 PM
To: Rosen, Jeffrey A. (ODAG); Hovakimian, Patrick (ODAG)
Subject: FW: Unclassified OLC opinion
Attachments: 2019-09-24 - AAG Engel - Urgent Concern Determination by IC IG (slip op) - FINAL.pdf

Edward C. O'Callaghan
202-514-2105

From: Engel, Steven A. (OLC) (b)(6)
Sent: Tuesday, September 24, 2019 6:58 PM
To: Rabbitt, Brian (OAG) <brrabbitt@jmd.usdoj.gov>; O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>; Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>; Kupec, Kerri (OPA) <kkupec@jmd.usdoj.gov>
Cc: Gannon, Curtis E. (OLC) (b)(6)
Subject: FW: Unclassified OLC opinion

Attached is the public version of the unclassified OLC opinion. We intend to put it on our website at 10 am tomorrow.

Steven A. Engel
Assistant Attorney General
Office of Legal Counsel
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530
Office: (b)(6)

O'Callaghan, Edward C. (ODAG)

From: O'Callaghan, Edward C. (ODAG)
Sent: Friday, September 20, 2019 8:52 AM
To: Kupec, Kerri (OPA); Engel, Steven A. (OLC)
Cc: Gannon, Curtis E. (OLC)
Subject: RE: Any update?

ok

Edward C. O'Callaghan
202-514-2105

From: Kupec, Kerri (OPA) <kkupec@jmd.usdoj.gov>
Sent: Friday, September 20, 2019 8:51 AM
To: Engel, Steven A. (OLC) (b)(6)
Cc: O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>; Gannon, Curtis E. (OLC) (b)(6)
Subject: Re: Any update?

Nope. I sent a text last night saying it was off - hope you got it.

On Sep 20, 2019, at 8:40 AM, Engel, Steven A. (OLC) <saengel@jmd.usdoj.gov> wrote:

I'm assuming no.

On Sep 20, 2019, at 8:25 AM, O'Callaghan, Edward C. (ODAG) (b)(6) wrote:

Just checking in. No 8:30 briefing?

Edward C. O'Callaghan
202-514-2105

On Sep 20, 2019, at 2:38 AM, Kupec, Kerri (OPA) <kkupec@jmd.usdoj.gov> wrote:

Of course

On Sep 19, 2019, at 10:21 PM, Engel, Steven A. (OLC) (b)(6) wrote:

Rudy is on Ingraham, on the offensive.

On Sep 19, 2019, at 10:01 PM, O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov> wrote:

Ok thanks

Edward C. O'Callaghan
202-514-2105

On Sep 19, 2019, at 9:54 PM, Engel, Steven A. (OLC)

(b)(6) wrote:

Thanks. Kerri and I talked with the AG (b)(5)
But it can wait until the am.

On Sep 19, 2019, at 9:46 PM, O'Callaghan, Edward C.
(ODAG) <ecocallaghan@jmd.usdoj.gov> wrote:

FYI from Ellis.

Edward C. O'Callaghan
202-514-2105

Begin forwarded message:

From: "Ellis, Michael J. EOP/WHO"
(b)(6)
Date: September 19, 2019 at 9:00:02 PM EDT
To: "O'Callaghan, Edward C. (ODAG)"
<Edward.C.O'Callaghan@usdoj.gov>
Subject: RE: Any update?

(b)(5)

From: O'Callaghan, Edward C. (ODAG)
<Edward.C.O'Callaghan@usdoj.gov>
Sent: Thursday, September 19, 2019 7:00 PM
To: Ellis, Michael J. EOP/WHO
(b)(6)
Subject: Any update?

Edward C. O'Callaghan
Principal Associate Deputy Attorney General
(o) 202-514-2105
(c) (b)(6)

Engel, Steven A. (OLC)

From: Engel, Steven A. (OLC)
Sent: Tuesday, September 17, 2019 3:51 PM
To: Rosen, Jeffrey A. (ODAG); Rabbitt, Brian (OAG); O'Callaghan, Edward C. (ODAG); Hovakimian, Patrick (ODAG); Kupec, Kerri (OPA)
Subject: FW: Draft HPSCI Letter
Attachments: Sept 17 Reponse to HPSCI.pdf; 2019_9_13 Letter to HPSCI and SSCI.pdf

FYI. DNI GC advises that they will make these letters public this afternoon.

Steven A. Engel
Assistant Attorney General
Office of Legal Counsel
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530
Office: (b)(6)

From: Bradley A Brooker (b)(3), (b)(6)
Sent: Tuesday, September 17, 2019 3:39 PM
To: Engel, Steven A. (OLC) (b)(6)
Cc: (b)(3), (b)(6) - Jason Klintonic; Whitaker, Henry C. (OLC) <hcwhitaker@jmd.usdoj.gov>
Subject: RE: Draft HPSCI Letter

Here is the final. They have now gone to the Committees.

UNCLASSIFIED

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
OFFICE OF GENERAL COUNSEL
WASHINGTON, DC 20511

September 17, 2019

The Honorable Adam Schiff
Chairman
Permanent Select Committee on Intelligence
United States House of Representatives
Washington, DC 20515

Dear Chairman Schiff,

I write in response to your September 13, 2019, letter and the subpoena from the House Permanent Select Committee on Intelligence (“HPSCI”), which was issued to the Acting Director of National Intelligence (“DNI”) last Friday evening. As you know, before you sent that letter, I had written to you, as well as to the other leaders of the Intelligence Committees, to explain how the DNI had handled a recent complaint received from the Inspector General of the Intelligence Community (“ICIG”). That letter explained how the DNI’s handling of the complaint complied with all applicable legal provisions.

The DNI has given nearly four decades of service to protecting the national security of our country. He is committed wholeheartedly to the mission of the Office of the Director of National Intelligence (“ODNI”), and he has deep respect for the relationship between ODNI and the Intelligence Committees. He looks forward to working constructively with you on this matter, as well as on the many pressing national security matters that our country faces, both this week, and on an ongoing basis.

The Intelligence Community and the Intelligence Committees have a long history of working cooperatively to support congressional oversight interests. We are disappointed, however, that rather than following our established practice of working together, HPSCI immediately served a subpoena for documents and demanded the Acting Director’s immediate testimony. That subpoena demanded production of sensitive and potentially privileged materials within fewer than two business days after service.

At the outset then, we believe that it is important to correct the record:

- ODNI has complied fully with all applicable law. We reiterate the full explanation provided in our September 13 letter, which I attach here.

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- The DNI believes strongly in the role of the ICIG and in the statutory provisions that encourage Federal employees and government contractors to report in good faith allegations of wrongdoing, in accordance with specific legal process. The DNI also takes seriously his obligation to protect whistleblowers from retaliation and pledges to continue to do so. The complainant here raised a matter with the ICIG. The ICIG has protected the complainant's identity from others within ODNI, and we will not permit the complainant to be subject to any retaliation or adverse consequence based upon his or her communicating the complaint to the ICIG.
- That said, the complaint forwarded to the ICIG does not meet the definition of "urgent concern" under 50 U.S.C. § 3033(k)(5). That definition concerns serious allegations relating to "the funding, administration or operation of an intelligence activity within the responsibility and authority" of the DNI. This complaint, however, concerned conduct by someone outside the Intelligence Community and did not relate to any "intelligence activity" under the DNI's supervision. Because the complaint was determined not to be an "urgent concern," the law did not require that the DNI forward the complaint to the Intelligence Committees.
- ODNI fully consulted with the ICIG during this process, and the DNI took no steps to prevent the ICIG from informing the Intelligence Committees of the existence of the complaint and the DNI's legal conclusion on this matter.

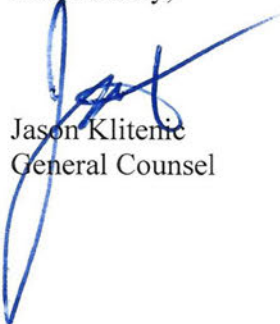
Notwithstanding that conclusion, as we explained last week, ODNI remains committed to working with the Committee to reach an acceptable accommodation, consistent with the established confidentiality interests of the Executive Branch. The complaint here involves confidential and potentially privileged matters relating to the interests of other stakeholders within the Executive Branch. Any decision by the DNI concerning potential accommodations of the Committee's requests will necessarily require appropriate consultations. While we are seeking to expedite consideration of the Committee's request, it will simply not be possible for the DNI to complete those consultations by this afternoon, which is less than two business days after we received the subpoena.

We also believe that it would be premature, at this juncture, for the Committee to expect for the DNI to appear on Thursday at a congressional hearing. Given the pressing responsibilities to which the DNI is devoted this week, he is not available on such short notice. We also believe that a hearing would not be a productive exercise while the ODNI remains engaged in deliberations over the appropriate response. We hope to quickly complete consultations to determine whether and to what extent we may be able to accommodate the Committee's request.

UNCLASSIFIED

We appreciate HPSCI's interest and support in this matter, and expect to provide a further response to the subpoena as soon as possible.

Respectfully,



Jason Klitemic
General Counsel

cc: Devin Nunes, Ranking Member

Attachment

UNCLASSIFIED

UNCLASSIFIED//~~FOUO~~

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
OFFICE OF GENERAL COUNSEL
WASHINGTON, DC 20511

September 13, 2019

The Honorable Richard Burr
Chairman
Select Committee on Intelligence
United States Senate
Washington, DC 20510

The Honorable Adam Schiff
Chairman
Permanent Select Committee on Intelligence
United States House of Representatives
Washington DC 20515

The Honorable Mark Warner
Vice Chairman
Select Committee on Intelligence
United States Senate
Washington, DC 20510

The Honorable Devin Nunes
Ranking Member
Permanent Select Committee on Intelligence
United States House of Representatives
Washington DC 20515

Dear Chairman Burr, Chairman Schiff, Vice Chairman Warner, and Ranking Member Nunes,

(U//~~FOUO~~) On September 10, 2019, Chairman Schiff sent a letter to the Acting Director of National Intelligence (“DNI”), requesting information relating to a complaint that the Inspector General of the Intelligence Community (“ICIG”) had received from an individual within the Intelligence Community. In that letter, Chairman Schiff expressed the view that the DNI’s handling of the complaint was not consistent with 50 U.S.C. § 3033(k)(5). The ICIG sent a separate letter to both committees concerning the underlying complaint on September 9, 2019. I write to provide the intelligence committees with additional information concerning the complaint and to explain how the DNI fully complied with applicable law. As explained below, because the disclosure in this case did not concern allegations of conduct by a member of the Intelligence Community or involve an intelligence activity under the DNI’s supervision, we determined, after consulting with the Department of Justice (“DOJ”), that no statute requires disclosure of the complaint to the intelligence committees.

(U//~~FOUO~~) The DNI believes strongly in the role of the ICIG and in the statutory provisions that encourage Federal employees and government contractors to report truthful allegations of wrongdoing, in accordance with the specific legal process. The DNI also takes seriously his obligation to protect lawful whistleblowers from retaliation. For the Intelligence Community, this process is codified in the Intelligence Community Whistleblower Protection Act (“ICWPA”) and in the parallel provisions in Title 50 of the U.S. Code. Under ICWPA, Congress enacted a framework to report matters of “urgent concern” within the Intelligence Community to Congress that protects both Congress’ legitimate oversight responsibilities as well as the constitutional authority of the President to determine how, when, and under what circumstances classified or privileged information may be reported to Congress. *See generally Whistleblower Protections for Classified Disclosures*, 22 Op. O.L.C. 92 (1998).

UNCLASSIFIED//~~FOUO~~

(U//~~FOUO~~) In this instance, the ICIG transmitted to the DNI a complaint, that he viewed as an urgent concern, and we reviewed that report immediately upon receipt. Because there were serious questions about whether the complaint met the statutory definition of an “urgent concern” under 50 U.S.C. § 3033(k)(5), we consulted with DOJ concerning the appropriate way to handle the complaint. We also included the ICIG in those consultations to make sure that he had the opportunity to provide his views.

(U//~~FOUO~~) Based on those consultations, we determined that the allegations did not fall within the statutory definition of an “urgent concern” and that the statute did not require the complaint to be transmitted to the intelligence committees. The statutory definition of “urgent concern” requires the reporting of a serious allegation involving classified information relating to “the funding, administration, or operation of an intelligence activity within the responsibility and authority of the Director of National Intelligence.” 50 U.S.C. § 3033(k)(5)(G)(i). This complaint, however, concerned conduct by someone outside the Intelligence Community and did not relate to any “intelligence activity within the responsibility and authority of the DNI.” The complaint therefore did not fall within the statutory framework governing reporting matters of “urgent concern” to Congress.

(U//~~FOUO~~) In his September 10, 2019 letter, Chairman Schiff states that the statute “requires” the DNI “to forward *all* whistleblower transmittals from the ICIG to the congressional intelligence committees within a statutorily-mandated 7-day period.” *Sept. 10 Letter at 1*. Respectfully, however, those are not the words of the statute. Instead, the statutory procedures apply only when “[a]n employee of an element of the intelligence community . . . intends to report to Congress a complaint or information with respect to an urgent concern,” which is itself a defined term. 50 U.S.C. § 3033(k)(5)(A), (k)(5)(G). The provision contemplates, as relevant here, that the employee first “report[s] such complaint or information to” the ICIG. *Id.* § 3033(k)(5)(A). The ICIG then determines whether to transmit it to the DNI. *Id.* § 3033(k)(5)(B). If the ICIG transmits a complaint to the DNI “under subparagraph (B),” then the DNI “shall, within 7 calendar days of such receipt, forward such transmittal to the [congressional] intelligence committees, together with any comments the [DNI] considers appropriate.” *Id.* § 3033(k)(5)(C). However, when a complaint does not state an urgent concern, the statute does not require the DNI to transmit it to the intelligence committees, because the complaint is not one “under subparagraph (B).” Here, we determined, in consultation with DOJ, that the complaint did not state an urgent concern.

(U//~~FOUO~~) We also respectfully disagree with the Chairman’s suggestion that “the statute provides for an Intelligence Community whistleblower to contact the congressional intelligence committees” directly in these circumstances. *Sept. 10 Letter at 2 n.3*. That provision of the statute cannot apply where, as here, the complaint falls outside the statutory definition of an urgent concern.

(U//~~FOUO~~) We believe that it is important to apply the statute as it was written, because reading it to give a complainant a unilateral right to forward a complaint to the congressional intelligence committees would raise serious constitutional questions. As the Obama Administration explained in its comments on the legislation enacting section 3033(k), “if this bill were read to give Intelligence Community employees unilateral discretion to disclose classified information to Congress, it would be unconstitutional.” Letter for the Hon. Dianne Feinstein,

Chairman, and the Hon. Christopher S. Bond, Vice-Chairman, Senate Select Committee on Intelligence, from Ronald Weich, Assistant Attorney General, Office of Legislative Affairs at 2 (Mar. 15, 2010). Assistant Attorney General Weich also advised Congress that, if it were enacted, the Executive Branch would “interpret” the statute “in a manner consistent with” the statement President Clinton issued upon signing the ICWPA into law. *Id.*

(U//~~FOUO~~) In that statement, President Clinton noted that “[t]he Constitution vests the President with authority to control disclosure of information when necessary for the discharge of his constitutional responsibilities.” *Statement on Signing the Intelligence Authorization Act for Fiscal Year 1999*, 2 Pub. Papers of William J. Clinton 1825 (1998). Accordingly, the Executive Branch would construe the statute not to “constrain” its “constitutional authority to review and, if appropriate, control disclosure of certain classified information.” *Id.* We therefore do not understand the statute to require the DNI automatically to forward every complaint to Congress, even where the complaint falls outside the plain terms of the underlying statutory procedures. We also do not understand the statute to foreclose the DNI from reviewing information in such complaints and withholding confidential Executive Branch information.

(U//~~FOUO~~) Notwithstanding the plain language of the statute, the ICIG requested that the DNI transmit the complaint to the intelligence committees or provide guidance on how he might do so. The ICIG observed that, in the past, the DNI has transmitted complaints to the intelligence committees even when the ICIG determined that they did not meet the definition of an “urgent concern.” The information within the present complaint, however, is different in kind from that involved in any past cases of which we are aware. The present complaint does not allege misconduct within the Intelligence Community or concern an intelligence activity subject to the authority of the DNI. Furthermore, because the complaint involves confidential and potentially privileged communications by persons outside the Intelligence Community, the DNI lacks unilateral authority to transmit such materials to the intelligence committees. Therefore, the DNI determined not to transmit this confidential information to the intelligence committees.

(U//~~FOUO~~) Notwithstanding this conclusion, ODNI remains committed to working to accommodate the Committees as best as we can. Indeed, after consulting with the ODNI, the ICIG informed the committees of the complaint. Should the Committees have further questions about this matter, we will seek to answer them and to work with the appropriate officials to accommodate any legitimate legislative interests that the Committees have in this matter, while also protecting Executive Branch confidentiality interests. *See Whistleblower Protections for Classified Disclosures*, 22 Op. O.L.C. at 102.

Respectfully,



Jason Klitenic
General Counsel

Benczkowski, Brian (CRM)

From: Rosen, Jeffrey A. (ODAG)
Sent: Sunday, September 15, 2019 1:28 PM
To: Benczkowski, Brian (CRM)
Subject: Re: Monday

8:30 am meeting will be over by 9:00 am at the latest. It is the topic you and I discussed on Friday but did not have time for briefing. Thanks.

