

ONE HUNDRED SEVENTEENTH CONGRESS

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON THE JUDICIARY

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**To:** Republican Members of the Committee on the Judiciary

**From:** Republican Committee Staff

**Re:** Key Take-aways from the Committee’s Transcribed Interview of Former White House Counsel Donald F. McGahn II

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On June 4, 2021, after two years of litigation pursued by Committee Democrats, former White House Counsel Donald F. McGahn II appeared before the Committee for a closed-door transcribed interview.<sup>1</sup> The long-awaited interview—of a witness that Democrats once called the “most important witness, other than the President,” in their investigation<sup>2</sup>—failed to substantiate any Democrat allegations of wrongdoing by President Trump. This memorandum provides a summary of the key take-aways from the interview.

### SUMMARY

Committee Democrats used the transcribed interview of Don McGahn to rehash the facts and relitigate the conclusions of the report of Special Counsel Robert Mueller III, which was publicly released on April 18, 2019. McGahn had been interviewed by the Special Counsel’s team at least five times, making the Committee’s interview at least the sixth occasion that McGahn had testified about these matters. Unsurprisingly, Democrats failed to uncover any new, substantive information that was not already disclosed in the Special Counsel’s report. Accordingly, Democrats spent hours asking McGahn for his reaction to a number of hypothetical and theoretical questions in a flailing effort to conjure up some basis of wrongdoing.

McGahn’s transcribed interview showed, however, that President Trump and his Administration acted appropriately, ethically, and within legal bounds. For example:

- McGahn testified very specifically that he never saw anything illegal or unlawful during his time as White House Counsel.

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<sup>1</sup> The interview was the product of a recent settlement agreement between Committee Democrats and the Department of Justice.

<sup>2</sup> Complaint for Declaratory and Injunctive Relief, *Committee on the Judiciary v. McGahn*, No. 1:19-CV-2379 at 4 (D.C. Cir. 2019).

- McGahn testified specifically that President Trump instructed McGahn and other White House staff to cooperate fully with the Special Counsel investigation.
- Although Democrats focused largely on President Trump's concern that conflicts of interest should have disqualified Robert Mueller from serving as special counsel, McGahn was clear that he never acted to disqualify Mueller. In fact, President Trump never fired or replaced Mueller, Mueller finished his investigation unimpeded, and the Trump Administration never limited the scope of the review.

The transcribed interview revealed that President Trump was rightly frustrated with the Special Counsel's probe and the FBI's handling of several related investigations. We now know that the debunked allegations of Russia collusion were based on political opposition research and Russian disinformation, and that the investigations initiated in the Obama-Biden Administration were tainted by political bias and FBI misconduct. The alleged obstructive episodes contained in the Special Counsel's report—and examined *ad nauseam* by Democrats—were often a reflection of President Trump's well-founded frustration that the baseless investigation had cast, as McGahn testified, a cloud over the beginning of President Trump's presidency.

The Democrats' greatest folly was using limited Committee time and resources in a face-saving project, believing they could uncover material that the Special Counsel investigation had missed. The Special Counsel performed an extensive and exhaustive investigation into allegations of Russian collusion and obstruction of justice. The investigation lasted nearly two years; cost taxpayers over \$30 million; and reflected the work of 19 attorneys and a team of approximately 40 FBI agents, intelligence analysts, and other professional staff. The Special Counsel team issued over 2,800 subpoenas, interviewed approximately 500 witnesses, and executed over 500 search warrants. In the end, the investigation determined there was no collusion and the Justice Department did not bring charges for obstruction of justice. Special Counsel Mueller himself testified about his investigation and his findings before this Committee at length almost two years ago.

Instead of rehashing the Special Counsel's report and indulging in their obsession with President Trump, Committee Democrats should be using the Committee's resources on issues that matter—for example, the Biden border crisis, the recent poor jobs reports, attacks on fundamental American civil rights, or Big Tech's censorship of speech online. These issues—and not regurgitated allegations from a two-year-old investigation—are what matter to the American people.

**I. President Trump did not collude with Russia, obstruct justice, or violate any law.**

McGahn testified that he did not witness any collusion between the Trump campaign and Russia—the same conclusion reached by Special Counsel Mueller.<sup>3</sup> McGahn testified:

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<sup>3</sup> SPECIAL COUNSEL ROBERT S. MUELLER, III, *Report On The Investigation Into Russian Interference In The 2016 Presidential Election* Vol. I at 2 (2019) [hereinafter Mueller Report].

