

COMMITTEE ON THE JUDICIARY,  
U.S. HOUSE OF REPRESENTATIVES,  
WASHINGTON, D.C.

INTERVIEW OF: DON MCGAHN

Friday, June 4, 2021

Washington, D.C.

The interview in the above matter was held in Room 2141, Rayburn House Office Building, commencing at 10:05 a.m.

Present: Representatives Nadler, Jackson Lee, Johnson of Georgia, Raskin, Scanlon, Dean, Jordan, and Gaetz.

Staff Present: Perry Apfelbaum, Staff Director and Chief Counsel; Aaron Hiller, Deputy Chief Counsel; Arya Hariharan, Chief Oversight Counsel; Sarah Istel, Oversight Counsel; Priyanka Mara, Professional Staff Member; Cierra Fontenot, Chief Clerk; Kayla Hamedi, Deputy Press Secretary; Will Emmons, Professional Staff Member; Anthony Valdez, Professional Staff Member; Steve Castor, Minority General Counsel; James Lesinski, Minority Counsel; Betsy Ferguson, Minority Senior Counsel; Caroline Nabity, Minority Counsel; Michael Koren, Minority Senior Professional Staff; Darius Namazi, Minority Research Assistant; and Isabela Belchior, Legislative Director for Representative Matt Gaetz.

Appearances:

For DON MCGAHN:

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SCOTT GAST

Mr. Hiller. All right. We'll go on the record.

Good morning. I'm Aaron Hiller, deputy chief counsel for the House Judiciary Committee, and I have the honor of kicking things off today.

This is a transcribed interview of former White House counsel, Donald F. McGahn.

Would the witness please state his name and formal position at the White House for the record?

Mr. McGahn. I'm Donald McGahn. I was the counsel to the President.

Mr. Hiller. Thank you, sir. Thank you for appearing here today.

I will now ask everyone who is here in the room to introduce themselves for the record. Remember to hit the "talk" button on your microphone. If you're not near a microphone, speak real loud for the reporters, starting with Chairman Nadler.

Chairman Nadler. I am Jerrold Nadler, chairman of the Judiciary Committee.

Ms. Istel. Sarah Istel, counsel for House Judiciary Committee.

Mr. Hiller. Mr. Raskin, why don't we go with the members first?

Mr. Raskin. Jamie Raskin, member of the Judiciary Committee.

Mr. Johnson of Georgia. Hank Johnson, member of the Judiciary Committee.

Ms. Dean. Madeleine Dean, member of the Judiciary Committee.

Ms. Scanlon. Mary Gay Scanlon, member of the Judiciary Committee.

Mr. Jordan. Jim Jordan, Fourth District of Ohio.

Mr. Gaetz. Matt Gaetz, Judiciary Committee member.

Mr. Hiller. And now the staff present, please. Mr. Apelbaum.

Mr. Apelbaum. Perry Apelbaum, chief counsel, Judiciary Committee.

Ms. Hariharan. Arya Hariharan, chief oversight counsel, majority staff.

Mr. Emmons. Will Emmons, professional staff member, Judiciary staff.

Ms. Mara. Priyanka Mara, professional staff member, majority staff.

Mr. Valdez. Anthony Valdez, professional staff member, majority staff.

Mr. Gast. Scott Gast, Office of the Former President Trump.

Ms. Belchior. Isabela Belchior. I'm with the office of Matt Gaetz.

Mr. Koren. Michael Koren, professional staff with Mr. Jordan's staff.

Mr. Lesinski. James Lesinski, Republican counsel.

Mr. Castor. Steve Castor with the Republican staff.

Ms. Ferguson. Betsy Ferguson, senior counsel, Republican staff.

Ms. Nabity. Caroline Nabity, Republican staff member.

Mr. Hiller. Thank you.

Ms. Jackson Lee.

Ms. Jackson Lee. Sheila Jackson Lee, representing Texas' 18th Congressional District. Thank you.

Mr. Hiller. And here at the table.

Mr. Burck. William Burck, counsel for Don McGahn.

Ms. Shapiro. Elizabeth Shapiro, counsel for the Department of Justice.

Ms. McGuire. Allison McGuire, counsel for Don McGahn.

Mr. Hiller. Thank you, everybody.

Mr. McGahn, before we begin in earnest, I'm going to set some context and go over the ground rules for the day.

The committee first issued a subpoena for Mr. McGahn's testimony on April 22, 2019. Mr. McGahn was scheduled to testify before the committee on May 21, 2019, but did not appear at that time.

Pursuant to House rules, in order to carry over our request for Mr. McGahn's testimony to the new Congress, the committee reissued its subpoena to Mr. McGahn on January 11, 2021.

In an attempt to resolve our suit to enforce that subpoena and compel that testimony, the committee has reached an accommodation with the Department of Justice concerning the format and scope of this interview. The full details of that agreement are on file with the court. I will not read the whole thing here, but I'll get to the salient details. We should discuss a few aspects of that arrangement before we begin.