Sent from my iPhone

> On Sep 15, 2019, at 1:15 PM, Benczkowski, Brian (CRM) (b) (6), (b) (7)(C) Per CRM@crm.usdoj.gov wrote:

>

> Yes, as long as I can get back to CRM by 10. I have a press conf on a bank case at 1030 for which I need to prep.

>

>

> Brian A. Benczkowski

> Assistant Attorney General

> Criminal Division

> United States Department of Justice

> P: (b) (6), (b) (7)(C) Per CRM

>

>

>> On Sep 15, 2019, at 1:05 PM, Rosen, Jeffrey A. (ODAG) <jarosen@jmd.usdoj.gov> wrote:

>>

>> I am thinking it would be better for us to talk before wider meeting per Steve Engel's request. Would it be feasible to do that at 8:30 am on Monday, and then Engel meeting at 11:15 am?

>>

>> Sent from my iPhone

Benczkowski, Brian (CRM)

From: Driscoll, Kevin (CRM)
Sent: Sunday, September 15, 2019 3:00 PM
To: Benczkowski, Brian (CRM)
Subject: Fwd: CRM update meeting

?

Sent from my iPhone

Begin forwarded message:

From: "Hovakimian, Patrick (ODAG)" <phovakimian4@jmd.usdoj.gov>
Date: September 15, 2019 at 1:28:38 PM EDT
To: "Suero, Maya A. (ODAG)" <masuero@jmd.usdoj.gov>
Cc: "Rosen, Jeffrey A. (ODAG)" (b)(6), "Benczkowski, Brian (CRM)" <(b) (6), (b) (7)(C) Per CRM@CRM.USDOJ.GOV>, "O'Callaghan, Edward C. (ODAG)" <ecocallaghan@jmd.usdoj.gov>, "Driscoll, Kevin (CRM)" <(b) (6), (b) (7)(C) Per CRM@CRM.USDOJ.GOV>
Subject: CRM update meeting

Maya - please reschedule Tuesday's CRM update meeting to tomorrow morning at 8:30 am.
Thanks.

Patrick Hovakimian
202-532-3295

Benczkowski, Brian (CRM)

From: Driscoll, Kevin (CRM)
Sent: Sunday, September 15, 2019 3:01 PM
To: Benczkowski, Brian (CRM)
Subject: Re: Monday

Let me see what I can do.

Sent from my iPhone

On Sep 15, 2019, at 1:17 PM, Benczkowski, Brian (CRM) <(b) (6), (b) (7)(C) Per CRM@crm.usdoj.gov> wrote:

ODAG now wants briefer tomorrow morning at 830am. Can you be in for that?

Brian A. Benczkowski
Assistant Attorney General
Criminal Division
United States Department of Justice
P: (b) (6), (b) (7)(C) Per CRM

Begin forwarded message:

From: "Rosen, Jeffrey A. (ODAG)" (b)(6)
Date: September 15, 2019 at 1:04:59 PM EDT
To: "Benczkowski, Brian (CRM)" <(b) (6), (b) (7)(C) Per CRM@CRM.USDOJ.GOV>
Cc: "Hovakimian, Patrick (ODAG)" <phovakimian4@jmd.usdoj.gov>, "O'Callaghan, Edward C. (ODAG)" <ecocallaghan@jmd.usdoj.gov>
Subject: Monday

I am thinking it would be better for us to talk before wider meeting per Steve Engel's request. Would it be feasible to do that at 8:30 am on Monday, and then Engel meeting at 11:15 am?

Sent from my iPhone

Benczkowski, Brian (CRM)

From: Benczkowski, Brian (CRM)
Sent: Sunday, September 15, 2019 3:38 PM
To: Rosen, Jeffrey A. (ODAG)
Subject: Accepted: CRM Update

Benczkowski, Brian (CRM)

From: Benczkowski, Brian (CRM)
Sent: Friday, September 13, 2019 12:09 PM
To: O'Callaghan, Edward C. (ODAG)
Subject: Re: Any progress

Done.

Brian A. Benczkowski
Assistant Attorney General
Criminal Division
United States Department of Justice
P: (b)(6), (b)(7)(C)

> On Sep 13, 2019, at 11:20 AM, O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov> wrote:
>
> With Eisenberg?
>
> Edward C. O'Callaghan
> 202-514-2105

Engel, Steven A. (OLC)

From: Engel, Steven A. (OLC)
Sent: Monday, May 6, 2019 11:23 AM
To: Gannon, Curtis E. (OLC); Paul P Colborn (OLC) (b) (6)
Subject: FW: Response to Nadler 3 May letter
Attachments: FINAL BARR Contempt Report Barr 5.6.19.pdf

(b) (5)

From: Moran, John (OAG) <jomor@jmd.usdoj.gov>
Sent: Monday, May 6, 2019 11:18 AM
To: Engel, Steven A. (OLC) <(b) (6)> Lasseter, David F. (OLA) <dlasseter@jmd.usdoj.gov>; Rabbitt, Brian (OAG) <brrabbitt@jmd.usdoj.gov>; O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>; Weinsheimer, Bradley (ODAG) <bradweinsheimer@jmd.usdoj.gov>; Gannon, Curtis E. (OLC) <(b) (6)>
Cc: Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>; Gannon, Curtis E. (OLC) <(b) (6)>
Colborn, Paul P (OLC) <(b) (6)>
Subject: RE: Response to Nadler 3 May letter

Attached here.

John

From: Engel, Steven A. (OLC) <(b) (6)>
Sent: Monday, May 6, 2019 11:16 AM
To: Lasseter, David F. (OLA) <dlasseter@jmd.usdoj.gov>; Rabbitt, Brian (OAG) <brrabbitt@jmd.usdoj.gov>; O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>; Weinsheimer, Bradley (ODAG) <bradweinsheimer@jmd.usdoj.gov>; Moran, John (OAG) <jomor@jmd.usdoj.gov>; Gannon, Curtis E. (OLC) <(b) (6)>
Cc: Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>; Gannon, Curtis E. (OLC) <(b) (6)>
Colborn, Paul P (OLC) <(b) (6)>
Subject: RE: Response to Nadler 3 May letter

Do we have a copy of the text of what may be marked up on Wednesday?

From: Lasseter, David F. (OLA) <dlasseter@jmd.usdoj.gov>
Sent: Monday, May 6, 2019 9:14 AM
To: Engel, Steven A. (OLC) <(b) (6)> Rabbitt, Brian (OAG) <brrabbitt@jmd.usdoj.gov>; O'Callaghan, Edward C. (ODAG) <ecocallaghan@jmd.usdoj.gov>; Weinsheimer, Bradley (ODAG) <bradweinsheimer@jmd.usdoj.gov>; Moran, John (OAG) <jomor@jmd.usdoj.gov>; Gannon, Curtis E. (OLC) <(b) (6)>
Cc: Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>
Subject: Response to Nadler 3 May letter

Good morning all. Hope the weekend was enjoyable.

I wanted to check in this morning to see where we were on status of a response. (b)(6), (b)(5)

Does OLC want to take a stab at the initial draft?

For everyone's awareness, we have communicated with Nadler's staff that the Department would not be responding by 9am this morning, but would respond to them today. The staff did not express surprise or concern. They did say that they would notice a contempt vote for Wednesday by 10am this morning. They further said that the contempt vote can be brought down at any time prior to the vote depending on what agreement we come to.

Thanks,
David

David F. Lasseter
Deputy Assistant Attorney General
Office of Legislative Affairs
U.S. Department of Justice
(202) 514-1260

**RESOLUTION RECOMMENDING THAT THE HOUSE OF REPRESENTATIVES
FIND WILLIAM P. BARR, ATTORNEY GENERAL, U.S. DEPARTMENT OF
JUSTICE, IN CONTEMPT OF CONGRESS FOR REFUSAL TO COMPLY WITH A
SUBPOENA DULY ISSUED BY THE COMMITTEE ON THE JUDICIARY**

_____, 2019 Referred to the House Calendar and ordered to be printed

**Mr. Nadler, from the Committee on the Judiciary,
submitted the following**

R E P O R T

together with

_____ **VIEWS**

The Committee on the Judiciary, having considered this Report, reports favorably thereon and recommends that the Report be approved.

The form of Resolution that the Committee on the Judiciary would recommend to the House of Representatives for citing William P. Barr, Attorney General, U.S. Department of Justice, for contempt of Congress pursuant to this Report is as follows:

Resolved, That William P. Barr, Attorney General of the United States, shall be found to be in contempt of Congress for failure to comply with a congressional subpoena.

Resolved, That pursuant to 2 U.S.C. §§ 192 and 194, the Speaker of the House of Representatives shall certify the report of the Committee on the Judiciary, detailing the refusal of William P. Barr, Attorney General, U.S. Department of Justice, to produce documents to the Committee on the Judiciary as directed by subpoena, to the United States Attorney for the District of Columbia, to the end that Mr. Barr be proceeded against in the manner and form provided by law.

Resolved, That the Speaker of the House shall otherwise take all appropriate action to enforce the subpoena.

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PURPOSE AND SUMMARY

The Judiciary Committee (“the Committee”) is currently engaged in an investigation into alleged obstruction of justice, public corruption, and other abuses of power by President Donald Trump, his associates, and members of his Administration. Relatedly, the Committee is

considering what legislative, oversight, or constitutional responses may be appropriate in response to any possible misconduct uncovered. For these purposes, the Committee has sought to obtain from Attorney General William Barr and the Department of Justice (“DOJ” or “Department”) a complete and unredacted copy, including exhibits and attachments, of the “Report On The Investigation Into Russian Interference In The 2016 Presidential Election” (“Mueller Report”) submitted to the Attorney General pursuant to 28 C.F.R. § 600.8(c) by Special Counsel Robert S. Mueller, III, as well as access to the underlying and supporting evidence and investigatory materials cited in the Mueller Report, and to other materials collected and produced by the Special Counsel’s office.

Since first communicating its need to obtain this information, the Committee has acknowledged the Attorney General’s legal and policy concerns regarding release of these materials and has sought to negotiate an accommodation acceptable to both the Attorney General and the Committee. Nevertheless, Attorney General Barr failed to comply with the Committee’s request for these documents and thereby has hindered the Committee’s constitutional, oversight, and legislative functions. Following Attorney General Barr’s decision to provide only a redacted version of the Mueller Report to Congress despite numerous entreaties to work toward a mutually acceptable accommodation the Committee issued a subpoena on April 19, 2019 directing the Attorney General to produce an unredacted copy of the Mueller Report as well as the underlying materials by May 1, 2019. Attorney General Barr failed to comply with the Committee’s subpoena.

The redacted Mueller Report contains numerous findings, including: 1) the Russian government attacked the 2016 U.S. presidential election in “sweeping and systematic fashion”¹ through a social media campaign, and releasing hacked documents;² 2) Russian intelligence services intentionally focused on state and local databases of registered voters, and state and local websites affiliated with voter registration; for example, “[t]he GRU compromised the computer network of the Illinois State Board of Elections ... then gained access to a database containing information on millions of registered Illinois voters, and extracted data related to thousands of U.S. voters before the malicious activity was identified”;³ 3) there were numerous links between the Russian government and the presidential campaign of Donald J. Trump (“Trump Campaign” or “Campaign”), which “consisted of business connections, offers of assistance to the Campaign, invitations for candidate Trump and Putin to meet in person, invitations for Campaign officials and representatives of the Russian government to meet, and policy positions seeking improved U.S. Russian relations”;⁴ 4) evidence of repeated attempts to obstruct justice by the President, including “multiple acts by the President that were capable of exerting undue influence over law enforcement investigations, including the Russian-interference and obstruction investigations,”⁵ which were “often carried out through one-on-one meetings in which the President sought to use his official power outside of usual channels”;⁶ 5) substantial evidence that President Trump’s attempts to remove the Special Counsel were linked to investigations that involved the President’s conduct and that once the President “became aware that his own conduct was being investigated in an obstruction-of-justice inquiry, he engaged in a

¹ Robert S. Mueller, III, *Report On The Investigation Into Russian Interference In The 2016 Presidential Election* (Mar. 2019), Vol. I, at 1 (hereinafter “Mueller Report”).

² *Id.* Vol. I, at 4.

³ *Id.* Vol. I, at 50.

⁴ *Id.* Vol. I, at 5.

⁵ *Id.* Vol. II, at 157.

⁶ *Id.*

second phase of conduct, involving public attacks on the investigation, non-public efforts to control it, and efforts in both public and private to encourage witnesses not to cooperate with the investigation”;⁷ and 6) multiple instances where the President sought to prevent his associates from cooperating with investigations, including “substantial evidence ... that in repeatedly urging [White House Counsel Donald F.] 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.”⁸

The redacted version of the Mueller Report presents grave concerns about the susceptibility of the nation’s democratic institutions to foreign disinformation campaigns and the vulnerability of our election infrastructure. It also demonstrates a compelling need to strengthen laws to improve election security. The redacted Mueller Report, however, does not provide sufficient details for the Committee to perform its own constitutional duty and engage in a thorough independent investigation based on the Mueller Report’s findings. It is imperative that the Committee have access to all of the facts contained in the full Mueller Report, to the evidentiary and investigatory materials cited in the Mueller Report, and to other materials produced and collected by the Special Counsel’s office. Access to these materials is essential to the Committee’s ability to effectively investigate possible misconduct, and consider appropriate legislative, oversight, or other constitutionally warranted responses. Attorney General Barr’s refusal to comply with the Committee’s subpoena or to engage in a meaningful accommodations process therefore continues to thwart the Committee’s ability to fulfill its responsibilities.

⁷ *Id.* Vol. II, at 7.

⁸ *Id.* Vol. II, at 120.

BACKGROUND AND NEED FOR THE LEGISLATION

I. Background

A. *Origins of the Special Counsel's Investigation and the Mueller Report*

On January 6, 2017, the Office of the Director of National Intelligence released an intelligence assessment on “Assessing Russian Activities and Intentions in Recent U.S. Elections.”⁹ The assessment concluded that “Russian President Vladimir Putin ordered an influence campaign in 2016 aimed at the U.S. presidential election,” and that the goals of this campaign were, *inter alia*, “to undermine public faith in the U.S. Democratic process.”¹⁰

On March 2, 2017, Attorney General Jeff Sessions recused himself from any possible DOJ investigations related to the 2016 presidential campaign, given Mr. Sessions’s own involvement with the Trump Campaign and his failure to disclose during his confirmation hearing his contacts with Russian Ambassador Sergey Kislyak while serving in his capacity as the Trump Campaign’s National Security Committee Chairman.¹¹ Later that month, at a hearing before the House Permanent Select Committee on Intelligence, Director of the Federal Bureau of Investigation (FBI) James Comey testified that he was authorized by DOJ to confirm that the FBI was currently investigating Russian interference in the 2016 election, as well as whether there was any coordination between individuals associated with the Trump Campaign and the Russian government.¹²

⁹ *Assessing Russian Activities and Intentions in Recent U.S. Elections*, Report of the Office of the Director of National Intelligence (Jan. 6, 2019).

¹⁰ *Id.* at ii.

¹¹ Karoun Demirjian, Ed O’Keefe, Sari Horwitz, & Matt Zaposky, *Attorney General Jeff Sessions will recuse himself from any probe related to 2016 presidential campaign*, WASH. POST, Mar. 2, 2017.

¹² Matthew Rosenberg, Emmarie Huetteman & Michael S. Schmidt, *Comey Confirms F.B.I. Inquiry on Russia; Sees No Evidence of Wiretapping*, N.Y. TIMES, Mar. 20, 2017.

On May 9, 2017, President Trump fired Director Comey and subsequently provided conflicting explanations for Mr. Comey’s dismissal.¹³ On May 17, 2017, Acting Attorney General Rod Rosenstein, pursuant to DOJ regulations,¹⁴ appointed former FBI Director Robert Mueller to serve as Special Counsel.¹⁵ Mr. Rosenstein’s order stated that the purpose of Special Counsel Mueller’s appointment was “to ensure a full and thorough investigation of the Russian government’s efforts to interfere in the 2016 presidential election,” as well as to investigate “any links and/or coordination between the Russian government and individuals associated with the campaign of President Donald Trump.” Special Counsel Mueller’s jurisdiction also included authority to investigate “any matters that arose or may arise directly from the investigation,” and “any other matters within the scope of 28 C.F.R. § 600.4(a).” Section 600.4(a) of the Code of Federal Regulations reads in relevant part that “[t]he jurisdiction of a Special Counsel shall also include the authority to investigate and prosecute federal crimes committed in the course of, and with intent to interfere with, the Special Counsel’s investigation, such as perjury, obstruction of justice, destruction of evidence, and intimidation of witnesses.” The Special Counsel’s investigation resulted in the indictment of 34 individuals and three companies, seven guilty pleas, and one conviction following a jury trial.

According to DOJ regulations, upon the conclusion of the Special Counsel’s investigation, “he or she shall provide the Attorney General with a confidential report explaining the prosecution or declination decisions reached by the Special Counsel.”¹⁶ The Attorney General, in turn, is required to notify the Chairman and Ranking Member of the House and

¹³ Michelle Ye Hee Lee, *All of the White House’s conflicting explanations for Comey’s firing: A timeline*, WASH. POST, May 12, 2017.