Q. And during your tenure working with the campaign, did you ever witness any improper collusion or anything with a Russian?

A. [N]o, I didn't witness anything of the sort.

Q. Okay. So you didn't witness any wrongdoing? Any collusion?

A. No. Whatever "collusion" means, I don't think I witnessed anything that –

Q. Right.

A. – could be remotely construed as collusion.<sup>4</sup>

Later in the interview, McGahn reiterated the fact that he did not witness any collusion. He testified:

Q. Just to wrap up . . . you didn't witness any evidence of collusion with any Russian people, right?

A. No.<sup>5</sup>

Additionally, McGahn testified that he did not have any recollection of anyone from the Trump campaign expressing concerns about collusion or conspiracy with the Russians. He testified:

Q. [D]id anybody from the campaign ever express concerns to you that there was . . . some matter that needed to be looked at for . . . whether there was collusion or conspiracy with the Russians?

A. The collusion stuff really didn't take shape until after the President won the election, to my recollection. I don't have any recollection of anybody, prior to him winning – now, I'm sure there was stray news articles or whatnot, but my recollection is that I don't have any . . . recollection that would be responsive to your question.<sup>6</sup>

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<sup>4</sup> Transcribed Interview of Donald F. McGahn II, Former White House Counsel at 55. (Jun. 4, 2020) [hereinafter McGahn TI].

<sup>5</sup> *Id.* at 86.

<sup>6</sup> McGahn TI at 55-56.

McGahn further testified that he never witnessed any violation of law by the President, including any violation of any criminal or obstruction statute. He testified:

Q. And, in your mind, you didn’t witness any violation of the law by the President? . . .

A. I don’t believe I did. No, nothing along those lines, no.<sup>7</sup>

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Q. And just to put a finer point on that . . . you’ve stated that, during the course of your tenure at the White House, you did not witness any violation of law relating to these matters.

A. Not in my view. No.

Q. And so . . . you didn’t witness anything the President did that would be a violation of the obstruction statute.

A. Correct.

Q. Or any other criminal statute.

A. Correct.<sup>8</sup>

McGahn’s testimony before the Committee comports with a statement that his attorney issued back in August 2019, which noted that “Don [McGahn] does not believe he witnessed any violation of law.”<sup>9</sup>

## **II. President Trump cooperated fully with the Special Counsel investigation.**

Don McGahn detailed how President Trump cooperated fully with the investigation of Special Counsel Robert Mueller. McGahn’s testimony undercuts any assertion that President Trump acted to obstruct the investigation.

President Trump’s cooperation with the Special Counsel’s investigation was already a matter of public record before the McGahn interview. According to his report, the Special Counsel interviewed several former and current aides to the President and senior Administration officials, including Attorney General Jeff Sessions, White House Chief of Staff Reince Priebus, White House Communications Director Hope Hicks, White House Press Secretary Sean Spicer,

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<sup>7</sup> *Id.* at 86.

<sup>8</sup> *Id.* at 147-148.

<sup>9</sup> Ellen Nakashima and Karoun Demirjian, *Democrats ask federal judge to force testimony from ex-White House counsel McGahn*, THE WASH. POST (Aug. 7, 2019).

as well as the numerous interviews of McGahn.<sup>10</sup> In January 2018, President Trump’s lawyers released information documenting the Administration’s and the Trump campaign’s “unprecedented” cooperation with the probe and related congressional investigations.<sup>11</sup> According to a contemporaneous news account, as of January 2018, the White House had “provided more than 20,000 pages of materials, and the campaign has provided more than 1.4 million pages” and “more than 20 White House personnel have given interviews” along with seventeen campaign employees and “plus 11 additional individuals.”<sup>12</sup>

McGahn, in particular, participated extensively with the Special Counsel’s probe. Committee Democrats acknowledged this cooperation in their August 2019 complaint to seek civil enforcement of their subpoena for McGahn’s testimony. In that complaint, Committee Democrats alleged that “McGahn sat for at least five interviews with the Special Counsel’s investigators from November 30, 2017, through February 28, 2019.”<sup>13</sup> A review of the Special Counsel’s report confirms that the Special Counsel and his team interviewed McGahn a minimum of five times.<sup>14</sup> In August 2018, multiple press outlets reported that McGahn spoke with Special Counsel investigators for a total of 30 hours.<sup>15</sup>

During the transcribed interview, McGahn confirmed his extensive cooperation with the Special Counsel’s probe. When McGahn was read segments of statements made by his attorney, he testified:

Q. “And the President instructed Don to cooperate fully with the special counsel.” Is that correct?

A. That is correct.

Q. And, in fact, you did cooperate fully with the special counsel, correct?

A. Best of my ability, yes.<sup>16</sup>

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<sup>10</sup> See generally SPECIAL COUNSEL ROBERT S. MUELLER, III, *Report On The Investigation Into Russian Interference In The 2016 Presidential Election* (2019) [hereinafter Mueller Report].