First, members of the public, the press, and Members of Congress who are not on the Judiciary Committee are not permitted to attend this interview. We will also try to keep the staff in this room to a minimum. And the chairman has instructed us to enforce this understanding.

Second, under the strict terms of the agreement, only committee counsel, private counsel for Mr. McGahn, and counsel for the Department are permitted in this room. However, as a courtesy to the former President and at the request of Mr. McGahn's attorney, the chairman will permit counsel for President Trump to observe today as well.

I am instructed to remind counsel for both the current administration and the former President that you are guests in this room, and I would ask that you please keep this in mind as we proceed.

Out of fairness to our witness, we will try to keep any interruptions to a minimum. If counsel for Mr. McGahn or the Department would like to register an objection, we will pause the interview and attempt to resolve our disagreements quickly and quietly on the side.

Third, at the conclusion of the interview, Mr. McGahn, the committee will make the transcript available to you and to the Department for review prior to its publication. The chairman notes that, in accordance with our agreement, all members and staff present are required to maintain the confidentiality of that transcript until we are able to make the document public.

Under the terms of our agreement with the Department, today's interview will cover the following topics, and I am quoting directly from the agreement here: one, information attributed to Mr. McGahn in the publicly available portions of the Mueller report and events that the publicly available portions of the Mueller report indicate involve Mr. McGahn; and, two, whether the Mueller report accurately reflected Mr. McGahn's statements to the Special Counsel's Office and whether those statements were truthful, unquote.

To be clear, either side may ask Mr. McGahn any questions on any number of topics, but within that agreed-upon scope, the Department will not raise any privilege issues and the committee expects that Mr. McGahn will respond to questions in that frame with direct and complete answers.

I'll pause for a moment to see if Mr. McGahn has any questions so far. Okay. Thank you. Just a little more official business, and then we'll begin.

Our questioning will proceed in 60-minute rounds. The majority will ask questions for one hour, and then the minority will have the opportunity to ask questions for an equal period of time. We will repeat this back and forth for additional rounds as necessary.

The interview will end at the discretion of the chair, provided that the majority and the minority have had an opportunity to question you for an equal amount of time. The majority and minority rounds are controlled by the chairman and ranking member, respectively.

To maintain a clear record for the official reporter, there will be no interruptions by individuals or members not authorized to ask questions. It is also important that we do not talk over one another or interrupt each other if we can help it. Typically, we take a short break at the end of each hour of questioning, but if you need an additional break for

any reason, please let us know.

We will also break between majority and minority rounds in order to allow for appropriate health and safety measures. As you can see, the physical layout of the room is a little different than it normally is, in order to comply with health and safety guidelines from the House Sergeant at Arms and the Attending Physician.

Mr. McGahn, an official reporter is taking down everything we say to make a written record, so we ask that you give verbal responses to all questions. Do you understand this? This is a test.

Mr. McGahn. Yes.

Mr. Hiller. Thank you, sir.

The committee encourages witnesses who appear for transcribed interviews to consult freely with counsel if they so choose. You understand that you may consult with your private counsel at any time, correct?

Mr. McGahn. Yes.

Mr. Hiller. Although this interview is not under oath, Federal law requires you to answer questions from Congress truthfully. Do you understand this?

Mr. McGahn. Yes.

Mr. Hiller. That same obligation applies to questions posed by congressional staff. Do you understand this as well?

Mr. McGahn. Yes.

Mr. Hiller. Witnesses who knowingly provide false testimony could be subject to criminal prosecution under 18 U.S.C., Section 1001. Do you understand this?

Mr. McGahn. Yes.

Mr. Hiller. Is there any reason you are unable to provide truthful answers to today's questions?

Mr. McGahn. No.

Mr. Hiller. Thank you, sir.

As I noted earlier, we anticipate that our questions will receive complete responses. If you do not understand a question, please say so. If you honestly do not know the answer to a question or do not remember it, please say so and give us your best recollection. If you learned the information from someone else, please inform us who, to the best of your knowledge, might be able to provide a more complete answer to the question.

Mr. McGahn, this is the end of my preamble. Do you have any questions before we begin?

Mr. McGahn. No, no questions.

Mr. Hiller. Thank you, sir. Would you like to make any sort of opening statement before we begin?

Mr. McGahn. No, but I appreciate you asking.

Mr. Hiller. All right. The majority will now begin its questioning with Ms. Istel. The time is 10:15. The floor is yours.

#### EXAMINATION

BY MS. ISTELE:

Q Mr. McGahn, thanks for being here.

A Good morning.

Q During my questions, I'll be referencing page numbers from the report.

Unless I specify otherwise, I will be referring to Volume II of the report. If at any point you want to take a minute and read the relevant portion, just ask.

A Okay. Is that what this binder is in front of me?