¹⁴ 28 C.F.R. § 600 *et. seq.* (2019).

¹⁵ Office of the Deputy Attorney General, U.S. Dep’t of Justice, Order No. 3915 2017 (2017).

¹⁶ 28 C.F.R. §§ 600.8(c) (2019).

Senate Judiciary Committees when the Special Counsel concludes an investigation.¹⁷ On March 22, 2019, Attorney General Barr notified the Committee that he had received the Report from Special Counsel Mueller.¹⁸ On March 24, 2019, Attorney General Barr provided the Committee his summary of principal conclusions of the Mueller Report.¹⁹ On April 18, 2019, nearly four weeks after Special Counsel Mueller submitted his confidential Report, the Attorney General released a redacted copy of the Report to Congress and the public.

B. *Requests for Information from the Department of Justice Regarding the Mueller Report and Subpoena Issued to Attorney General William Barr*

In February 2019, well before Attorney General Barr received the Mueller Report, the Committee commenced the process of informing DOJ that it sought an unredacted copy of the Mueller Report once it was completed as well as access to the underlying materials. As described below, the Committee has from that time to the present also expressed its willingness to consider the Department’s legal and policy concerns related to the release of such materials and offered to negotiate mutually acceptable solutions.

On February 22, 2019, Chairman Jerrold Nadler along with five other committee chairs wrote a letter to Attorney General Barr indicating their expectation that DOJ would disclose the Mueller Report to the public “to the maximum extent permitted by law,” and requesting that “to the extent that the Department believes that certain aspects of the report are not suitable for

¹⁷ 28 C.F.R. § 600.9(a)(3) (2019).

¹⁸ Letter to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary; Hon. Lindsey Graham, Chairman, S. Comm. on the Judiciary; Hon. Doug Collins, Ranking Member, H. Comm. on the Judiciary; Hon. Dianne Feinstein, Ranking Member, S. Comm. on the Judiciary, from William Barr, Attorney General, U.S. Dep’t of Justice (Mar. 22, 2019) (hereinafter “Notification Letter”).

¹⁹ Letter to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary; Hon. Lindsey Graham, Chairman, S. Comm. on the Judiciary; Hon. Doug Collins, Ranking Member, H. Comm. on the Judiciary; Hon. Dianne Feinstein, Ranking Member, S. Comm. on the Judiciary, from William Barr, Attorney General, U.S. Dep’t of Justice (Mar. 24, 2019).

immediate public release,” the Department provide that information to Congress “along with your reasoning for withholding the information from the public.”²⁰ The letter further stated the expectation that DOJ would provide “to our Committees, upon request and consistent with applicable law, other information and material obtained or produced by the Special Counsel.”²¹ Thereafter, the full House of Representatives unanimously endorsed this view.²² On March 14, 2019, the House voted 420 to 0 in favor of a resolution calling for “the public release of any report...except to the extent the public disclosure of any portion thereof is expressly prohibited by law” and for “the full release to Congress of any report, including findings, Special Counsel Mueller provides to the Attorney General.”²³

In spite of these reasonable requests from the House and the Committee to receive the unredacted Mueller Report and the underlying materials, as well as the House’s position that it is entitled to information beyond what might be made publicly available, Attorney General Barr’s communications during this period drew no distinction between Congress and the public, and ignored the Committee’s requests for materials underlying the Mueller Report. In his March 22, 2019 notification letter, Attorney General Barr indicated that he would in short order “advise” the Committee of the Special Counsel’s “principal conclusions” and that he would consult with Deputy Attorney General Rosenstein and Special Counsel Mueller “to determine what other information from the report can be released to Congress and the public consistent with the law,

²⁰ Letter to Hon. William Barr, Attorney General, U.S. Dep’t of Justice, from Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary; Hon. Adam Schiff, Chairman, H. Permanent Select Comm. on Intelligence; Hon. Elijah Cummings, Chairman, H. Comm. on Oversight and Reform; Hon. Elliot Engel, Chairman, H. Comm. on Foreign Affairs; Hon. Maxine Waters, Chairwoman, H. Comm. on Financial Services & Hon. Richard Neal, Chairman, H. Comm. on Ways and Means (Feb. 22, 2019).

²¹ *Id.*

²² 165 Cong. Rec. H2731 32 (daily ed. Mar. 14, 2019).

²³ H.Con.Res.24, Expressing the Sense of Congress that the Report of Special Counsel Mueller Should Be Made Available to the Public and to Congress, 116th Cong. (2019).

including the Special Counsel regulations, and the Department’s longstanding policies and practices.”²⁴

On March 24, 2019, Attorney General Barr wrote a letter summarizing the Mueller Report’s “principal conclusions.”²⁵ The letter also briefly discussed the status of the Department’s review of the Mueller Report. Again, the Attorney General failed to address the Committee’s stated expectation that it receive an unredacted copy and access to the Mueller Report’s underlying materials. Instead, the Attorney General reiterated his intent to “release as much of the Special Counsel’s report as I can consistent with applicable law, regulations, and Departmental policies,” and indicated his intent to withhold material that “is or could be subject to Federal Rule of Criminal Procedure 6(e).”²⁶

In response, on March 25, 2019, Chairman Nadler along with the chairs of five other committees wrote a letter to Attorney General Barr formally requesting that he “release the Special Counsel’s full report to Congress no later than Tuesday, April 2 [2019]” and that he begin “transmitting the underlying evidence and materials to the relevant committees at that time.”²⁷ The letter further expressed the committees’ willingness to accommodate the Attorney General’s concerns, noting that “[t]o the extent that you believe applicable law limits your ability

²⁴ Notification Letter.

²⁵ Letter to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary; Hon. Lindsey Graham, Chairman, S. Comm. on the Judiciary; Hon. Doug Collins, Ranking Member, H. Comm. on the Judiciary; Hon. Dianne Feinstein, Ranking Member, S. Comm. on the Judiciary, from William Barr, Attorney General, U.S. Dep’t of Justice (Mar. 24, 2019).

²⁶ *Id.*

²⁷ Letter to Hon. William Barr, Attorney General, U.S. Dep’t of Justice, from Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary; Hon. Adam Schiff, Chairman, H. Permanent Select Comm. on Intelligence; Hon. Elijah Cummings, Chairman, H. Comm. on Oversight and Reform; Hon. Elliot Engel, Chairman, H. Comm. on Foreign Affairs; Hon. Maxine Waters, Chairwoman, H. Comm. on Financial Services & Hon. Richard Neal, Chairman, H. Comm. on Ways and Means (Mar. 25, 2019).

to comply, we urge you to begin the process of consultation with us immediately in order to establish shared parameters for resolving those issues without delay.”²⁸

The committee chairs’ March 25 letter also addressed the reasons underlying their request. The chairs explained that “the release of the full report and the underlying evidence and documents is urgently needed” by the committees “to perform their duties under the Constitution.” As the chairs explained, “[t]hose duties include evaluating the underlying facts and determining whether legislative or other reforms are required both to ensure that the Justice Department is able to carry out investigations without interference or obstruction by the President and to protect our future elections from foreign interference.”²⁹

On March 29, 2019, Attorney General Barr responded to Chairman Nadler’s March 25 letter, but failed to address the committee chairs’ requests and their explicit offer to begin consultations over access to the Mueller Report’s underlying materials.³⁰ Instead, the Attorney General reiterated that the Department was preparing the Mueller Report for release by making what he described as “the redactions that are required.”³¹ The Attorney General described four categories of information he intended to withhold from both Congress and the public: 1) material subject to Federal Rule of Criminal Procedure 6(e); 2) material that the intelligence community identifies as potentially compromising sensitive sources and methods; 3) material whose release could affect ongoing matters; and 4) information that would unduly infringe on the personal privacy and reputational interests of “peripheral third parties.”³² The Attorney General indicated

²⁸ *Id.*

²⁹ *Id.*

³⁰ Letter to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary, & Hon. Lindsey Graham, Chairman, S. Comm. on the Judiciary from Hon. William Barr, Attorney General, U.S. Dep’t of Justice (Mar. 29, 2019).

³¹ *Id.*

³² *Id.*

the Mueller Report would be released “in mid-April, if not sooner,” and offered to testify before the House Judiciary Committee on May 2, 2019.³³

During this period, Committee majority staff engaged in discussions with DOJ Office of Legislative Affairs (OLA) officials in an attempt to begin the accommodations process offered in the chairs’ March 25 letter, but the parties were ultimately unable to reach an agreement. OLA officials eventually informed Committee majority staff on March 29, 2019 that the Department had no plans to share redacted portions of the Mueller Report with Congress, but indicated that further negotiations could proceed following the Mueller Report’s public release.

On April 1, 2019, Chairman Nadler and the chairs of the five other committees again wrote to Attorney General Barr urging him to “begin the process of consultation with us immediately” and to inform him that the Judiciary Committee “plans to begin the process of authorizing subpoenas for the report and underlying evidence and materials.”³⁴ The letter contained a detailed appendix describing the nature of the committees’ need for the Mueller Report and the underlying evidence, noting that “[t]he longer the delay in obtaining this information, the more harm will accrue to Congress’s independent duty to investigate misconduct by the President and to assure public confidence in the independence of federal law enforcement operations.”³⁵ The letter further explained that neither Rule 6(e) nor any applicable privilege barred disclosure of these materials to Congress. Additionally, the letter stated that to the extent the Department believed it was unable to produce any materials due to Rule 6(e),

³³ *Id.*

³⁴ Letter to Hon. William Barr, Attorney General, U.S. Dep’t of Justice, from Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary; Hon. Adam Schiff, Chairman, H. Permanent Select Comm. on Intelligence; Hon. Elijah Cummings, Chairman, H. Comm. on Oversight and Reform; Hon. Elliot Engel, Chairman, H. Comm. on Foreign Affairs; Hon. Maxine Waters, Chairwoman, H. Comm. on Financial Services & Hon. Richard Neal, Chairman, H. Comm. on Ways and Means (Apr. 1, 2019).

³⁵ *Id.*

which pertains to grand jury secrecy, then “it should seek leave from the district court to produce those materials to Congress as it has done in analogous situations in the past.”³⁶

That same day, Chairman Nadler announced a markup to authorize the issuance of a subpoena for the Mueller Report and the underlying material, and released a statement that “Attorney General Barr has thus far indicated he will not meet the April 2 deadline set by myself and five other committee chairs, and refused to work with us to provide the full report, without redactions, to Congress.”³⁷ On April 3, 2019, the Committee, by a vote of 24 to 17, authorized Chairman Nadler to issue a subpoena for the Mueller Report and the underlying evidence. The Chairman did not, however, issue the subpoena pending further efforts to reach an accommodation with DOJ.

At an appearance before the House Appropriations Committee on April 9, 2019, Attorney General Barr stated that he had no intention of accommodating the Committee’s request until after the Mueller Report’s public release.³⁸ When directly asked whether DOJ would request the district court to approve the release of grand jury material to the Committee, Attorney General Barr responded, “My intention is not to ask for it at this stage.”³⁹

On April 11, 2019, Chairman Nadler, along with Chairman Adam Schiff, Speaker of the House Nancy Pelosi, Senate Minority Leader Charles Schumer, Senate Judiciary Committee Ranking Member Dianne Feinstein, and Senate Intelligence Committee Vice Chairman Mark Warner, wrote to Attorney General Barr to reiterate that “as a matter of law, Congress is entitled

³⁶ *Id.*

³⁷ Press Release, H. Comm. on the Judiciary, Wednesday: House Judiciary to Hold Markup to Authorize Subpoenas for Full Mueller Report and Related Matters, available at <https://judiciary.house.gov/news/press-releases/wednesday-house-judiciary-hold-markup-authorize-subpoenas-full-mueller-report>.

³⁸ Ellis Kim, *AG Barr: No Plans to Ask Court to Release Grand Jury Info in Mueller Report*, NAT’L L. J., Apr. 9, 2019.

³⁹ *Id.*

to the full report . . . as well as the underlying evidence,” and to remind him that “the Department of Justice has an obligation to work with the relevant committees of the House and Senate to reach an accommodation on the full report and the underlying evidence.”⁴⁰ They further noted that “we have received no direct response, and you have made no effort to work with us to accommodate our concerns. This work should not wait until after you have provided a redacted report.”⁴¹

Attorney General Barr released a redacted version of the Mueller Report to Congress and to the public on April 18, 2019. The substance of even the redacted Report expressly affirmed Congress’ independent authority to conduct its own investigation pursuant to its legislative, oversight, and other constitutional prerogatives. Specifically, the Special Counsel noted the need not to “preempt constitutional processes for addressing presidential misconduct,” affirmed that “Congress can validly make obstruction-of-justice statutes applicable to corruptly motivated official acts of the President,” and rejected President Trump’s “statutory and constitutional defenses to the potential application of the obstruction-of-justice statutes to the President’s conduct.”⁴²

Although the Committee had requested the unredacted Mueller Report on numerous occasions and had requested in multiple letters to begin consultation regarding access to redacted and underlying materials, Attorney General Barr refused to engage the Committee. In fact, Attorney General Barr did not make a direct, concrete offer to accommodate the Committee’s

⁴⁰ Letter to Hon. William Barr, Attorney General, U.S. Dep’t of Justice, from Hon. Nancy Pelosi, Speaker, U.S. House of Representatives; Hon. Charles Schumer, Minority Leader, U.S. Senate; Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary; Hon. Adam Schiff, Chairman, H. Permanent Select Comm. on Intelligence, Hon. Dianne Feinstein, Ranking Member, S. Comm. on the Judiciary & Hon. Mark Warner, Vice Chairman, S. Select Comm. on Intelligence (Apr. 11, 2019).

⁴¹ *Id.*

⁴² Mueller Report Vol. II, at 1, 171, 159.

request until after he released the redacted Mueller Report. In his letter accompanying the Mueller Report, Attorney General Barr finally acknowledged that “you have expressed an interest in viewing an unredacted version of the report,” but offered only to make a less redacted version of the Mueller Report available for review with grand jury information still withheld.⁴³

Furthermore, in a separate letter written on April 18, 2019, Assistant Attorney General Stephen Boyd detailed the specific terms of Attorney General Barr’s offer.⁴⁴ The Attorney General would only permit the majority and minority leaders of the House and Senate, and Chairs and Ranking Members of select House and Senate Committees, including Chairman Nadler and Ranking Member Collins, along with a single staff member each, to review at the Department of Justice “certain material redacted in the publicly released report” and for a limited period of time between April 22 and April 26, 2019.⁴⁵ The Department further offered to permit review of a less-redacted version of the Mueller Report to the same limited group on Capitol Hill for a one-week period starting on April 29, 2019.⁴⁶ The Department insisted that any notes taken would also have to remain at the Department in a secure facility.⁴⁷

On April 19, 2019, Chairman Nadler informed Attorney General Barr that although “the current proposal is not workable, we are open to discussing a reasonable accommodation with the Department that would protect law enforcement sensitive information while allowing

⁴³ Letter to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary; Hon. Lindsey Graham, Chairman, S. Comm. on the Judiciary; Hon. Doug Collins, Ranking Member, H. Comm. on the Judiciary; Hon. Dianne Feinstein, Ranking Member, S. Comm. on the Judiciary, from William Barr, Attorney General, U.S. Dep’t of Justice (Apr. 18, 2019).

⁴⁴ Letter to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary & Hon. Lindsey Graham, Chairman, S. Comm. on the Judiciary, from Stephen Boyd, Assistant Attorney General, U.S. Dep’t of Justice (Apr. 18, 2019).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

Congress to fulfill its constitutional duties.”⁴⁸ On that same day, Chairman Nadler issued a subpoena to Attorney General Barr for: (1) the full Mueller Report, including any exhibits or attachments; (2) all materials referenced in the Mueller Report; and (3) all materials obtained or produced by the Special Counsel’s office. The subpoena required production of these materials by May 1, 2019. In a statement released to the public, Chairman Nadler explained, “I am open to working with the Department to reach a reasonable accommodation for access to these materials, however I cannot accept any proposal which leaves most of Congress in the dark, as they grapple with their duties of legislation, oversight and constitutional accountability.”⁴⁹ To emphasize Congress’ willingness to accommodate the Department’s concerns, Speaker Pelosi on May 1, 2019, wrote the Attorney General directly to urge that initial proposals for resolving the dispute that had been raised at an in-person meeting of Congressional and Department staff on April 29, 2019 “be given serious consideration by you so we can work together productively.”⁵⁰

On May 1, 2019, the Department informed the Committee that it would not comply with Chairman Nadler’s subpoena.⁵¹ On May 3, 2019, Chairman Nadler responded to the Department’s May 1 letter, noting:

[T]he Department has never explained why it is willing to allow only a small number of Members to view a less-redacted version of the report, subject to the condition that they cannot discuss what they have seen with anyone else. The Department also remains unwilling to work with the Committee to seek a court

⁴⁸ Letter to Hon. William Barr, Attorney General, U.S. Dep’t of Justice, from Hon. Nancy Pelosi, Speaker, U.S. House of Representatives; Hon. Charles Schumer, Minority Leader, U.S. Senate; Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary; Hon. Adam Schiff, Chairman, H. Permanent Select Comm. on Intelligence; Hon. Dianne Feinstein, Ranking Member, S. Comm. on the Judiciary & Hon. Mark Warner, Vice Chairman, S. Select Comm. on Intelligence (Apr. 19, 2019).