<sup>11</sup> Philip Ewing, *White House Touts ‘Unprecedented’ Cooperation Amid Mueller Interview Talks*, NPR (Jan. 25, 2018).

<sup>12</sup> *Id.*

<sup>13</sup> Complaint for Declaratory and Injunctive Relief, *Committee on the Judiciary v. McGahn*, No. 1:19-CV-2379 at 46 (D.C. Cir. 2019).

<sup>14</sup> During the interview, McGahn testified that he sat for “at least four” interviews but did not “have a crisp memory of how many times with any certainty, but multiple.” However, a review of the footnotes in Vol. II of the Mueller report indicates that McGahn sat for at least five 302 interviews on 11/30/17, 12/12/17, 12/14/17, 3/8/18, and 2/29/19.

<sup>15</sup> Michael S. Schmidt, Maggie Haberman, *White House Counsel, Don McGahn Has Cooperated Expensively in Mueller Inquiry*, N.Y. TIMES (Aug. 18, 2018); Kaitlan Collins, Kevin Liptak, and Jeremy Diamond, *Sources: Trump unsettled by McGahn’s 30 hours with the special counsel*, CNN (Aug. 21, 2018).

<sup>16</sup> McGahn TI at 52.

Further, McGahn explained that the President directed him and others to cooperate with the Special Counsel’s probe. He testified:

- Q. And certainly [it is] fair to say you cooperated extensively with the Mueller probe, right?
- A. Yes.
- Q. And, in addition to yourself, the White House as an institution cooperated extensively with the Mueller probe?
- A. As I said before and as the report reflects, the President instructed cooperation.<sup>17</sup>

Throughout the interview, McGahn repeatedly confirmed that President Trump instructed cooperated with the Special Counsel’s probe.<sup>18</sup>

Likewise, McGahn testified that he was open and honest in his interviews with the Special Counsel and his investigators, per the President’s direction. He testified:

- Q. And your intention when you showed up to Mueller’s offices to cooperate fully was to just . . . answer all questions as completely and candidly as humanly possible, correct?
- A. As the President wanted.<sup>19</sup>

The President’s decision to cooperate with the Special Counsel’s probe was no doubt to his own detriment, ultimately giving credence to baseless allegations of Russian collusion. For example, as early as July 2017, senior Obama intelligence community and Justice Department officials—James Clapper, Loretta Lynch, Ben Rhodes, Sally Yates, Mary McCord, Susan Rice, Samantha Power—had testified to House investigators that they never saw any evidence of collusion or conspiracy between the Trump campaign and the Russian government.<sup>20</sup> Even so,

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<sup>17</sup> *Id.* at 87.

<sup>18</sup> *Id.* at 54 (“And . . . I know the President told me to cooperate. I went over, did the best I could. That’s what I know.”); *Id.* at 111 (“[A]s I mentioned and as the report confirms, the President had instructed full cooperation . . .”).

<sup>19</sup> *Id.* at 53.

<sup>20</sup> James Clapper, Director of National Intelligence: “I never saw any direct empirical evidence that the Trump campaign or someone in it was plotting/conspiring with the Russians to meddle with the election.” (July 17, 2017); Susan Rice, White House National Security Advisor: “I don’t recall intelligence that I would consider evidence to that effect that I saw prior – of conspiracy prior to my departure.” (Sept. 8, 2017); Samantha Power, State Department Ambassador to the United Nations: “I am not in possession of anything—I am not in possession and didn’t read or absorb information that came from out of the intelligence community.” (Oct. 13, 2017); Loretta Lynch, Attorney General: “And again, I don’t recall that being briefed up to me, which isn’t to say – so I can’t say that it existed or not.” (Oct. 20, 2017); Benjamin Rhodes, White House Deputy National Security Advisor: No “information of any criminal or counterintelligence investigations into what the Trump campaign was doing.” (Oct. 25, 2017); Mary McCord, Acting Assistant Attorney General: “I can’t recall if there was information any

Special Counsel Mueller allowed his investigation into allegations of Russian collusion to drag on for nearly two years.

**III. Although concerned about Special Counsel Robert Mueller's conflicts of interest, President Trump never fired Mueller or limited the scope of his review.**

During McGahn's transcribed interview, the Democrats spent considerable time and energy attempting to ascribe nefarious intent to President Trump's legitimate concerns. For instance, despite Democrat efforts to discard President Trump's concern that Mueller possessed several conflicts of interest, McGahn testified that Mueller had in fact interviewed for the position of FBI Director the day before his appointment as Special Counsel.<sup>21</sup> Similarly, despite Democrat efforts to suggest that President Trump sought to obstruct the Special Counsel's investigation by having Mueller removed, McGahn testified that there was never any real effort to shut down the Special Counsel's probe.<sup>22</sup>

***Mueller interviewed to be FBI Director the day before he was appointed Special Counsel***

The Special Counsel report discussed President Trump's concerns that Mueller had conflicts of interest that would prevent President Trump from receiving fair treatment during the Special Counsel's investigation.<sup>23</sup> These concerns included the fact that Mueller had recently interviewed for the FBI Director position with the President. President Trump publicly explained that he had rejected Mueller's interest in returning to serve as FBI Director the day before Rosenstein appointed Mueller as Special Counsel and that Mueller may have resented President Trump over the rejection.<sup>24</sup> Although Justice Department ethics officials reviewed Mueller's prior work in private practice and concluded that it did not bar him from serving as Special Counsel, it is not clear that these ethics officials reviewed issues surrounding Mueller interviewing for the FBI Director position.<sup>25</sup>

McGahn's testimony calls into question the accuracy of Mueller's denial that he sought the vacant FBI director position. In testimony before the Committee in July 2019, Mueller stated that he had not interviewed for the FBI Director position. Specifically, Mueller testified, "In my understanding, I was not applying for the job" and that instead his interview with President Trump and McGahn was "about the job but not about me applying for the job."<sup>26</sup> However,

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information or evidence at the time I left about conspiring to take part in the actual intrusion." (Nov. 1, 2017); Sally Yates, Deputy Attorney General: "I don't believe anybody had reached a conclusion yet as to whether there was a nefarious alliance . . . whether there was a nefarious alliance with the Russians." (Nov. 3, 2017).

<sup>21</sup> McGahn TI at 85-86, 143-144.

<sup>22</sup> *Id.* at 48.

<sup>23</sup> See Mueller Report, Vol. II, at 80-82.

<sup>24</sup> Colby Itkowitz et al., *Trump uses discredited conflict-of-interest charges to attack Mueller*, WASH. POST (May 30, 2019).

<sup>25</sup> Mueller Report, Vol. II, at 81; McGahn TI at 22, 143-144.

<sup>26</sup> *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. 117 (2019).

McGahn testified during his transcribed interview that Mueller indeed interviewed for the vacant FBI Director position. McGahn testified:

- Q. And so I'm just trying to button up the fact that, in the President's mind, Mueller was interviewed for being FBI Director. That's correct?
- A. In the President's mind? I can't really speak for the President, what's in his mind, but we had interviews. Mueller came in. I thought it was an interview. Asking me, so yeah.<sup>27</sup>

Later in the transcribed interview, McGahn reiterated that "I was there. I was part of the interviews. I thought it was an interview. . . . I think the President thought it was an interview too, but I can't speak for him."<sup>28</sup>

***Mueller was not fired and the investigation was not curtailed***

Although President Trump reasonably believed that Mueller's perceived conflicts of interest would prevent the President from receiving fair treatment from the Special Counsel's investigation, McGahn testified that there was no conversation about shutting down the investigation.<sup>29</sup> Instead, President Trump insisted that the investigation should be fair, and he knew the investigation would continue even if Mueller was removed due to his conflicts of interest.<sup>30</sup> Specifically, McGahn testified that "the President never, for example, got anywhere near ordering shutting down the office of Mueller. It was Mueller and conflicts. There was no discussion about 'end the whole thing' or 'remove the entire thing.'"<sup>31</sup>

After President Trump and McGahn had several conversations about Mueller's conflicts, President Trump took McGahn's advice and did not have Mueller removed.<sup>32</sup> McGahn further testified that President Trump never directed him to remove Mueller as Special Counsel.<sup>33</sup> Ultimately, Mueller was never fired, and the White House never constricted or curtailed the investigation.<sup>34</sup>

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<sup>27</sup> McGahn TI at 85.

<sup>28</sup> *Id.* at 143.

<sup>29</sup> *Id.* at 48.