⁴⁹ Press Release, H. Comm. on the Judiciary, Chairman Nadler Issues Subpoena for Full Mueller Report and Underlying Materials, available at https://judiciary.house.gov/news/press_releases/chairman_nadler_issues_subpoena_full_mueller_report_and_underlying_materials.

⁵⁰ Letter to Hon. William Barr, Attorney General, U.S. Dep’t of Justice, from Hon. Nancy Pelosi, Speaker, U.S. House of Representatives (May 1, 2019).

⁵¹ Letter to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary, from Stephen Boyd, Assistant Attorney General, U.S. Dep’t of Justice (May 1, 2019).

order permitting disclosure of materials in the report that are subject to Federal Rule of Criminal Procedure 6(e). And the Department has offered no reason whatsoever for failing to produce the evidence underlying the report, except for a complaint that there is too much of it and a vague assertion about the sensitivity of law enforcement files.⁵²

Chairman Nadler also observed that Attorney General Barr’s “proposed conditions are a departure from accommodations made by previous Attorneys General of both parties.”⁵³ The letter notes that the Department “produced more than 880,000 pages of sensitive investigative materials pertaining to its investigation of Hillary Clinton, as well as much other material relating to the then-ongoing Russia investigation.”⁵⁴ The letter further notes that production “included highly classified material, notes from FBI interviews, internal text messages, and law enforcement memoranda” and that in the “most recent prior instance in which the Department conducted an investigation of a sitting President, Kenneth Starr produced a 445-page report to Congress along with 18 boxes of accompanying evidence.”⁵⁵

Chairman Nadler nonetheless communicated his continued willingness to “negotiate a reasonable accommodation with the Department.”⁵⁶ Chairman Nadler renewed his request that the “Department work jointly with Congress to seek a court order permitting disclosure of materials covered by Rule 6(e)”; offered to prioritize a “specific, defined set of underlying investigative and evidentiary materials for immediate production,” namely the “investigative and evidentiary materials specifically cited in the report”; and indicated he was “prepared to discuss

⁵² Letter to Stephen Boyd, Assistant Attorney General, U.S. Department of Justice, from Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary (May 3, 2019).

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

limiting and prioritizing our request . . . for other underlying evidence obtained by the Special Counsel’s office.”⁵⁷

II. Need for the Legislation

A. Authority and Legislative Purpose

The Committee on the Judiciary is a standing Committee of the House of Representatives, duly established pursuant to the Rules of the House of Representatives, which are adopted pursuant to the Rulemaking Clause of the Constitution.⁵⁸ House Rule X(*l*) grants to the Committee legislative and oversight jurisdiction over, *inter alia*, “judicial proceedings, civil and criminal,”; “criminal law enforcement”; the “application, administration, execution, and effectiveness of laws and programs addressing subjects within its jurisdiction”; the “operation of Federal agencies and entities having responsibilities for the administration and execution of laws and programs addressing subjects within its jurisdiction”; and any conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation addressing subjects within its jurisdiction.”

House Rule XI specifically authorizes the Committee and its subcommittees to “require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as it considers necessary.” The Rule also provides that the “power to authorize and issue subpoenas” may be delegated to the Committee Chairman.

⁵⁷ *Id.*

⁵⁸ U.S. CONST., art. I, § 5, cl. 2.

The investigation into the alleged obstruction of justice, public corruption, and other abuses of power by President Donald Trump, his associates, and members of his Administration and related concerns is being undertaken pursuant to the full authority of the Committee under Rule X(l) and applicable law. The purposes of this investigation include: 1) investigating and exposing any possible malfeasance, abuse of power, corruption, obstruction of justice, or other misconduct on the part of the President or other members of his Administration; 2) considering whether the conduct uncovered may warrant amending or creating new federal authorities, including among other things, relating to election security, campaign finance, misuse of electronic data, and the types of obstructive conduct that the Mueller Report describes; and 3) considering whether any of the conduct described in the Special Counsel’s Report warrants the Committee in taking any further steps under Congress’ Article I powers. That includes whether to approve articles of impeachment with respect to the President or any other Administration official, as well as the consideration of other steps such as censure or issuing criminal, civil or administrative referrals. No determination has been made as to such further actions, and the Committee needs to review the unredacted report, the underlying evidence, and associated documents so that it can ascertain the facts and consider our next steps.⁵⁹

B. *Urgency*

Although the Committee has attempted to engage in accommodations with Attorney General Barr for several months, it can no longer afford to delay, and must resort to contempt proceedings. The Committee urgently requires access to the full, unredacted Mueller Report and

⁵⁹ Several bills relevant to the legislative purpose of this investigation have already been introduced and referred to the Committee, including but not limited to: the Special Counsel Independence and Integrity Act, H.R. 197, 116th Cong (2019); the Special Counsel Reporting Act, H.R. 1357, 116th Cong. (2019); the Presidential Pardon Transparency Act, H.R. 1348, 116th Cong. (2019); and the For the People Act of 2019, H.R. 1, 116th Cong. (2019) (now pending in the Senate).

to the investigatory and evidentiary materials cited in the Report. The Mueller Report describes the Russian government’s extensive efforts to interfere in the 2016 presidential election “in sweeping and systematic fashion.”⁶⁰ First, a Russian entity known as the “Internet Research Agency” (IRA) carried out a social media influence operation to “sow discord in the U.S. political system through what it termed ‘information warfare.’”⁶¹ Second, Russia’s intelligence services hacked into computer networks associated with the Clinton campaign, stole hundreds of thousands of e-mails and other documents, and released those documents online.⁶² Third, Russian intelligence services successfully compromised state computer networks; for example, they “gained access to a database containing information on millions of registered Illinois voters, and extracted data related to thousands of U.S. voters,” and “targeted employees of...a voting technology company that developed software used by numerous U.S. counties to manage voter rolls, and installed malware on the company network.”⁶³

Russia’s hostile actions against the United States and its democratic institutions are ongoing. The Justice Department has indicated in at least one other case that Russian influence efforts continued into the 2018 midterm elections.⁶⁴ With the 2020 elections looming, this threat to our democracy is at risk of recurrence, and Congress must act immediately to address it. Just recently, FBI Director Christopher Wray warned that Russia continues to pose a “very significant counterintelligence threat,” and that the U.S. government “view[ed] 2018 as just kind of a dress rehearsal for the big show in 2020.”⁶⁵ Earlier this year, the Director of National Intelligence

⁶⁰ Mueller Report Vol. I, at 1.

⁶¹ *Id.* Vol. I, at 4.

⁶² *Id.* Vol. I, at 4 5.

⁶³ *Id.* Vol. I, at 50 51.

⁶⁴ *See* Criminal Complaint ¶ 14, *United States v. Khusyaynova*, No. 1:18 mj 464 (E.D. Va. Sept. 28, 2018) (alleging Russian national participated in a conspiracy “to interfere with U.S. political and electoral processes, including the 2018 U.S. elections”).

⁶⁵ Transcript, *A Conversation with Christopher Wray*, Council on Foreign Relations (Apr. 26, 2019).

similarly warned that Russia and other adversaries “probably are already looking to the 2020 U.S. election” to conduct malign influence operations and that “Moscow may employ additional influence toolkits such as spreading disinformation, conducting hack-and-leak operations, or manipulating data in a more targeted fashion to influence U.S. policy, actions, and elections.”⁶⁶

In the face of these efforts, and with the 2020 elections approaching, the Committee requires the most complete possible understanding of Russia’s influence and hacking operations. Among other things, the Committee must be permitted to assess whether the Department and the FBI are devoting sufficient resources to the growing threat, and to consider remedial legislation such as criminal penalties targeting election interference activities or the use of illegally acquired data. In its current form, sections of the Mueller Report describing the structure and actions taken by the IRA are heavily redacted.⁶⁷ Sections of the Mueller Report describing the hacking activities undertaken by Russian intelligence services likewise contain significant redactions, which impair the ability of the Committee to gain a complete understanding of Russia’s actions.⁶⁸ Without this information, the Committee is unable to fully perform its responsibility to protect the impending 2020 elections and thus our democracy itself from a recurrence of Russian interference.

President Trump’s repeated efforts to obstruct and derail the Special Counsel’s investigations also pose grave concerns. Volume II of Special Counsel Mueller’s Report details “multiple acts by the President that were capable of exerting undue influence over law enforcement investigations, including the Russian-interference and obstruction investigations.”⁶⁹

⁶⁶ Daniel R. Coats, Director of National Intelligence, *Worldwide Threat Assessment of the U.S. Intelligence Community* (Jan. 29, 2019).

⁶⁷ Mueller Report, Vol. I, at 15-35.

⁶⁸ *Id.* Vol. I, at 35-51.

⁶⁹ *Id.* Vol. II, at 157.

The President’s efforts increased in intensity over time. Once he “became aware that his own conduct was being investigated in an obstruction-of-justice inquiry, he engaged in a second phase of conduct, involving public attacks on the investigation, non-public efforts to control it, and efforts in both public and private to encourage witnesses not to cooperate with the investigation.”⁷⁰ These actions “ranged from efforts to remove the Special Counsel and to reverse the effect of the Attorney General’s recusal; to the attempted use of official power to limit the scope of the investigation; to direct and indirect contacts with witnesses with the potential to influence their testimony.”⁷¹ In order to carry out this campaign of obstruction, President Trump “sought to use his official power outside of usual channels,” including by conducting “one-on-one meetings” with Administration officials or other advisors and by contacting the Attorney General about the Russia investigation after he had been explicitly counseled against doing so.⁷²

The Mueller Report contains evidence that in the wake of an attack by a hostile nation against American democratic institutions, President Trump’s response was to undermine the investigation rather than take action against the perpetrators. The facts recounted in the Mueller Report make clear the Committee’s interest in obtaining further, more detailed information. For example, the Mueller Report states that when the President learned that he himself was under investigation for obstruction, the President “directed McGahn to call Rosenstein to have the Special Counsel removed.”⁷³ At one point the President went so far as to direct White House Counsel Don McGahn to call Deputy Attorney General Rosenstein and inform him that

⁷⁰ *Id.* Vol. II, at 7.

⁷¹ *Id.* Vol. II, at 157.

⁷² *Id.*; see also e.g., *id.* Vol. II at 50-51 (President Trump pulled Attorney General Sessions aside to ask that he “unrecuse” himself from the Russia investigation after the White House Counsel’s office directed that Sessions should not be contacted about the matter).

⁷³ *Id.* Vol. II, at 88.

“Mueller has conflicts and can’t be the Special Counsel.”⁷⁴ The President later “asked McGahn in [a] meeting why he had told Special Counsel’s Office investigators that the President had told him to have the Special Counsel removed”⁷⁵ and ordered Mr. McGahn to issue a “statement denying that he had been asked to fire the Special Counsel and that he had threatened to quit in protest.”⁷⁶

Furthermore, the Mueller Report notes that the President attempted to have Attorney General “Sessions reverse his recusal [and] take control of the Special Counsel’s investigation.”⁷⁷ The President repeatedly tried to order Attorney General Sessions to interfere in or limit the Special Counsel investigation, including meeting with Sessions alone and “suggest[ing] that Sessions should ‘unrecuse’ from the Russia investigation,”⁷⁸ and attempting to send a message through campaign advisor Corey Lewandowski asking that “Sessions limit the scope of the Russia investigation.”⁷⁹ The President’s “position as the head of the Executive Branch provided him with unique and powerful means of influencing official proceedings, subordinate officers, and potential witnesses.”⁸⁰ This conduct also included discouraging associates such as his former personal attorney, Michael Cohen, from cooperating by using “inducements in the form of positive messages in an effort to get Cohen not to cooperate, and then turn[ing] to attacks and intimidation to deter the provision of information or undermine Cohen's credibility once Cohen began cooperating.”⁸¹ This also included using his private attorneys to dangle potential pardons to discourage former campaign chairman Paul Manafort

⁷⁴ *Id.*

⁷⁵ *Id.* Vol. II, at 117.

⁷⁶ *Id.* Vol. II, at 114.

⁷⁷ *Id.* Vol. II, at 107.

⁷⁸ *Id.* Vol. II, at 51.

⁷⁹ *Id.* Vol. II, at 90.

⁸⁰ *Id.* Vol. II, at 7.

⁸¹ *Id.* Vol. II, at 154.

from cooperating, such as by having Rudolph Giuliani make “repeated statements suggesting that a pardon was a possibility for Manafort, while also making it clear that the President did not want Manafort to ‘flip’ and cooperate with the government.”⁸²

In order to protect the rule of law, the Committee requires an immediate and more detailed accounting of these and other actions taken by the President. The Special Counsel “conducted a thorough factual investigation in order to preserve the evidence when memories were fresh and documentary materials were available.”⁸³ As a result, the Committee has sought access to the fruits of that work—including investigative materials, such as interview reports, as well as evidence, such as contemporaneous notes taken by fact witnesses. The Committee urgently requires access to those materials to perform its core constitutional functions. The Special Counsel has expressly noted the need to avoid “preempt[ing] constitutional processes for addressing presidential misconduct,”⁸⁴ and affirmed that “Congress can validly make obstruction-of-justice statutes applicable to corruptly motivated official acts of the President without impermissibly undermining his Article II functions.”⁸⁵ If the Committee is to proceed, it requires the unredacted Mueller Report and underlying materials without further delay.

As the Special Counsel further noted, the Department has a policy against indicting a sitting president, which the Special Counsel “accepted for purposes of exercising prosecutorial jurisdiction.”⁸⁶ Congress is therefore the only body able to hold the President to account for improper conduct in our tripartite system, and urgently requires the subpoenaed material to determine whether and how to proceed with its constitutional duty to provide checks and

⁸² *Id.* Vol. II, at 131.

⁸³ *Id.* Vol. II, at 2.

⁸⁴ *Id.* Vol. II, at 1.

⁸⁵ *Id.* Vol. II, at 171.

⁸⁶ *Id.*

balances on the President and Executive Branch. Otherwise, the President remains insulated from legal consequences and sits above the law. As the Special Counsel emphasized, in our system, “no person in this country is so high that he is above the law.”⁸⁷

HEARINGS

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress, the Committee’s May 2, 2019 hearing on “Oversight of the U.S. Department of Justice: Report by Special Counsel Robert S. Mueller, III on the Investigation Into Russian Interference in the 2016 Presidential Election and Related Matters” was used to develop this Report: Attorney General Barr was scheduled to appear at this hearing, but failed to do so. In addition, the Committee held a related hearing on February 8, 2019 entitled “Oversight of the U.S. Department of Justice.” Matthew Whitaker, Acting Attorney General, on behalf of U.S. Department of Justice, was the sole witness. The hearing considered various matters, including the Justice Department’s role with respect to Special Counsel Mueller’s investigation and his then-anticipated report.

Lastly, the Committee’s Subcommittee on the Constitution, Civil Rights, and Civil Liberties held a hearing on March 27, 2019 on “Examining the Constitutional Role of the Pardon Power.” The witnesses included Caroline Fredrickson, President, American Constitution Society for Law and Policy; Justin Florence, Legal Director, Protect Democracy; Andrew Kent, Professor of Law, Fordham University School of Law; and James Pfiffner, University Professor in the Schar School of Policy and Government, George Mason University. Despite the Committee’s repeated outreach, it was unable to secure a Department witness from the Office of the Pardon Attorney for the hearing. The hearing considered the potential constitutional and legal limits on the president’s power to grant clemency.

⁸⁷ *Id.* Vol. II at 181-82 (citations, quotation marks and brackets omitted).

COMMITTEE CONSIDERATION

On [date], the Committee met in open session and ordered the Report favorably reported with [or without] an amendment, by a [specify: voice or rollcall vote of to], a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following rollcall votes occurred during the Committee's consideration of the Report:

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this Report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not

received a cost estimate for this Report from the Director of the Congressional Budget Office. The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this Report contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

DUPLICATION OF FEDERAL PROGRAMS

No provision of the Report establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the purpose of the Report is to enforce the Committee's authority to subpoena and obtain the unredacted Mueller Report, and its underlying investigative and evidentiary materials.

ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, the Report does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

Engel, Steven A. (OLC)

From: Engel, Steven A. (OLC)
Sent: Tuesday, April 2, 2019 10:48 AM
To: Hardy, Liam P. (OLC); (b) (6) (OLC)
Subject: FW: Letter to AG Barr
Attachments: 4.1.2019 Letter to William Barr + appendix.pdf

From: Hiller, Aaron (b)(6) Congressional Email
Sent: Monday, April 1, 2019 6:43 PM
To: Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>
Subject: FW: Letter to AG Barr

FYI.

From: McElvein, Elizabeth (b)(6)
Sent: Monday, April 1, 2019 6:39 PM
To: 'David.F.Lasseter@usdoj.gov' <David.F.Lasseter@usdoj.gov>; 'doj.correspondence@usdoj.gov' <doj.correspondence@usdoj.gov>
Cc: Hiller, Aaron (b)(6) Congressional Email ; Hariharan, Arya (b)(6) Congressional Email
Subject: Letter to AG Barr

Attached, please find a letter to Attorney General Barr.