<sup>30</sup> *See, e.g., Id.* at 94-95 ("there is a distinction between padlocking the . . . special counsel's office and disbanding the whole operation versus Mueller would not give [President Trump] a fair shake. But I took from that call that he didn't think Mueller could play that role.").

<sup>31</sup> *Id.* at 48.

<sup>32</sup> *See* McGahn TI at 94-95.

<sup>33</sup> *Id.* at 94.

<sup>34</sup> *Id.* at 63.

**IV. Alleged incidents of obstruction of justice merely reflect the President’s well-founded frustration that a baseless investigation had created a “cloud” of controversy.**

Although the Special Counsel’s report made no determination about allegations of obstruction of justice—instead leaving the decision to the Attorney General—Democrats have incessantly highlighted certain incidents retold in the report as evidence of obstruction.

During his transcribed interview, however, Don McGahn explained how these incidents were merely manifestations of the President’s frustration that unfounded and untrue allegations were jeopardizing his ability to govern.<sup>35</sup> McGahn explained that President Trump was frustrated with the pace and origins of the Russia investigation and Special Counsel’s probe.<sup>36</sup> In addition, McGahn testified that the President had reasonable concerns about the composition of the Special Counsel’s team, which included 13 registered or self-asserted Democrats<sup>37</sup>—a concern that former Deputy Attorney General Rosenstein testified he shared.<sup>38</sup>

McGahn stated that the President believed the investigation cast a “dark cloud” over his presidency.<sup>39</sup> The President was right to be frustrated with many aspects of the investigations; however, as confirmed by McGahn’s testimony, the President’s frustrations never interfered with or affected the Special Counsel’s investigation. As McGahn explained, “the President instructed cooperation.”<sup>40</sup>

***Attorney General Jeff Sessions did not un-recuse himself from the Russia probe***

The Special Counsel report recounted an alleged effort to have Attorney General Jeff Session un-recuse himself from the Russia investigation.<sup>41</sup> Democrats allege that this fact shows a nefarious intent to stop the Special Counsel’s probe. However, as frustrated as the President may have been that Attorney General Sessions had recused himself—and thereby allowing a baseless investigation to run amok—McGahn testified that Attorney General Sessions never un-recused and McGahn said that he was not asked by President Trump to tell Sessions to un-recuse.<sup>42</sup> McGahn testified that he did not recall the President “trying to say: You’ve got to go get Sessions to unrecuse.”<sup>43</sup> McGahn explained:

Well, [President Trump] wanted me to talk to Sessions about the recusal, but that’s different than him telling me that I had to go, like, undo the recusal. I don’t remember him being to the point where he

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<sup>35</sup> *Id.* at 63, 131-132.

<sup>36</sup> *Id.* at 53.

<sup>37</sup> *Id.* at 188-189.

<sup>38</sup> *Oversight of the Crossfire Hurricane Investigation: Hearing before the S. Comm. on Judiciary*, 116th Cong. (Jun. 3, 2020).

<sup>39</sup> McGahn TI at 131.

<sup>40</sup> *Id.* at 87.

<sup>41</sup> Mueller Report, Vol. II, at 5.

<sup>42</sup> See McGahn TI at 65-66, 213-214.

<sup>43</sup> *Id.* at 213.

said, "I don't care what the law is; you've got to go do it," or something to that effect. He probably wanted me to go see if I could revisit Sessions' decision, but that's what I told him, that the ethics officials had weighed in, and he already made the decision to recuse.<sup>44</sup>

***McGahn never contemplated making a public statement correcting media report***

The Special Counsel report asserts that following reports in the *New York Times* and *Washington Post* alleging that President Trump had ordered McGahn to remove Special Counsel Mueller, President Trump, through lower-level staff, purportedly asked McGahn to make a public statement denying the reports.<sup>45</sup> McGahn testified that he never contemplated making a statement to correct the erroneous reporting in those articles.<sup>46</sup> Even still, Democrats spent over an hour asking questions on this topic and attempting to establish that McGahn making a false statement to the press could somehow expose him to criminal liability for testifying truthfully to the Special Counsel.<sup>47</sup>

***President Trump rightly fired FBI Director James Comey***

Another episode investigated by Special Counsel Mueller was FBI Director James Comey's termination. McGahn testified that President Trump was right to terminate Comey, and that he fully "supported" Deputy Attorney General Rod Rosenstein and Attorney General Sessions's conclusion to recommend Comey's termination.<sup>48</sup> McGahn testified:

Q. And you never advised President Trump that firing Jim Comey would be unlawful, did you?

A. No, never advised him that. Quite the contrary.

Q. Yeah, right, because you believed that it would've been lawful to fire Comey.

A. And I said earlier I actually supported [that] recommendation.<sup>49</sup>

At that time of Comey's termination, Sessions concluded that, "[b]ased on my evaluation, and for the reasons expressed by the Deputy Attorney General in the attached memorandum, I have concluded that a fresh start is needed at the leadership of the FBI."<sup>50</sup> Rosenstein's

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<sup>44</sup> *Id.* at 213-214.