Regards,

Elizabeth H. McElvein
Professional Staff
Committee on the Judiciary
House of Representatives
202-226-(b)(6)

Engel, Steven A. (OLC)

From: Engel, Steven A. (OLC)
Sent: Friday, April 5, 2019 5:27 PM
To: Hardy, Liam P. (OLC); (b) (6) (OLC)
Cc: Gannon, Curtis E. (OLC)
Subject: FW: (b) (5) Questions
Attachments: McKeever DC Circuit Opinion.pdf; 4.1.2019 Letter to William Barr + appendix.pdf

Can you guys take a look and share some thoughts?

From: Rabbitt, Brian (OAG) <brrabbitt@jmd.usdoj.gov>
Sent: Friday, April 5, 2019 4:53 PM
To: Engel, Steven A. (OLC) <(b) (6)> Gannon, Curtis E. (OLC) <(b) (6)>
Subject: (b) (5) Questions

Attached is a decision today out of the D.C. Circuit (b) (5)
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]. Is there someone in OLC who could take a look?

Brian C. Rabbitt
Chief of Staff
Office of the Attorney General
U.S. Department of Justice
T: (202) 514-3893
M: (b)(6)
Brian.Rabbitt@usdoj.gov

Congress of the United States
Washington, DC 20515

April 1, 2019

The Honorable William P. Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Barr:

On March 25, 2019, we sent you a letter requesting that you produce to Congress the full report of Special Counsel Robert S. Mueller III and its underlying evidence by Tuesday, April 2, 2019. “To the extent you believe the applicable law limits your ability” to produce the entire report, we urged that you “begin the process of consultation with us immediately” to resolve those issues without delay.¹ On Wednesday, April 3, 2019, the House Judiciary Committee plans to begin the process of authorizing subpoenas for the report and underlying evidence and materials. While we hope to avoid resort to compulsory process, if the Department is unwilling to produce the report to Congress in unredacted form, then we will have little choice but to take such action.

As Chairman Nadler explained in his phone conversation with you on March 27, Congress requires a complete and unedited copy of the Special Counsel’s report, as well as access to the evidence and materials underlying that report. During your confirmation hearing in January, you stated that your “goal will be to provide as much transparency as I can consistent with the law.” As such, if the Department believes it is unable to produce any of these materials in full due to rules governing grand jury secrecy, it should seek leave from the district court to produce those materials to Congress—as it has done in analogous situations in the past. To the extent you believe any other types of redactions are necessary, we again urge you to engage in an

¹ Letter from Chairpersons Jerrold Nadler, H Comm. on the Judiciary, Elijah Cummings H. Comm. on Oversight & Reform, Adam Schiff, H. Perm. Select. Comm. on Intelligence, Maxine Waters, H. Comm. on Fin. Servs., Richard Neal, House Comm. on Ways & Means, and Eliot Engel, H. Comm. on Foreign Affairs, to Att’y Gen. William P. Barr (Mar. 25, 2019). *See also* Letter from Chairpersons Jerrold Nadler, H Comm. on the Judiciary, Elijah Cummings H. Comm. on Oversight & Reform, Adam Schiff, H. Perm. Select. Comm. on Intelligence, Maxine Waters, H. Comm. on Fin. Servs., Richard Neal, House Comm. on Ways & Means, and Eliot Engel, H. Comm. on Foreign Affairs, to Att’y Gen. William P. Barr, informing him of their expectation that he will make Special Counsel Robert Mueller’s report public “without delay and to the maximum extent permitted by law” (Feb. 22, 2019).

immediate consultation to address and alleviate any concerns you have about providing that information to Congress.²

We also reiterate our request that you appear before the Judiciary Committee as soon as possible—not in a month, as you have offered, but now, so that you can explain your decisions to first provide Congress with your characterization of the Mueller report as opposed to the report itself; to initiate a redaction process that withholds critical information from Congress; and to assume for yourself final authority over matters within Congress’s constitutional purview. In addition, as Chairman Nadler also requested on his call with you, we ask for your commitment to refrain from interfering with Special Counsel Mueller testifying before the Judiciary Committee—and before any other relevant committees—after the report has been released regarding his investigation and findings.

Congress is, as a matter of law, entitled to each of the categories of information you proposed to redact from the Special Counsel’s report in your March 29 letter.³ In the attached appendix we provide a more complete legal analysis of each of the potential redaction categories your letter identified. We expect the Department will take all necessary steps without further delay—including seeking leave from the court to disclose the limited portions of the report that may involve grand jury materials—in order to satisfy your promise of transparency and to allow Congress to fulfill its own constitutional responsibilities.⁴

Full release of the report to Congress is consistent with both congressional intent and the interests of the American public. On March 14, 2019, by a vote of 420-0, the House unanimously passed H. Con. Res. 24, a resolution calling for “the full release” of the Special Counsel’s report to Congress, as well as the public release of the Special Counsel’s report except to the extent the disclosure of “any portion thereof is expressly prohibited by law.” The American people have also consistently and overwhelmingly supported release of the full report. The President himself has likewise called for its release in full.

The allegations at the center of Special Counsel Mueller’s investigation strike at the core of our democracy. Congress urgently needs his full, unredacted report and its underlying evidence in order to fulfill its constitutional role, including its legislative, appropriations, and

² Congress is authorized by law and equipped to receive and examine the U.S. government’s most sensitive materials and information. The Department of Justice and the Federal Bureau of Investigation have long provided to relevant congressional committees sensitive law enforcement and investigatory information and records in complete and unredacted form, including those involving classified information, that are not provided to the general public.


³ Letter from Att’y Gen. William P. Barr to Chairman Lindsey Graham, S. Comm. on the Judiciary, and Chairman Jerrold Nadler, H. Comm. on the Judiciary (Mar. 29, 2019).

⁴ At a minimum, the Department should produce a detailed log of each redaction and the reasons supporting it in order to facilitate the accommodation process and to provide sufficient clarity for Congress to evaluate the Department’s claims.

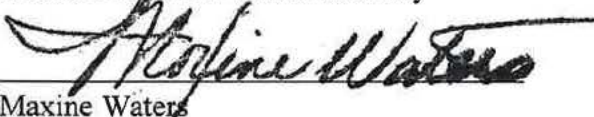
oversight responsibilities. Congress can and has historically been provided with sensitive, unredacted, and classified material that cannot be provided to the general public. In addition, the American people deserve to be fully informed about these issues of extraordinary public interest, and therefore need to see the report and findings in Special Counsel Mueller's own words to the fullest extent possible.

For all these reasons, we hope you will produce to Congress an unredacted report and underlying materials to avoid the need for compulsory process.


Sincerely,




Jerrold Nadler
Chairman
House Committee on the Judiciary




Maxine Waters
Chairwoman
House Committee on Financial Services



Elijah E. Cummings
Chairman
House Committee on Oversight and Reform



Richard E. Neal
Chairman
House Committee on Ways and Means



Adam Schiff
Chairman
House Permanent Select Committee on Intelligence



Eliot L. Engel
Chairman
House Committee on Foreign Affairs

Appendix:
The Department of Justice Must Produce the Full Mueller Report

Congress urgently needs the full Special Counsel’s report and the underlying evidence in order to fulfill its Article I constitutional functions, including its legislative, appropriations, and oversight responsibilities. Moreover, there is no basis for withholding from Congress the four categories of information described by the Attorney General in his March 29 letter to the House and Senate Judiciary Committees.¹

1. Congress Urgently Requires the Full Report and the Evidence

The Attorney General’s March 24 letter indicates that the Special Counsel found that President Trump may have criminally obstructed the Department’s investigation of Russia’s interference in the 2016 election and related matters.² The Special Counsel pointedly stated that the evidence the investigation uncovered “does not exonerate” the President of obstruction, and includes potentially criminal acts not yet known to the public.³ It is difficult to overstate the seriousness of those actions if, in the wake of an attack by a hostile nation against our democracy, President Trump’s response was to seek to undermine the investigation rather than take action against the perpetrators.

The longer the delay in obtaining this information, the more harm will accrue to Congress’s independent duty to investigate misconduct by the President and to assure public confidence in the integrity and independence of federal law enforcement operations. These are not only matters of addressing the harm that has occurred; they are urgent ongoing concerns. As has been publicly reported and referenced in the March 24 letter, multiple open investigations referred by the Special Counsel to other U.S. Attorneys’ offices may implicate the President or his campaign, transition, inauguration, or businesses. These critically important inquiries could be compromised if the President is seeking to interfere with them. Among other things, Congress has considered and continues to consider legislation to protect the integrity of these type of investigations against precisely the sorts of interference in which the President appears to have engaged.⁴

¹ Letter from Att’y Gen. William P. Barr to Chairman Lindsey Graham, S. Comm. on the Judiciary, and Chairman Jerrold Nadler, H. Comm. on the Judiciary (Mar. 29, 2019).

² Letter from Att’y Gen. William P. Barr to Chairman Lindsey Graham and Ranking Member Dianne Feinstein, S. Comm. on the Judiciary, and Chairman Jerrold Nadler and Ranking Member Doug Collins, H. Comm. on the Judiciary (Mar. 24, 2019) (hereinafter “March 24 Letter”).

³ March 24 Letter at 3 (the report “addresses a number of actions by the President—*most of which* have been the subject of public reporting”) (emphasis added).

⁴ See H.R. 197 and S. 71, Special Counsel Independence and Integrity Act, 116th Cong (2019); see also H.R. 1357, Special Counsel Reporting Act, 116th Cong. (2019); H.R. 1627, Abuse of Pardon Prevention Act, 116th Cong. (2019); H.R. 1348, Presidential Pardon Transparency Act, 116th Cong. (2019).

Moreover, the Judiciary Committee is engaged in an ongoing investigation of whether the President has undermined the rule of law, including by compromising the integrity of the Justice Department. Other committees are engaged in investigations related to whether the President, his associates, or members of his administration have engaged in other corrupt or unethical activities or are subject to foreign influence or compromise by actors abroad. Congress's authority "to inquire into and publicize corruption, maladministration or inefficiency in agencies of the Government" has been unquestioned since "the earliest times in its history."⁵ That interest is at its height when Congress's oversight activities pertain to potentially illegal acts by the President. As a court determined in another context involving the release of a report about potential obstruction of justice by a President, "[i]t would be difficult to conceive of a more compelling need than that of this country for an unswervingly fair inquiry based on all the pertinent information."⁶

The March 24 letter also claims that the Special Counsel's decision not to reach a definitive legal conclusion about obstruction "leaves it to the Attorney General to determine whether the conduct described in the report constitutes a crime."⁷ That view is fundamentally flawed. As a coequal branch of government—indeed, as the only branch of government that is expressly empowered by the Constitution to hold the President accountable—Congress must be permitted to assess the President's conduct for itself. The Attorney General cannot unilaterally make himself judge and jury. That is particularly so where the Attorney General has already expressed the view—in arguing against a theory of obstruction in this very investigation—that "there is no legal prohibition . . . against the President's acting on a matter in which he has a personal stake."⁸

The Attorney General's pre-confirmation memorandum on this topic also stated that "the determination of whether the President is making decisions based on 'improper' motives or whether he is 'faithfully' discharging his responsibilities is left to the people, through the election process, and the Congress."⁹ Neither the American people nor Congress, however, can make any such a determination without all of Special Counsel Mueller's evidence, analysis, and findings—unfiltered and in his own words.

⁵ *Watkins v. United States*, 354 U.S. 178, 200 n.33 (1957) (internal quotations omitted)

⁶ *In re Report & Rec. of June 5, 1972 Grand Jury Concerning Transmission of Evidence to House of Representatives*, 370 F. Supp. 1219, 1230 (D.D.C. 1974).

⁷ March 24 Letter at 3.

⁸ William P. Barr, *Memorandum Re: Mueller's "Obstruction" Theory* at 10, June 8, 2018 (emphasis omitted). Additionally, although the Attorney General's March 24 letter states that the absence of an underlying crime bears upon the President's intent, it is black-letter law that there need not be an underlying crime for obstruction of justice to occur. See, e.g., *United States v. Hopper*, 177 F.3d 828, 831 (9th Cir. 1999).

⁹ *Id.* at 11.

The Special Counsel’s investigation also confirmed that Russia engaged in extensive efforts to interfere in the 2016 presidential election, and Congress’s need for that information is no less urgent. The Special Counsel’s report, according to the Attorney General, describes “crimes committed by persons associated with the Russian government in connection with these efforts,” including “efforts to conduct computer hacking operations designed to gather and disseminate information to influence the election.”¹⁰

These hostile acts are ongoing: The Department has indicated in at least one other case that Russian influence efforts continued into the 2018 midterm elections.¹¹ The Director of National Intelligence likewise testified last year in regard to the 2018 midterm elections that Russia would continue to use “persistent and disruptive cyber operations” and would target “elections as opportunities to undermine democracy” both here and against our allies in Europe.¹² More recently, Director Coats warned that Russia and other adversaries “probably are already looking to the 2020 U.S. election” to conduct malign influence operations and that “Moscow may employ additional influence toolkits—such as spreading disinformation, conducting hack-and-leak operations, or manipulating data—in a more targeted fashion to influence U.S. policy, actions, and elections.”¹³ It is imperative that Congress have access to the Special Counsel’s full descriptions and evidence of these crimes and malign influence operations that the Russian government or associated actors perpetrated against our democracy.

Moreover, the Attorney General’s March 24 letter acknowledges “multiple offers from Russian-affiliated individuals to assist the Trump campaign.”¹⁴ The facts and circumstances uncovered by the Special Counsel’s Office surrounding these and any other overtures by foreign actors, as well as the individuals associated with them and how they responded to such offers, are of vital importance to Congress. The Foreign Affairs Committee, for example, requires access to these facts as it investigates whether the foreign and financial entanglements of the President and his associates may be improperly influencing foreign policy in ways that serve their private interests rather than the national security of the United States. Moreover, the House Permanent Select Committee on Intelligence must have access to the full facts as it evaluates counterintelligence threats and risks during and since the 2016 U.S. election, and as it considers

¹⁰ March 24 Letter at 2.

¹¹ See Criminal Complaint ¶ 14, *United States v. Khusyaynova*, No. 1:18-mj-464 (E.D. Va. Sept. 28, 2018) (alleging Russian national participated in a conspiracy “to interfere with U.S. political and electoral processes, including the 2018 U.S. elections”).

¹² Patricia Zengerle and Diona Chaicu, *U.S. 2018 Elections ‘Under Attack’ by Russia: U.S. Intelligence Chief*, Reuters, Feb. 13, 2018.

¹³ Worldwide Threats: Hearing before the S. Select Comm. on Intelligence, 116th Cong. (Jan. 29, 2019) (Statement of Daniel R. Coats, Director of National Intelligence).

¹⁴ March 24 Letter at 2.

remedies necessary to prevent, or mitigate to the greatest extent possible, the vulnerability of campaigns, or persons associated with them, to foreign influence or compromise operations.

Congressional committees have conducted multiple hearings regarding foreign influence operations and the security of our election systems and have proposed numerous legislative reforms to address vulnerabilities.¹⁵ In an appropriations bill enacted into law last year, Congress allocated much-needed funding to support election security initiatives.¹⁶ It is critical to legislation that has or will be introduced this year to understand foreign intelligence disinformation campaigns, risks to our election infrastructure security, evolving methods of voter targeting and suppression, and the manner in which foreign adversaries seek to exploit campaign vulnerabilities as well as the technology industry in our elections moving forward.

In addition, the House of Representatives' appropriations process for the next fiscal year is already underway—including for funding any election security, cybersecurity, and offensive or defensive counterintelligence operations needed to combat attacks during the 2020 election—with submission deadlines scheduled for April and appropriations packages expected to reach the House floor in June.¹⁷ However, Congress cannot fully address the scope of these threats (whether through appropriations or other legislation) without a thorough accounting by the Special Counsel's Office of the attack that occurred in 2016. Indeed, it is difficult to envision any function of Congress more important than ensuring the integrity of our democratic elections, authorizing and appropriating funding for the relevant federal authorities, and authorizing critical national security programs.

2. The Application of Rule 6(e) is Limited and Does Not Bar Disclosures to Congress

The Attorney General has indicated that the Department is reviewing the Special Counsel's report to identify material whose disclosure may be limited by Federal Rule of Criminal Procedure 6(e), which prohibits certain disclosures of "matter[s] occurring before the grand jury." In a call with Chairman Nadler, the Attorney General suggested that redactions made in accordance with Rule 6(e) will be substantial. But even assuming Rule 6(e) applies with respect to disclosures to Congress,¹⁸ the law clearly forbids the Department from making

¹⁵ See, e.g., Secure America from Russian Interference Act, H.R. 6437, 115th Cong. (2018); Defending Elections from Threats by Establishing Redlines Act, H.R. 4884, 115th Cong. (2018); Bot Disclosure Accountability Act, S. 3127, 115th Cong. (2018); H.R. 5011, Election Security Act, 115th Cong. (2018); For the People Act, H.R. 1, 116th Cong (2019).

¹⁶ Pub. L. No. 115-141, Div. E, tit. V (2018).

¹⁷ See Hearings, H. Comm. on Appropriations, 116th Cong. (2019); Paul M. Krawzak, *House appropriations may start markup in April*, RollCall, Mar. 19, 2019.