<sup>45</sup> Mueller Report, Vol. II, at 113-114.

<sup>46</sup> McGahn TI at 151.

<sup>47</sup> *Id.* at 112-114.

<sup>48</sup> McGahn TI at 144.

<sup>49</sup> *Id.* at 144-145.

<sup>50</sup> Mueller Report, Vol. II, at 68, note 440.

memorandum stated that “[t]he way the Director handled the conclusion of the [Hillary Clinton] email investigation was wrong. As a result, the FBI is unlikely to regain public and congressional trust until it has a Director who understands the gravity of the mistakes and pledges never to repeat them. Having refused to admit his errors, the Director cannot be expected to implement the necessary corrective actions.”<sup>51</sup>

During his interview, McGahn confirmed his testimony to Special Counsel Mueller that he and then-White House attorney Uttam “Dhillon said the fact that neither Sessions nor Rosenstein objected to replacing Comey gave them peace of mind that the President’s decision to fire Comey was not an attempt to obstruct justice.”<sup>52</sup>

## V. Other noteworthy take-always from the McGahn interview

### *The FBI mishandled its investigation concerning Trump National Security Advisor LTG Michael Flynn*

McGahn agreed that the FBI did not handle its investigation of Lieutenant General (LTG) Michael Flynn in an honorable way.<sup>53</sup> The FBI began a counterintelligence investigation on LTG Flynn in August 2016 for potential violations of the Foreign Agents Registration Act (FARA).<sup>54</sup> By December 2016, the Washington field office was prepared to close the case until FBI leadership intervened.<sup>55</sup> The FBI’s handling of the LTG Flynn investigation was wrong, dishonorable, and outrageous. For example:

- Justice Department officials did not find the conversation between LTG Flynn and Russian Ambassador Sergey Kislyak troubling, and in fact considered their conversations to be “pretty common.”<sup>56</sup>
- On January 5, 2017, President Barack Obama, then-Vice President Joseph Biden, then-FBI Director Comey, then-National Security Advisor Susan Rice, and then-Deputy Attorney General Sally Yates met in the Oval Office to discuss Russian interference in the 2016 election.<sup>57</sup> At this meeting, according to notes, then-Vice President Biden raised

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<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 66. *See* McGahn TI at 71-72.

<sup>53</sup> McGahn TI at 62.

<sup>54</sup> U.S. DEP’T OF JUSTICE, OFFICE OF INSPECTOR GEN., REVIEW OF FOUR FISA APPLICATIONS AND OTHER ASPECTS OF THE FBI’S CROSSFIRE HURRICANE INVESTIGATION 59 (DEC. 2019) [hereinafter DOJ OIG 2019 FISA Report].

<sup>55</sup> Government’s Mot. to Dismiss the Criminal Information Against the Defendant Michael T. Flynn, Document 198, United States v. Flynn, No. 17-000232 (D.D.C. May 7, 2020); Text Messages, Document 189-1, United States v. Flynn, No. 17-000232 (D.D.C. Apr. 30, 2020).

(Documents show that on January 4, 2017 at 2:22PM Strzok sent a series of text messages including one that stated, “7th floor involved” referencing FBI case Crossfire Razor—the code name for the FBI’s case against LTG Flynn—and another text that stated, “Hey don’t close RAZOR.”)

<sup>56</sup> *See generally* Mary McCord Transcribed Interview 61, Nov. 1, 2017.

<sup>57</sup> Letter from Sens. Chuck Grassley & Lindsey Graham, S. Comm. on the Judiciary, to Ambassador Susan Rice (Feb. 8, 2018).

the possibility of using the antiquated and seldom-used Logan Act as a basis for investigating LTG Flynn.<sup>58</sup>

- On January 24, 2017, despite having the transcript of LTG Flynn’s conversation with Kislyak, two FBI agents—Peter Strzok and Joe Pientka—interviewed LTG Flynn at the White House.<sup>59</sup> In a 2018 public appearance, Comey bragged about how he directed Strzok and Pientka to interview LTG Flynn outside of standard protocols and admitted to Congress that he circumvented the proper process for interviewing a White House employee.<sup>60</sup> According to McGahn, he believed that LTG Flynn was under the impression, based on information from the FBI, that the agents were meeting with him to inform LTG Flynn that the investigation was being closed.<sup>61</sup> McGahn opined that this impression could have possibly been the reason why LTG Flynn did not alert McGahn’s office about the interview.<sup>62</sup>
- Handwritten notes show that the FBI sought to confront LTG Flynn about potentially violating the Logan Act—a seldom-used criminal statute under which federal prosecutors have brought charges just twice in the past two centuries and for which no one has ever been convicted.<sup>63</sup> McGahn testified that following two meetings with Deputy Attorney General Yates on January 26 and 27, 2017, he did not believe the Department could or would prosecute Flynn for violating the Logan Act.<sup>64</sup> According to handwritten notes, the FBI’s goal during the interview was to either get LTG Flynn to admit to violating the Logan Act or to lie about the conversation so that he could be prosecuted or fired.<sup>65</sup>

***President Trump was targeted by rogue senior level federal law enforcement officials***

McGahn conceded that President Trump was “not wrong to think that maybe the fix was in” when it came to the animus and bias expressed by rogue agents and officials.<sup>66</sup> Several investigations have revealed political bias and serious misconduct at the upper echelon of the FBI as thoroughly detailed by the Justice Department Office of Inspector General (OIG). For example:

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<sup>58</sup> Handwritten Notes, Document 231-1, United States v. Flynn, No. 17-000232 (D.D.C. June 24, 2020).

<sup>59</sup> Government’s Reply to Defendants Memorandum in Aid of Sentencing, Document 56-1-2, United States v. Flynn, No. 17-000232 (D.D.C. Dec. 14, 2018).

<sup>60</sup> See 92<sup>nd</sup> Street Y, James Comey in Conversation with Nicolle Wallace (2018), <https://www.youtube.com/watch?v=9xqgu66d6vu>; James Comey Transcribed Interview 49, Dec. 17, 2018 (Mr. Gowdy. You said the protocol was to go through White House Counsel, correct? Mr. Comey. That was what I understood, yes . . . . My understanding was, to do an interview at the White House complex, we would arrange – the FBI would arrange those interviews through the White House Counsel’s Office. I never participated in one, don’t know of one, but I have a recollection that’s what the protocol was . . . .).

<sup>61</sup> McGahn TI at 66-67.

<sup>62</sup> *Id.* at 70.

<sup>63</sup> Michelle Nichols, *Flynn, Kushner targeted several states in failed U.N. lobbying: diplomats*, REUTERS (Dec. 1, 2017).

<sup>64</sup> McGahn TI at 69.

<sup>65</sup> Handwritten Notes, Document 188, United States v. Flynn, No. 17-000232 (D.D.C. Apr. 29, 2020).

<sup>66</sup> McGahn TI at 136-137.

- In June 2018, the Justice Department OIG released a report that reviewed various actions by the FBI and Justice Department during the investigation into former Secretary of State Hilary Clinton’s misuse of classified information on a private email server.<sup>67</sup>
- The OIG outlined anti-Trump and anti-conservative text messages and instant messages exchanged between two senior-level FBI employees, FBI agent Peter Strzok and FBI lawyer Lisa Page.<sup>68</sup> Strzok and Page participated in the FBI’s investigation into President Trump’s 2016 campaign and, for a brief time, served on Special Counsel Mueller’s team.<sup>69</sup>

### ***FBI’s illegal surveillance of Trump campaign***

In a December 2019 report, the Justice Department OIG detailed significant FBI abuses in Foreign Intelligence Surveillance Act (FISA) warrant applications submitted to the Foreign Intelligence Surveillance Court (FISC) to surveil Trump Campaign associate Carter Page.<sup>70</sup> The Obama-Biden era FBI used Democrat-funded opposition research and Russian disinformation—as well as doctored evidence—as a basis to illegally spy on Page. The Justice Department later admitted that “there was insufficient predication to establish probable cause to believe that Page was acting as an agent of a foreign power.”<sup>71</sup>

- The OIG found “at least 17 significant errors or omissions” and 51 wrong or unsupported factual assertions in FISA applications to surveil Page.<sup>72</sup>
- In explaining the OIG report during a Senate Judiciary Committee hearing, Inspector General Michael Horowitz testified that he could not rule out political bias as contributing to the FBI’s misconduct.<sup>73</sup>
- Ultimately, FBI lawyer Kevin Clinesmith was convicted of intentionally altering email evidence as part of a FISA submission to the FISC relating to Page’s surveillance.<sup>74</sup> Clinesmith, who also worked on the investigations into Hilary Clinton’s misuse of

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<sup>67</sup> U.S. DEP’T OF JUSTICE, OFFICE OF INSPECTOR GEN., A REVIEW OF VARIOUS ACTIONS BY THE FEDERAL BUREAU OF INVESTIGATION AND DEPARTMENT OF JUSTICE IN ADVANCE OF THE 2016 ELECTION (2018).