¹⁸ See, e.g., *In re Grand Jury Inv. of Ven-Fuel*, 441 F. Supp. 1299, 1302, 1304-08 (M.D. Fla. 1977) (holding that Congress has "an independent right" under the Constitution to obtain requested documents regardless of whether they are subject to Rule 6(e)); *In re Proceedings of Grand Jury No. 81-1 (Miami)*, 669 F. Supp. 1072, 1075 (S.D.

sweeping designations as to any evidence that happens to have been presented to a grand jury or was obtained through a grand jury subpoena.

Rule 6(e) “does not ‘draw a veil of secrecy . . . over all matters occurring in the world that happen to be investigated by a grand jury.’”¹⁹ “The mere fact that information has been presented to the grand jury does not” mean that the information is prohibited from disclosure.²⁰ Further, as the D.C. Circuit has made clear, the fact that evidence was obtained through a grand jury subpoena does not necessarily mean that it is barred from disclosure by Rule 6(e).²¹ As a result, the Department cannot withhold documents or information simply because they were produced in response to a grand jury subpoena. Because a person receiving the documents would not know whether they were obtained through a grand jury subpoena or other means, “subpoenaed documents would not necessarily reveal a connection to a grand jury.”²² Just last year, the D.C. Circuit reaffirmed this principal in *Bartko v. Dep’t of Justice*, where it made clear that “copies of specific records provided to a federal grand jury” were not covered by Rule 6(e) because “the mere fact the documents were subpoenaed fails to justify withholding under Rule 6(e).”²³

For this reason, it is clear the Department cannot withhold portions of the Special Counsel’s report merely because they discuss information that was presented to the grand jury or documents that were obtained through a grand jury subpoena. Likewise, the Department cannot withhold underlying evidence simply because it was presented to the grand jury or obtained through a grand jury subpoena. That is particularly so because the Special Counsel’s Office obtained a great deal of evidence by other means. The Special Counsel’s team interviewed numerous witnesses on a voluntary basis and acquired voluminous records without resorting to grand jury subpoenas.²⁴ Other evidence was obtained through different types of mandatory legal process, such as through the issuance of nearly 500 search warrants.²⁵ That evidence can of course be disclosed without implicating Rule 6(e). And because so much evidence was obtained

Fla. 1987) (similar). *But see In re Grand Jury Investigation of Uranium Indus.*, Misc. 78-173, 1979 WL 1661, at *4 (D.D.C. Aug. 16, 1979). No circuit court has squarely addressed this issue.

¹⁹ *Labow v. Dep’t of Justice*, 831 F.3d 523, 529 (D.C. Cir. 2016) (quoting *Senate of the Com. of Puerto Rico v. Dep’t of Justice*, 823 F.2d 574, 582 (D.C. Cir. 1987) (R.B. Ginsburg, J.)).

²⁰ *Id.* at 529.

²¹ *Id.* at 529-30.

²² *Id.* at 529.

²³ 898 F.3d 51, 73 (D.C. Cir. 2018) (quoting *Labow*, 831 F.3d at 530).

²⁴ *See, e.g.*, Philip Rucker et al., *A Mueller Mystery: How Trump Dodged a Special Counsel Interview—and a Subpoena Fight*, WASH. POST, Mar. 28, 2019 (quoting the President’s attorney, Rudolph Giuliani, who stated, “We allowed [the Special Counsel’s office] to investigate everybody, and [the White House] turned over every document they were asked for: 1.4 million documents.”).

²⁵ March 24 Letter at 1.

through these other means, the Department would have no basis to withhold materials or descriptions of materials that it happens to have gathered by issuing grand jury subpoenas. So long as those materials do not on their face “reveal a connection to a grand jury,” Rule 6(e) does not bar their disclosure.²⁶

As to testimony or other grand jury materials that are genuinely subject to Rule 6(e), the Department can and should work with the House Judiciary Committee to obtain the permission of the district court overseeing the grand jury to make disclosures to Congress on a confidential basis, as it has done in the past in analogous circumstances. The Department took that precise path after the grand jury considering evidence in the Watergate affair issued a report describing potentially criminal acts by President Nixon. The Justice Department filed briefs fully supporting disclosure of the report to the House Judiciary Committee, and made the obvious point that “[t]he need for the House to be able to make its profoundly important judgment on the basis of all available information is as compelling as any that could be conceived.”²⁷ Independent Counsel Kenneth Starr likewise sought the court’s authorization to disclose grand jury material regarding President Clinton to the House of Representatives.²⁸

The district court would have ample authority to permit disclosure of relevant materials to Congress. As Chief Judge Howell, the judge overseeing this grand jury, explained in a recent opinion, “numerous courts have recognized [that] a district court retains an inherent authority to unseal and disclose grand jury material not otherwise falling within the enumerated exceptions to Rule 6(e).”²⁹ Indeed, every federal court of appeals to have considered this question has reached that conclusion.³⁰ Congress’s need for these materials is beyond compelling, and the public interest in Congress receiving these materials is at its height. President Trump, moreover, has

²⁶ *Barko*, 898 F.3d at 73 (quoting *Labow*, 831 F.3d at 529).

²⁷ Mem. for the United States on Behalf of the Grand Jury at 16, *In re Report & Rec. of June 5, 1972 Grand Jury*, Misc. No. 74-21 (D.D.C. Mar. 5, 1974).

²⁸ See Order, *In re Madison Guaranty Savings & Loan Assoc.*, Div. No. 94-1 (D.C. Cir. Special Div. July 7, 1998).

²⁹ *In re App. to Unseal Dockets Related to the Independent Counsel’s 1998 Investigation of President Clinton*, 308 F. Supp. 3d 314, 323 (D.D.C. 2018).

³⁰ *Id.* at 323-24. See *Carlson v. United States*, 837 F.3d 753, 763 (7th Cir. 2016); *In re Craig*, 131 F.3d 99, 103 (2d Cir. 1997); *In re Pet. to Inspect & Copy Grand Jury Materials*, 735 F.2d 1261, 1268 (11th Cir. 1984); see also *Pitch v. United States*, 915 F.3d 704, 708-09 (11th Cir. 2019); *Haldeman v. Sirica*, 501 F.2d 714, 715 (D.C. Cir. 1974) (court was “in general agreement with” the district court’s decision to release the Watergate grand jury’s report to Congress). The D.C. Circuit heard argument last fall in a case involving a historian who seeks the release of grand jury material involving an incident that occurred in the 1950s pursuant to the court’s inherent authority to release materials otherwise covered by Rule 6(e). *McKeever v. Barr*, No. 17-5149. The facts of that case are obviously distinct from those presented here. As the Department explained in its brief in *McKeever*, “[t]he question in this appeal is whether . . . a district court may order the disclosure of secret grand jury records solely for reasons of historical or academic interest.”

expressed public support for the report's release.³¹ As such, the Department should immediately request that these materials be released to Congress.

The Attorney General has refused thus far to work with Congress in that regard. At his confirmation hearing, however, the Attorney General stated: "I . . . believe it is very important that the public and Congress be informed of the results of the special counsel's work. My goal will be to provide as much transparency as I can consistent with the law."³² The most efficacious way to honor that commitment would be to join with the House Judiciary Committee in seeking expedited disclosure of any Rule 6(e) material to Congress, and to refer any questions about the scope of Rule 6(e)'s application to independent court review.

3. Any Potential Claim of Executive Privilege Has Been Waived

Although the Attorney General's March 24 letter made no mention of executive privilege, his March 29 letter states that "there are no plans to submit the report to the White House for a privilege review," because the President "intends to defer" to the Attorney General on those issues. Whatever that may mean, it would be highly improper for the Department to conceal portions of the report based on claims of executive privilege on behalf of the President. As an initial matter, the Department's own long-standing policy is that executive privilege "should not be invoked to conceal evidence of wrongdoing or criminality on the part of executive officers."³³

In any event, the President and the White House have waived any claims of executive privilege. The White House voluntarily disclosed millions of documents to the Special Counsel's office and permitted multiple senior officials to be interviewed by the Special Counsel's team, without asserting any type of privilege.³⁴ Having voluntarily disclosed this evidence, the President cannot now seek to invoke executive privilege to block its release. As the D.C. Circuit has held in an analogous context, regarding waiver of attorney-client privilege, "[t]he client cannot be permitted to pick and choose among his opponents, waiving the privilege for some and resurrecting the claim of confidentiality to obstruct others."³⁵ Moreover, the White House has similarly shared information and documents with numerous former White House

³¹ Liam Stack, *Trump Says Mueller Report Should Be Made Public: 'Let People See It,'* N.Y. TIMES, Mar. 20, 2019.

³² *The Nomination of the Honorable William Pelham Barr to be Attorney General of the United States*, hearing before the S. Comm. on the Judiciary, Jan. 15, 2019 (statement of the Hon. William Barr).

³³ Robert B. Shanks, Office of Legal Counsel, *Congressional Subpoenas of Department of Justice Investigative Files*, 8 Op. O.L.C. 252, 267 (1984).

³⁴ See Rucker et al., *supra* note 24; Michael Schmidt and Maggie Haberman, *White House Counsel, Don McGahn, Has Cooperated Extensively in Mueller Inquiry*, N.Y. TIMES, Aug. 18, 2018 (noting that no privilege was asserted).

³⁵ *Permian Corp. v. United States*, 665 F.2d 1214, 1221 (D.C. Cir. 1981).

officials and their private counsel.³⁶ The D.C. Circuit has expressly held that the White House “waive[s] its claims of privilege in regard to [] specific documents that it voluntarily reveal[s] to third parties outside the White House.”³⁷

Lastly, in the unlikely event that the White House has preserved privilege as to any of the evidence underlying the Mueller report, the public interest in disclosure would still overwhelmingly outweigh the President’s interest in secrecy. The privilege pertaining to presidential communications is not absolute. Just as the Supreme Court determined in *United States v. Nixon*, the public interest here in the “fair administration of justice” outweighs the President’s “generalized interest in confidentiality.”³⁸

4. Ongoing Investigations, Classified Information, and Privacy and Reputational Interests of Third Parties Should Not Prevent Release to Congress

The fact that certain investigations remain ongoing cannot justify the Department withholding critical evidence from Congress that pertains to Russia’s interference in our federal elections or obstruction of justice by the President. Indeed, during the previous Congress, the Department produced to congressional committees thousands of pages of highly sensitive law enforcement and classified investigatory and deliberative records.³⁹ Many of these were related to *this very same investigation*—which of course was open and ongoing at the time.

Similarly, the mere presence of classified information in the Mueller report or in underlying evidence cannot justify withholding evidence from Congress, which is well equipped to handle classified information and does so on a daily basis. The Department can provide any classified materials to the appropriate committees for handling in secure facilities. It can also permit the Intelligence Community to review the report on an expedited basis in order to share with Congress whatever equities the Intelligence Community feels may be implicated by the release of specific information contained in the report or any underlying materials. Additionally, to the extent the Special Counsel’s Office is in possession of underlying evidence that is particularly sensitive, the relevant committees are in a position to work with the Department to reach an accommodation to ensure appropriate handling as Congress has in the past on numerous occasions. However, the Department should not be able to simply invoke the same reasons for redacting the report from public view as a shield against disclosure to a coequal branch of government.

³⁶ See, e.g., Schmidt and Haberman, *supra* note 34.

³⁷ *In re Sealed Case*, 121 F.3d 729, 741-42 (D.C. Cir. 1997).

³⁸ 418 U.S. 683, 713 (1974).

³⁹ See, e.g., *DOJ hands over new classified documents on Russia probe to Congress*, Associated Press, June 23, 2018; Charlie Savage, *Carter Page FISA Released by Justice Department*, N.Y. TIMES, July 21, 2018

Finally, the Department also should not be able to keep from Congress information related to the “reputational interests of peripheral third parties” as referenced in the Attorney General’s March 29 letter. To the extent the Special Counsel has developed information relative to President Trump’s family members (including those employed by the White House) or his associates, campaign employees, consultants, advisers, and others within the scope of the investigation, that should not be withheld from Congress. It is precisely the type of information that the relevant committees need to perform their oversight, legislative, and other responsibilities. There is no constitutionally recognized privilege that would apply in such instances, and there is ample precedent for provision of such information, as recently as the last Congress.

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued September 21, 2018

Decided April 5, 2019

No. 17-5149

STUART A. MCKEEVER,
APPELLANT

v.

WILLIAM P. BARR, ATTORNEY GENERAL,
APPELLEE

Appeal from the United States District Court
for the District of Columbia
(No. 1:13-mc-00054)

Graham E. Phillips, appointed by the court, argued the cause for appellant as *amicus curiae* in support of appellant. With him on the court were *Roman Martinez* and *Nathanael D.S.R. Porembka*, appointed by the court.

Stuart A. McKeever, *pro se*, was on the brief for appellant.

Amir C. Tayrani was on the brief for *amicus curiae* Legal Scholars in support of appellant.

Brad Hinshelwood, Attorney, U.S. Department of Justice, argued the cause for appellee. With him on the brief was *Jessie K. Liu*, U.S. Attorney, and *Michael S. Raab* and *Mark R.*

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Freeman, Attorneys. *Elizabeth J. Shapiro*, Attorney, entered an appearance.

Before: SRINIVASAN and KATSAS, *Circuit Judges*, and GINSBURG, *Senior Circuit Judge*.

Opinion for the Court filed by *Senior Circuit Judge GINSBURG*.

Dissenting opinion filed by *Circuit Judge SRINIVASAN*.

GINSBURG, *Senior Circuit Judge*: Historian Stuart A. McKeever appeals an order of the district court denying his petition to release grand jury records from the 1957 indictment of a former agent of the Federal Bureau of Investigation, which McKeever sought in the course of his research for a book he is writing. The district court, lacking positive authority, asserted it has inherent authority to disclose historically significant grand jury matters but denied McKeever's request as overbroad. On appeal, the Government argues the district court does not have the inherent authority it claims but rather is limited to the exceptions to grand jury secrecy listed in Federal Rule of Criminal Procedure 6(e).

We agree with the Government. Accordingly, we affirm the order of the district court denying McKeever's petition for the release of grand jury matters.

I. Background

In 1965 Columbia University Professor Jesús de Galíndez Suárez disappeared from New York City. News media at the time believed Galíndez, a critic of the regime of Dominican Republic dictator Rafael Trujillo, was kidnapped and flown to

the Dominican Republic and there murdered by Trujillo's agents. *Witness Tells of Galindez Pilot's Death*, N.Y. TIMES (Apr. 6, 1964); Dwight D. Eisenhower, The President's News Conference of April 25, 1956, in Public Papers of the Presidents of the United States 440-41 (1956). To this day, the details of Galíndez's disappearance remain a mystery.

Stuart McKeever has been researching and writing about the disappearance of Professor Galíndez since 1980. In 2013 McKeever petitioned the district court for the "release of grand jury records in the Frank case," referring to the 1957 investigation and indictment of John Joseph Frank, a former FBI agent and CIA lawyer who later worked for Trujillo, and who McKeever believed was behind Galíndez's disappearance. The grand jury indicted Frank for charges related to his failure to register as a foreign agent pursuant to the Foreign Agents Registration Act of 1938 but never indicted him for any involvement in Galíndez's murder. *See Frank v. United States*, 262 F.2d 695, 696 (D.C. Cir. 1958).

The district court asserted it has "inherent supervisory authority" to disclose grand jury matters that are historically significant, but nevertheless denied McKeever's request after applying the multifactor test set out *In re Craig*, 131 F.3d 99, 106 (2d Cir. 1997). Although several of the nine non-exhaustive factors favored disclosure, the district court read McKeever's petition as seeking release of all the grand jury "testimony and records in the Frank case," which it held was overbroad. McKeever duly appealed.¹

¹ McKeever appeared pro se in the district court but on appeal has been ably assisted by a court-appointed amicus curiae.

We review de novo the district court's assertion of inherent authority to disclose what we assume are historically significant grand jury matters. *Cf. United States v. Doe*, 934 F.2d 353, 356 (D.C. Cir. 1991). Because we hold the district court has no such authority, we need not determine whether it abused its discretion in denying McKeever's petition as overbroad.²

II. Analysis

The Supreme Court has long maintained that “the proper functioning of our grand jury system depends upon the secrecy of grand jury proceedings.” *Douglas Oil Co. v. Petrol Stops Northwest*, 441 U.S. 211, 218 (1979). That secrecy safeguards vital interests in (1) preserving the willingness and candor of witnesses called before the grand jury; (2) not alerting the target of an investigation who might otherwise flee or interfere with the grand jury; and (3) preserving the rights of a suspect who might later be exonerated. *Id.* at 219. To protect these important interests,

[b]oth the Congress and [the Supreme] Court have consistently stood ready to defend [grand jury secrecy] against unwarranted intrusion. In the absence of a clear indication in a statute or Rule, we must always be

² Although the records at issue here were transferred from the Department of Justice to the National Archives, we understand the DOJ has legal control over them. *See* FED. R. CRIM. P. 6(e)(1) (“Unless the court orders otherwise, an attorney for the government will retain control of the recording, the reporter’s notes, and any transcript prepared from those notes”). An order directing the Attorney General to release the records would, therefore, redress McKeever’s alleged injury.

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reluctant to conclude that a breach of this secrecy has been authorized.

United States v. Sells Engineering, Inc., 463 U.S. 418, 425 (1983).

As we have said before, Federal Rule of Criminal Procedure 6(e) “makes quite clear that disclosure of matters occurring before the grand jury is the exception and not the rule” and “sets forth in precise terms to whom, under what circumstances and on what conditions grand jury information may be disclosed.” *Fund of Constitutional Gov’t v. Nat’l Archives & Records Serv.*, 656 F.2d 856, 868 (D.C. Cir. 1981). The full text of Rule 6(e) is reproduced in the Appendix. Of particular relevance here, Rule 6(e)(2)(B) sets out the general rule of grand jury secrecy and provides a list of “persons” who “must not disclose a matter occurring before the grand jury” “[u]nless these rules provide otherwise.” Rule 6(e)(3) then sets forth a detailed list of “exceptions” to grand jury secrecy, including in subparagraph (E) five circumstances in which a “court may authorize disclosure ... of a grand-jury matter.” As McKeever does not claim his request comes within any exception, the question before us is whether the list of exceptions is exhaustive, as the Government argues.

We agree with the Government’s understanding of the Rule. Rule 6(e)(2)(B) instructs that persons bound by grand jury secrecy must not make any disclosures about grand jury matters “[u]nless these rules provide otherwise.” The only rule to “provide otherwise” is Rule 6(e)(3). Rules 6(e)(2) and (3) together explicitly require secrecy in all other circumstances. *See Andrus v. Glover Constr. Co.*, 446 U.S. 608, 616-17 (1980) (“Where Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be

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implied, in the absence of evidence of a contrary legislative intent”).

That the list of enumerated exceptions is so specific bolsters our conclusion. For example, the first of the five discretionary exceptions in Rule 6(e)(3)(E) permits the court to authorize disclosure of a grand jury matter “preliminarily to or in connection with a judicial proceeding.” Rule 6(e)(3)(E)(i). The second exception allows for disclosure “at the request of a defendant who shows that a ground may exist to dismiss the indictment because of a matter that occurred before the grand jury.” Rule 6(e)(3)(E)(ii). The other three exceptions provide that a court may authorize disclosure to certain non-federal officials “at the request of the government” to aid in the enforcement of a criminal law, Rule 6(e)(3)(E)(iii)-(v); those provisions implicitly bar the court from releasing materials to aid in enforcement of civil law. Each of the exceptions can clearly be seen, therefore, as the product of a carefully considered policy judgment by the Supreme Court in its rulemaking capacity, and by the Congress, which in 1977 directly enacted Rule 6(e) in substantially its present form. *See Fund for Constitutional Gov’t*, 656 F.2d at 867. In interpreting what is now Rule 6(e)(3)(E)(i), for example, the Supreme Court stressed that the exception “reflects a judgment that not every beneficial purpose, or even every valid governmental purpose, is an appropriate reason for breaching grand jury secrecy.” *United States v. Baggot*, 463 U.S. 476, 480 (1983).

As the Government emphasizes, McKeever points to nothing in Rule 6(e)(3) that suggests a district court has authority to order disclosure of grand jury matter outside the enumerated exceptions. The list of exceptions in Rule 6(e)(3) does not lead with the term “including,” nor does it have a residual exception. *Cf., e.g.*, FED. R. CIV. P. 60(b) (permitting the court to relieve a party from a final judgment or order for

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five listed reasons as well as “any other reason that justifies relief”).

The contrary reading proposed by McKeever which would allow the district court to create such new exceptions as it thinks make good public policy would render the detailed list of exceptions merely precatory and impermissibly enable the court to “circumvent” or “disregard” a Federal Rule of Criminal Procedure. *Carlisle v. United States*, 517 U.S. 416, 426 (1996); *see also Dietz v. Bouldin*, 136 S. Ct. 1885, 1888 (2016) (The exercise of an inherent power “cannot be contrary to any express grant of, or limitation on, the district court’s power contained in a rule or statute”).

In an effort to limit the natural consequences of his proposal, McKeever explains that the district court should be allowed to fashion new exceptions to grand jury secrecy only if they are “so different from the types of disclosures addressed by Rule 6(e)(3)(E) that no negative inference can be drawn.” Amicus Reply Br. 14-16. That reasoning, however, ignores the likelihood that disclosures “so different” from the ones explicitly permitted by the rule are so far removed from permissible purposes of disclosure that the drafters saw no need even to mention them.

Our understanding that deviations from the detailed list of exceptions in Rule 6(e) are not permitted is fully in keeping with Supreme Court precedent. Though the Court has not squarely addressed the present question, its Rule 6 opinions cast grave doubt upon the proposition that the district court has authority to craft new exceptions. McKeever does not cite any case and we can find none in which the Supreme Court upheld a disclosure pursuant to the district court’s inherent authority after Rule 6 was enacted. The Supreme Court once suggested in a dictum that Rule 6 “is but declaratory” of the

principle that disclosure of a grand jury matter is “committed to the discretion of the trial judge,” *Pittsburgh Plate Glass Co. v. United States*, 360 U.S. 395, 399 (1959), but none of the cases it cited suggests a court has discretion to disclose grand jury materials apart from Rule 6. To the contrary, the Court said “any disclosure of grand jury [materials] is covered” by Rule 6(e). *Id.* at 398. The disclosure sought in that case in order to cross-examine a witness in civil litigation plainly fell within the exception for use “in connection with a judicial proceeding.” *Id.* at 396 n.1 (quoting rule). The only “discretion” at issue involved the district court’s determination whether the party seeking material covered by the exception had made a sufficiently strong showing of need to warrant disclosure. *See id.* at 398-99; *see also Douglas Oil*, 441 U.S. at 217-24 (describing same discretion). Indeed, the Court has at least four times since suggested the exceptions in Rule 6(e) are exclusive. In *Baggot*, 463 U.S. at 479-80, the Court prohibited disclosure of a witness’s grand jury testimony for use in a civil investigation by the Internal Revenue Service. The Court held a civil tax audit was not “preliminary to [n]or in connection with a judicial proceeding” and therefore did not come within the exception in what is now Rule 6(e)(3)(E)(i). In reaching its conclusion, the Court explained that the exception at issue is “on its face, an affirmative limitation on the availability of court-ordered disclosure of grand jury materials.” *Id.* at 479; *see also Illinois v. Abbott & Assocs., Inc.*, 460 U.S. 557, 567 (1983) (Rule 6(e)(3)(C) “authorize[s]” the court “to permit certain disclosures that are otherwise prohibited by the General Rule of Secrecy”); *United States v. Williams*, 504 U.S. 36, 46 n.6 (1992) (describing Rule 6(e), which “plac[es] strict controls on disclosure of ‘matters occurring before the grand jury,’” as one of those “few, clear rules which were carefully drafted and approved by this Court and by the Congress to ensure the integrity of the grand jury’s functions”); *Sells Engineering*, 463 U.S. at 425 (“In the

absence of a clear indication in a statute or Rule, we must always be reluctant to conclude that a breach of this secrecy has been authorized”).

Our understanding of Rule 6(e) is also supported by this court’s precedents, which require a district court to hew strictly to the list of exceptions to grand jury secrecy. For example, *In re Sealed Case*, 801 F.2d 1379, 1381 (D.C. Cir. 1986), we said Rule 6(e)(2) “provides that disclosure of ‘matters occurring before the grand jury’ is prohibited unless specifically permitted by one of the exceptions set forth in Rule 6(e)(3).” A few years later, we reiterated this point *In re Sealed Case*, 250 F.3d 764, 768 (D.C. Cir. 2001), when we held that statements made by government attorneys to a qui tam court about a witness’s grand jury testimony were an impermissible disclosure outside the strictures of Rule 6(e). In so holding, we rejected the Government’s then-position that there is a place for implied exceptions to the Rule: “the Rule on its face prohibits such a communication because it does not except it from the general prohibition.” *Id.* at 769. It would be most peculiar to have stressed then that the exceptions in Rule 6(e) “must be narrowly construed,” *id.* 769, yet to hold now that they may be supplemented by unwritten additions.³

³ McKeever and our dissenting colleague cite *Haldeman v. Sirica*, 501 F.2d 714 (D.C. Cir. 1974) – which permitted the disclosure of a sealed grand jury report to aid in the inquiry by the House Judiciary Committee into possible grounds for impeachment of President Nixon – as stepping outside the strict bounds of Rule 6(e). As the dissent acknowledges, however, our opinion in “*Haldeman* ... contains no meaningful analysis of Rule 6(e)’s terms.” Rather, the court’s opinion is ambiguous as to its rationale, expressing only a “general agreement” with the district court’s decision. *Id.* at 715. The reasoning of the district court is itself ambiguous; its holding that “[p]rinciples of grand jury secrecy do not bar this disclosure” is

based in part upon various policy considerations; in part upon the view that grand jury matters may lawfully be made available to the House of Representatives as “a body that in this setting acts simply as another grand jury”; and in part upon the view that it “seems incredible that grand jury matters should lawfully be available to disbarment committees and police disciplinary investigations and yet be unavailable to the House of Representatives in a proceeding of so great import as an impeachment investigation.” See *In re Report & Recommendation of June 5, 1972 Grand Jury Concerning Transmission of Evidence to House of Representatives*, 370 F. Supp. 1219, 1228-30 (D.D.C. 1974); *id.* at 1228 n.39 (citing *Special Feb. 1971 Grand Jury v. Conlisk*, 490 F.2d 894, 897 (7th Cir. 1973) (police disciplinary investigation)), and *id.* at 1229 n.41 (citing *Doe v. Rosenberry*, 255 F.2d 118, 120 (2d Cir. 1958) (disbarment committee)), both decided per the “judicial proceeding” exception in Rule 6(e).

The dissent also notes that the district court in *Haldeman* favorably cited Judge Friendly’s opinion *In re Biaggi*, 478 F.2d 489 (2d Cir. 1973), which authorized a disclosure not covered by any Rule 6(e) exception. But *Biaggi* was carefully limited to the “special circumstances” of that case, *id.* at 494, in which a grand jury witness, who is not subject to any secrecy obligation in the first place, sought disclosure only of his own testimony. See *id.* at 492-93. Judge Friendly carefully noted that, if the witness had not sought his own testimony, then disclosure would have been improper “[n]o matter how much, or how legitimately, the public may want to know” how the witness had testified. *Id.* at 493.

In any event, we read *Haldeman* as did Judge MacKinnon in his separate opinion concurring in part, as fitting within the Rule 6 exception for “judicial proceedings.” See 501 F.2d at 717. Doing so reads the case to cohere, rather than conflict, with the Supreme Court and D.C. Circuit precedents discussed above, which both predate and postdate *Haldeman*.

McKeever makes three arguments to the contrary. The first is that Rule 6(e) imposes no obligation of secrecy upon the district court itself because the district court is not on the list of “persons” to whom grand jury secrecy applies per Rule 6(e)(2). See Rule 2(e)(2)(A) (“No obligation of secrecy may be imposed on any person except in accordance with Rule 6(e)(2)(B)”). Therefore, the argument goes, the two *Sealed Cases* discussed above are inapplicable here because they deal with disclosures by government attorneys, not by the court itself, and the court has authority to order disclosure of grand jury matters because these materials are “judicial records” over which the court has inherent authority. Amicus Br. 24-25 (citing, inter alia, *Carlson v. United States*, 837 F.3d 753, 758-59 (7th Cir. 2016) (concluding grand jury records are “records of the court” over which the district court can exercise inherent authority because the grand jury is “part of the judicial process”)).

We do not agree that the omission of the district court from the list of “persons” in Rule 6(e)(2) supports McKeever’s claim. Rule 6 assumes the records are in the custody of the Government, not that of the court: When the court authorizes their disclosure, it does so by ordering “an attorney for the government” who holds the records to disclose the materials. See Rule 6(e)(1) (“Unless the court orders otherwise, an attorney for the government will retain control of the recording, the reporter’s notes, and any transcript” of the grand jury proceeding). Because an “attorney for the government” is one of the “persons” subject to grand jury secrecy in Rule 6(e)(2)(B), the Rule need not also list the district court as a “person” in order to make the court, as a practical matter, subject to the strictures of Rule 6. Indeed, as the Government explains, a district court is not ordinarily privy to grand jury matters unless called upon to respond to a request to disclose grand jury matter. As to whether records of a grand jury

proceeding are “judicial records” a term not found in Rule 6 we note the teaching of the Supreme Court that although the grand jury may act “under judicial auspices,” its “institutional relationship with the Judicial Branch has traditionally been, so to speak, at arm’s length,” *Williams*, 504 U.S. at 47; it is therefore not at all clear that when Rule 6(e)(2)(B) mentions a “matter appearing before the grand jury,” it is referring to a “judicial record.” The Supreme Court has never said as much, and we, albeit in another context, have twice said the opposite: “[T]he concept of a judicial record ‘assumes a judicial decision,’ and with no such decision, there is ‘nothing judicial to record.’” *SEC v. Am. Int’l Grp.*, 712 F.3d 1, 3 (D.C. Cir. 2013) (quoting *United States v. El-Sayegh*, 131 F.3d 158, 162 (D.C. Cir. 1997)).

McKeever’s second argument, which was recently accepted by the Seventh Circuit in *Carlson*, is that the advent of Rule 6 did not eliminate the district court’s preexisting authority at common law to disclose grand jury matters because courts “do not lightly assume” a federal rule reduces the “scope of a court’s inherent power.” *Chambers v. NASCO, Inc.*, 501 U.S. 32, 47 (1991) (citation omitted). A federal rule that “permits a court to do something and does not include any limiting language” therefore “should not give rise to a negative inference that it abrogates the district court’s inherent power without a ‘clear[] expression of [that] purpose.’” *Carlson*, 837 F.3d at 763 (quoting *Link v. Wabash R.R. Co.*, 370 U.S. 626, 631-32 (1962)) (alterations in original). In this telling, because Rule 6 did not contain a “clear expression” that it displaced the district court’s preexisting authority, the court remains free to craft new exceptions; the rulemakers simply furnished the list of detailed exceptions “so that the court knows that no special hesitation is necessary in those circumstances.” *Id.* at 764-65.

That account of Rule 6 is difficult to square with the text of the Rule, which we have examined above. The “limiting language,” *id.* at 763, the Seventh Circuit sought is plain: Rule 6(e)(2) prohibits disclosure of a grand jury matter “unless these rules provide otherwise.” Yet the Seventh Circuit dismisses this instruction because a limitation “buried” in Rule 6(e)(2) could not “secretly appl[y]” to “an entirely different subpart,” *Carlson*, 837 F.3d at 764, never mind that this subpart follows immediately after Rule 6(e)(2) as Rule 6(e)(3). Because we believe it is necessary to read the exceptions in subpart (e)(3) in conjunction with the general rule in subpart (e)(2), we agree with Judge Sykes’s dissent in *Carlson*:

As my colleagues interpret the rule, the limiting language in the secrecy provision has no bearing at all on the exceptions.... But the two provisions cannot be read in isolation. They appear together in subpart (e), sequentially, and govern the same subject matter. The exceptions plainly modify the general rule of nondisclosure. Treating the exceptions as merely exemplary puts the two provisions at cross-purposes: If the district court has inherent authority to disclose grand-jury materials to persons and in circumstances not listed in subsection (e)(3)(E), the limiting phrase “unless these rules provide otherwise” in the secrecy provision is ineffectual.

Id. at 769.

McKeever’s third contention is that the purposes of grand jury secrecy would not be served by denying disclosure in this case; the passage of time and likely death of all witnesses in Frank’s grand jury proceeding have rendered continued secrecy pointless. Of course, these considerations are irrelevant if the district court lacks authority to create new

exceptions to Rule 6(e). In any event, it is not clear that continued secrecy serves no purpose in this case. First, privacy interests can persist even after a person's death. See *New York Times Co. v. Nat'l Aeronautics & Space Admin.*, 920 F.2d 1002, 1009-1010 (D.C. Cir. 1990). Second, as the Supreme Court noted in *Douglas Oil*, there is likely to be a chilling effect on what a witness is willing to say to a grand jury if there is a risk the court will later make the witness's testimony public. 441 U.S. at 219. The effect of an exception must be evaluated *ex ante*, not *ex post*. For example, if a witness in Frank's grand jury proceedings had known that the public might learn about his testimony in the future and that his words could be immortalized in a book then his willingness to testify "fully and frankly," *id.*, could have been affected. Furthermore, the risk of a witness's testimony being disclosed would grow as district courts continue over time to create additional exceptions to grand jury secrecy.

Our concern is not merely hypothetical; as the Government points out, there has been a steady stream of requests for disclosures since the district court first claimed inherent authority *In re Petition of Kutler*, 800 F. Supp. 2d 42, 50 (D.D.C. 2011) (granting request to disclose President Nixon's grand jury testimony about Watergate due to its historical importance). See *In re Application to Unseal Dockets Related to the Independent Counsel's 1998 Investigation of President Clinton*, 308 F. Supp. 3d 314, 335-36 (D.D.C. 2018) (ordering disclosure of grand jury materials related to the investigation of President Clinton's business dealings and his relationship with a White House intern); *Sennett v. Dep't of Justice*, 962 F. Supp. 2d 270, 283-84 (D.D.C. 2013) (permitting the FBI to withhold grand jury information in response to a Freedom of Information Act request despite the requester's argument for an exception to grand jury secrecy for historically important material); *In re*

Nichter, 949 F. Supp. 2d 205, 212-13 (D.D.C. 2013) (denying disclosure of certain grand jury records about Watergate in part because at least one of the subjects of the testimony was alive); *In re Shepard*, 800 F. Supp. 2d 37, 39-40 (D.D.C. 2011) (denying as overbroad a request for disclosure of “all testimony and materials associated with every witness before three [Watergate] grand juries”).