<sup>68</sup> *Id.* at 395-400.

<sup>69</sup> *Id.* at 397.

<sup>70</sup> See DOJ OIG 2019 FISA Report.

<sup>71</sup> In re Carter W. Page, Nos. 16-1182, 17-52, 17-375, 17-679 (FISC Jan. 7, 2020).

<sup>72</sup> DOJ OIG 2019 FISA Report, at xiii, 418-423.

<sup>73</sup> *Examining the Inspector General’s Report on Alleged Abuses of the Foreign Intelligence Surveillance Act: Hearing Before the S. Comm. on the Judiciary*, 116th Cong. 110 (Dec. 11, 2019).

<sup>74</sup> DOJ OIG 2019 FISA Report, at 254-256. The OIG found that Clinesmith “altered” the contents of another agency’s email to misrepresent that Carter Page was not a source working for the U.S. government. This doctored document lowered the hurdle for the FBI to surveil him. This lawyer changed the email that Page was a “source” for the U.S. government to read that Page was “not a source.” See also, Charlie Savage, *Ex-F.B.I. Lawyer Who Altered Email in Russia Case Is Sentenced to Probation*, N.Y. TIMES (Jan. 29, 2021).

classified information and alleged Russian collusion, expressed political animus towards President Trump and support for the so-called “Resistance.”<sup>75</sup>

McGahn, who said he was familiar with the FBI’s FISA abuses, testified that, as a private citizen, he found the OIG findings to be “very disappointing.”<sup>76</sup> He testified, that “you would expect candor” from the FBI to the FISC, “particularly given the secrecy of that court.”<sup>77</sup> Only a few weeks ago, on May 19, 2021, Judge Rudolph Contreras became the presiding judge of the FISC.<sup>78</sup> Judge Contreras is the same judge who, without explanation, recused himself from the FBI investigation of LTG Flynn.<sup>79</sup> Text messages between Strzok and Page revealed that Strzok believed that Judge Contreras was friendly with him.<sup>80</sup> It appears that Judge Contreras’s relationship with Strzok, may have led to Judge Contreras’s recusal from LTG Flynn’s case.

### CONCLUSION

At the conclusion of his investigation, Special Counsel Mueller found what President Trump and millions of Americans knew all along: there was no collusion and the Justice Department did not bring obstruction of justice charges. Similarly, Don McGahn testified he observed no collusion with Russia, no obstruction of justice, and no criminal activity during his time as White House Counsel. McGahn offered explanations for the President’s reasonable frustration that the Special Counsel probe into baseless allegations had created a cloud over his presidency and impeded his ability to govern. The testimony of McGahn—whom the Democrats called the “most important witness besides President Trump in their investigation”—affirms the President’s reasonable frustration with the probe.<sup>81</sup> This interview will presumably conclude the Democrat’s long-held obsession with President Trump and allow the Committee to spend its limited time and resources on issues that matter to the American people.

For more information about the transcribed interview or Committee Democrats’ obsession with attacking former President Donald Trump for political gain, please contact Committee staff at (202) 225-6906.

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<sup>75</sup> DOJ OIG 2019 FISA Report, at 256, note 400.

<sup>76</sup> McGahn TI at 137.

<sup>77</sup> *Id.* at 136.

<sup>78</sup> U.S. Foreign Intelligence Surveillance Court, Current and Past Members, <https://www.fisc.uscourts.gov/sites/default/files/FISC%20FISCR%20Judges%20May%202021%2010518.pdf> (last visited Jun. 7, 2021).

<sup>79</sup> Ellen Nakashima, et. al., *Texts show judge who recused himself in Flynn case was friendly with FBI agent involved in probe*, WASH. POST (Mar. 16, 2018).

<sup>80</sup> *Id.*

<sup>81</sup> Complaint for Declaratory and Injunctive Relief, Committee on the Judiciary v. McGahn, No. 1:19-CV-2379 at 4 (D.C. Cir. 2019).