We recognize that our view of Rule 6(e) differs from that of some other circuits. See, e.g., *Carlson*, 837 F.3d at 767, discussed above; *In re Craig*, 131 F.3d at 105 (recognizing it is “entirely conceivable that in some situations historical or public interest alone could justify the release of grand jury information” because they constitute “special circumstances” in which release of grand jury records is appropriate outside the bounds of Rule 6); *In re Hastings*, 735 F.2d 1261, 1272 (11th Cir. 1984) (allowing a district court to “act outside the strict bounds of Rule 6(e), in reliance upon its historic supervisory power” to disclose grand jury matters to a judicial investigating committee); *Pitch v. United States*, 915 F.3d 704, 707 (11th Cir. 2019) (affirming an order to unseal historically significant grand jury matter “[b]ecause we are bound by our decision in *Hastings*”). For all the reasons set forth above, we simply cannot agree.

Instead, we agree with the Sixth Circuit, which has turned down an invitation to craft an exception to grand jury secrecy outside the terms of the Rule:

We are not unaware of those commentators who have urged the courts to make grand jury materials more accessible to administrative agencies in an effort to reduce duplicative investigations. Rule 6(e)(3)(C)(i) is not a rule of convenience; without an unambiguous statement to the contrary from Congress, we cannot,

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and must not, breach grand jury secrecy for any purpose other than those embodied by the Rule.

In re Grand Jury 89-4-72, 932 F.2d 481, 488 (1991) (citation omitted). The Eighth Circuit expressed the same view in *United States v. McDougal*, 559 F.3d 837, 840 (2009):

McDougal's argument invoking ... the "[c]ourt's supervisory power over its own records and files" is unpersuasive.... "[B]ecause the grand jury is an institution separate from the courts, over whose functioning the courts do not preside," *United States v. Williams*, 504 U.S. 36, 47 (1992), courts will not order disclosure absent a recognized exception to Rule 6(e)

....

Just so.⁴

III. Conclusion

Because the district court has no authority outside Rule 6(e) to disclose grand jury matter, the order of the district court denying McKeever's petition is

Affirmed.

⁴ At least three other circuits have expressed the same view in dicta. See *United States v. Educ. Dev. Network Corp.*, 884 F.2d 737, 740 (3d Cir. 1989); *In re Grand Jury Subpoenas, Apr., 1978, at Baltimore*, 581 F.2d 1103, 1108–09 (4th Cir. 1978); *In re J. Ray McDermott & Co., Inc.*, 622 F.2d 166, 172 (5th Cir. 1980).

Appendix***Federal Rule of Criminal Procedure 6: The Grand Jury*****(e) Recording and Disclosing the Proceedings.**

(1) Recording the Proceedings. Except while the grand jury is deliberating or voting, all proceedings must be recorded by a court reporter or by a suitable recording device. But the validity of a prosecution is not affected by the unintentional failure to make a recording. Unless the court orders otherwise, an attorney for the government will retain control of the recording, the reporter's notes, and any transcript prepared from those notes.

(2) Secrecy.

(A) No obligation of secrecy may be imposed on any person except in accordance with Rule 6(e)(2)(B).

(B) Unless these rules provide otherwise, the following persons must not disclose a matter occurring before the grand jury:

- (i)** a grand juror;
- (ii)** an interpreter;
- (iii)** a court reporter;
- (iv)** an operator of a recording device;
- (v)** a person who transcribes recorded testimony;
- (vi)** an attorney for the government; or
- (vii)** a person to whom disclosure is made under Rule 6(e)(3)(A)(ii) or (iii).

(3) Exceptions.

(A) Disclosure of a grand-jury matter other than the grand jury's deliberations or any grand juror's vote may be made to:

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- (i)** an attorney for the government for use in performing that attorney's duty;
 - (ii)** any government personnel including those of a state, state subdivision, Indian tribe, or foreign government that an attorney for the government considers necessary to assist in performing that attorney's duty to enforce federal criminal law; or
 - (iii)** a person authorized by 18 U.S.C. § 3322.
- (B)** A person to whom information is disclosed under Rule 6(e)(3)(A)(ii) may use that information only to assist an attorney for the government in performing that attorney's duty to enforce federal criminal law. An attorney for the government must promptly provide the court that impaneled the grand jury with the names of all persons to whom a disclosure has been made, and must certify that the attorney has advised those persons of their obligation of secrecy under this rule.
- (C)** An attorney for the government may disclose any grand-jury matter to another federal grand jury.
- (D)** An attorney for the government may disclose any grand-jury matter involving foreign intelligence, counterintelligence (as defined in 50 U.S.C. § 3003), or foreign intelligence information (as defined in Rule 6(e)(3)(D)(iii)) to any federal law enforcement, intelligence, protective, immigration, national defense, or national security official to assist the official receiving the information in the performance of that official's duties. An attorney for the

government may also disclose any grand-jury matter involving, within the United States or elsewhere, a threat of attack or other grave hostile acts of a foreign power or its agent, a threat of domestic or international sabotage or terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by its agent, to any appropriate federal, state, state subdivision, Indian tribal, or foreign government official, for the purpose of preventing or responding to such threat or activities.

(i) Any official who receives information under Rule 6(e)(3)(D) may use the information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information. Any state, state subdivision, Indian tribal, or foreign government official who receives information under Rule 6(e)(3)(D) may use the information only in a manner consistent with any guidelines issued by the Attorney General and the Director of National Intelligence.

(ii) Within a reasonable time after disclosure is made under Rule 6(e)(3)(D), an attorney for the government must file, under seal, a notice with the court in the district where the grand jury convened stating that such information was disclosed and the departments, agencies, or entities to which the disclosure was made.

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(iii) As used in Rule 6(e)(3)(D), the term “foreign intelligence information” means:

(a) information, whether or not it concerns a United States person, that relates to the ability of the United States to protect against

- actual or potential attack or other grave hostile acts of a foreign power or its agent;
- sabotage or international terrorism by a foreign power or its agent; or
- clandestine intelligence activities by an intelligence service or network of a foreign power or by its agent; or

(b) information, whether or not it concerns a United States person, with respect to a foreign power or foreign territory that relates to

- the national defense or the security of the United States;
- or
- the conduct of the foreign affairs of the United States.

(E) The court may authorize disclosure at a time, in a manner, and subject to any other conditions that it directs of a grand-jury matter:

(i) preliminarily to or in connection with a judicial proceeding;

(ii) at the request of a defendant who shows that a ground may exist to dismiss the

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indictment because of a matter that occurred before the grand jury;

(iii) at the request of the government, when sought by a foreign court or prosecutor for use in an official criminal investigation;

(iv) at the request of the government if it shows that the matter may disclose a violation of State, Indian tribal, or foreign criminal law, as long as the disclosure is to an appropriate state, state-subdivision, Indian tribal, or foreign government official for the purpose of enforcing that law; or

(v) at the request of the government if it shows that the matter may disclose a violation of military criminal law under the Uniform Code of Military Justice, as long as the disclosure is to an appropriate military official for the purpose of enforcing that law.

(F) A petition to disclose a grand-jury matter under Rule 6(e)(3)(E)(i) must be filed in the district where the grand jury convened....

[Remainder of Rule 6 omitted.]

SRINIVASAN, *Circuit Judge*, dissenting: The central issue in this case is whether a district court can authorize the release of grand jury materials in circumstances beyond those expressly identified in Rule 6(e) of the Federal Rules of Criminal Procedure. If not, grand jury materials falling outside Rule 6(e)'s exceptions cannot be released even if there is a strong public interest favoring disclosure and no enduring interest in secrecy. My colleagues read Rule 6 to compel that result. In my respectful view, however, our court's en banc decision in *Haldeman v. Sirica*, 501 F.2d 714 (1974), allows for district court disclosures beyond Rule 6(e)'s exceptions.

Rule 6(e) "codifies the traditional rule of grand jury secrecy." *United States v. Sells Eng'g, Inc.*, 463 U.S. 418, 425 (1983). The Rule imposes an obligation of secrecy on certain persons, Rule 6(e)(2), but then sets out five exceptions to that obligation, Rule 6(e)(3)(A) (E). The first four exceptions allow for disclosure without a need for district court authorization. The last exception describes five circumstances in which "[t]he court may authorize disclosure . . . of a grand-jury matter." Rule 6(e)(3)(E)(i) (v) (emphasis added). None of those circumstances applies in this case.

The crucial question for our purposes, then, is whether Rule 6(e)(3)'s exceptions identify the only circumstances in which a district court may authorize disclosure of grand jury materials. Or, alternatively, does a court retain inherent discretion to consider releasing grand jury materials in other circumstances potentially including, as relevant here, for reasons of historical significance?

In *Haldeman*, this court, sitting en banc, faced the contention that a district court's authority to disclose grand jury materials is confined to the exceptions in Rule 6(e). The district court in that case had ordered the disclosure of materials from the Watergate grand jury to the House Judiciary Committee for its consideration in investigating the possible

impeachment of President Nixon. Only one of the exceptions in Rule 6(e) even arguably applied: when disclosure occurs “preliminarily to or in connection with a judicial proceeding.” See Rule 6(e)(3)(E)(i).

The petitioners in *Haldeman* asked our court to prohibit the district court from releasing the grand jury materials to the House Judiciary Committee. We declined to do so and instead sustained the district court’s disclosure order. 501 F.2d at 716. Our decision thus settled that a district court retains discretion to release grand jury matter to a House Committee in the specific context of an impeachment inquiry.

But what are the implications of our decision in *Haldeman* for a district court’s authority to release grand jury materials outside the impeachment context? And, in particular, does a district court possess inherent discretion to consider disclosure beyond the specific exceptions set out in Rule 6(e) including, as relevant here, for reasons of historical significance?

The petitioners in *Haldeman* argued no. They believed the district court lacked discretion to disclose the grand jury materials to the House Judiciary Committee unless the circumstances fit within the Rule 6(e) exception for judicial proceedings. They “asserted, both in the District Court and here, that the discretion ordinarily reposed in a trial court to make such disclosure of grand jury proceedings as he deems in the public interest is, by the terms of Rule 6(e) . . . limited to circumstances incidental to judicial proceedings and that impeachment does not fall into that category.” *Id.* at 715.

In rejecting the petitioners’ argument, we said that the district judge, Chief Judge Sirica, “ha[d] dealt at length with this contention,” that we were “in general agreement with his handling of the[] matter[],” and that “we fe[lt] no necessity to

expand his discussion.” *Id.* Our decision thereby subscribed to Chief Judge Sirica’s rationale for his disclosure order. The question for our purposes, then, is whether he ordered the disclosure on an understanding that he had inherent discretion to release grand jury materials outside the Rule 6(e) exceptions, or whether he instead believed he was confined to those exceptions but that the disclosure to the House Judiciary Committee fit within the exception for judicial proceedings.

I understand Chief Judge Sirica to have adopted and thus our court to have ratified the former understanding. He began his analysis by stating that, as to “the question of disclosure,” “judicial authority” is “exclusive.” *In re Report & Recommendation of June 5, 1972 Grand Jury*, 370 F. Supp. 1219, 1226 (D.D.C. 1974). He noted decisions that had assessed the propriety of disclosure by weighing, “among other criteria, judicial discretion over grand jury secrecy, the public interest, and prejudice to persons named by the [grand jury] report.” *Id.* at 1227. Those considerations led him to conclude “that delivery to the Committee is eminently proper, and indeed, obligatory.” *Id.*

Judge Sirica identified the “only significant objection to disclosure” to be “the contention that release . . . is absolutely prohibited by Rule 6(e).” *Id.* He emphasized, though, that the “rule continues the traditional practice of secrecy on the part of members of the grand jury, *except when the court permits a disclosure.*” *Id.* (emphasis in original). He reviewed decisions addressing the exception for judicial proceedings and concluded that the “difficulty in application of Rule 6(e) to specific fact situations likely arises from the fact that its language regarding ‘judicial proceedings’ can imply limitations on disclosure much more extensive than were apparently intended.” *Id.* at 1229.

Of particular salience, Judge Sirica favorably referenced a then-recent “opinion written by Chief Judge Friendly” in which “the Second Circuit held that Rule 6(e) did not bar public disclosure of grand jury minutes[] *wholly apart from judicial proceedings.*” *Id.* (emphasis added). The Second Circuit had found that the judicial-proceeding exception was “inapplicable” because the court had “not been told of any judicial proceeding preliminary to or in connection with which the . . . grand jury testimony may be relevant.” *In re Biaggi*, 478 F.2d 489, 492 (2d Cir. 1973). But the court still allowed disclosure, even though no Rule 6(e) exception applied. *Id.* at 492–93; *see id.* at 493–94 (Hays, J., dissenting) (noting that the majority allowed disclosure even though it “concede[d] that the present situation does not present a case for the application of any of the exceptions specified in the Rule”).

Judge Sirica, in concluding that “[p]rinciples of grand jury secrecy do not bar [the] disclosure” at issue in *Haldeman*, explained that he was “persuaded to follow the lead . . . of Judges Friendly and Jameson” in *Biaggi*. 370 F. Supp. at 1230. He also listed additional decisions he was “persuaded to follow” in which disclosure had been authorized. *Id.* Those decisions, like *Biaggi*, did not involve disclosures justified on the theory that they fell within any Rule 6(e) exception. I thus understand Judge Sirica to have ordered disclosure on the understanding that he retained inherent discretion to release grand jury materials outside of Rule 6(e)’s exceptions.

Granted, Judge Sirica at one point described the House Judiciary Committee as “a body that in this setting acts simply as another grand jury.” *Id.* But, as his reliance on *Biaggi* and the other decisions shows, he did not compare the Committee to “another grand jury” on any theory that the Committee’s investigation implicated the judicial-proceedings exception. In fact, the Advisory Committee later added an exception

allowing disclosures from one grand jury to another, reasoning that such a transfer fell outside the pre-existing judicial-proceedings exception. *See* Rule 6(e)(3)(C) advisory committee's note to 1983 amendment. Rather, Judge Sirica compared the Committee to "another grand jury" to convey that the Committee likewise would "insure against unnecessary and inappropriate disclosure." 370 F. Supp. at 1230.

For those reasons, when our court in *Haldeman* endorsed Judge Sirica's approach, we in my view affirmed his understanding that a district court retains discretion to release grand jury materials outside the Rule 6(e) exceptions. To be sure, *Haldeman* unlike my colleagues' careful opinion in this case contains no meaningful analysis of Rule 6(e)'s terms. But Rule 6(e) has not changed since *Haldeman* in any way material to the issue we address today. And my reading of *Haldeman* squares with the reading of the decision adopted by each of our sister circuits to have interpreted it. *See Pitch v. United States*, 915 F.3d 704, 710 n.5 (11th Cir. 2019); *Carlson v. United States*, 837 F.3d 753, 766 (7th Cir. 2016). It also squares with the Advisory Committee's evident reason for declining to add a Rule 6(e) exception for historically-significant materials viz., that district courts already authorized such disclosures as a matter of their inherent authority. *See Pitch*, 915 F.3d at 715 (Jordan, J., concurring). It is also consistent with various decisions relied on by my colleagues, *see supra* at 7 9 & n.3, none of which dealt with whether courts can order disclosures outside of Rule 6(e)'s exceptions.

Because my colleagues conclude that district courts lack authority to release grand jury materials outside the Rule 6(e) exceptions, they have no occasion to decide whether, if district courts do have that authority, the district court in this case appropriately declined to exercise it. I therefore do not reach

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that issue either. But on the threshold question of whether district courts have discretion to consider disclosures beyond Rule 6(e), I respectfully dissent from my colleagues' view based on my different reading of our decision in *Haldeman*.

Escalona, Prim F. (OLA)

From: Escalona, Prim F. (OLA)
Sent: Wednesday, September 25, 2019 11:29 AM
To: Purdy, Nikita (JMD); Hankey, Mary Blanche (OLA); Lucas, Daniel (JMD)
Subject: 2019-09-24 - AAG Engel - Urgent Concern Determination by IC IG (slip op) - FINAL.pdf
Attachments: 2019-09-24 - AAG Engel - Urgent Concern Determination by IC IG (slip op) - FINAL.pdf; ATT00001.txt

Engel, Steven A. (OLC)

From: Engel, Steven A. (OLC)
Sent: Tuesday, September 24, 2019 10:48 PM
To: Kupec, Kerri (OPA)
Subject: Re: Final statements

There's a "Ukranian" not "Ukrainian" in the second statement. ;-)

Otherwise, looks good.

Sent from my iPad

On Sep 24, 2019, at 10:43 PM, Kupec, Kerri (OPA) <kkupec@jmd.usdoj.gov> wrote:

Duplicative Material - See December 10 Production, Bates Stamp Page
20200330-0000609