Q Yes. The binder in front of you has the full Mueller report, and I believe your

counsel has a copy as well. Let me know when you're ready.

A I have Volume II in front of me.

Q Great. I want to begin by asking you about the special counsel's appointment. Do you recall a meeting in the Oval Office on May 17, 2017, during which the appointment of the special counsel was discussed?

A No. Is there something in the report that you're referencing?

Q Let me direct --

A You're throwing out a date more than 4 years ago, so I apologize. But May 17th and --

Q Understood. It was an --

A -- no context, it's tough to pick a date.

Q -- important day, but --

A Well, maybe.

Q -- let me direct you to page 78 of the report, first main paragraph. It says: The President learned of the special counsel's appointment from Sessions, who was on with the President, Hunt, and McGahn conducting interviews for a new FBI Director. Sessions stepped out of the Oval Office to take a call from Rosenstein, who told him about the special counsel appointment, and Sessions then returned to inform the President of the news.

Does that refresh your recollection?

A It does, yes.

Q As reflected in what I just read, during that meeting, the President learned of the special counsel's appointment. Can you tell us the President's reaction to that appointment?

A Well, I think the report goes on to describe it in some detail.

Q I'm asking for your recollection of what the President's reaction was at the time.

A Well, again, you know, you're asking about something 4 years ago, but what you've read in the report is accurate, and the next sentence is also what happened.

Q What's the next sentence you're referring to, please?

A It says: According to notes written by Hunt, when Sessions told the President that a special counsel had been appointed, the President sunk back in his chair and said, "Oh my God. This is terrible. This is the end of my Presidency. I'm fucked."

Q Do you recall the President's tone when he said that?

A His tone? I don't really recall his tone. Tone is subjective so tough to --

Q Was he angry when he said that?

A I don't think at this point it would be considered anger. I think he -- I think he felt like, from my perception, that this was bad news.

Q What was your understanding as to why he felt "this is terrible, this is the end of my Presidency, I'm F'd," in response to the special counsel's appointment?

A You'd have to ask him.

Ms. Shapiro. Can I interrupt? His answers need to be limited to what's in the report because communications between executive branch officials are outside the scope even in the event part of the agreement.

Ms. Istel. His answers need to be limited to information attributed to him and events the publicly available portions of the Mueller report indicate involved Mr. McGahn. He was present.

Ms. Shapiro. Excluding communications between executive branch officials.

Ms. Istel. But this isn't a communication. I'm asking him what he understood the President to mean when he said that.

Ms. Shapiro. Okay. Just so we're clear we're excluding those communications.

Fine.

Ms. Istel. Understood.

BY MS. ISTEEL:

Q I'll repeat the question.

A Yeah, sorry.

Q That's okay.

A What's the question?

Q What was your understanding as to why the President felt that the appointment of the special counsel was, quote, "terrible, this is the end of my Presidency, I'm F'd"?

A Well, I think what he said speaks for itself. I'm not sure what I can add to bring it to life more than what's on the page.

Q Do you recall the President saying anything else during that meeting about the special counsel's appointment?

A Well, the report goes on and recounts other parts. He certainly had other things to say, yes. It wasn't the end of the meeting.

Q In the first paragraph on page 78, it says: The President became angry and lambasted the Attorney General for his decision to recuse himself from the investigation, saying, "How could you let this happen, Jeff?"

What did you understand the President to mean by that?

A I think he meant what he said: How could you let this happen? "This," I read "this" as --

Q What did "this" refer to?

A Say again? Sorry.

Q What did you understand "this" to refer to, the special counsel's appointment?

A Yes.

Q Was it your understanding that the President believed that if Sessions had not recused himself, the special counsel would not have been appointed?

A I don't know what the President would have understood. I wasn't in his mind. And this was -- you know, this was a meeting within a meeting. I think the report explains this. We were in the process of interviewing a new FBI Director. So this wasn't a regularly scheduled meeting with the usual mental preparedness to be on your toes. So it was a fluid situation.

Q Do you recall the President saying, "You were supposed to protect me," or words to that effect when he got angry at Sessions?

A You're reading from the report? Yes, there it is. Right. That's what he said. Yeah.

Q When the President said, "You were supposed to protect me," what did you understand the President to mean? What did he want Sessions to protect him from?

A Well, I think the next sentence in the report answers that question, where he talks about the consequences of the appointment. And according to the report, he says: Everyone tells me if you get one of these independent counsels, it ruins your Presidency. It takes years and years, and I won't be able to do anything. This is the worst thing that ever happened to me.

I think that's also responsive to your previous question as to what was in the President's mind. I think the President told us very clearly what he was thinking.

Q Do you recall the President telling Sessions that he should resign during that meeting?

Ms. Shapiro. Don't answer. Outside of the --

BY MS. ISTEEL:

Q Let me direct you to the report on page 79.

A Yes.

Q First paragraph.

A Yes.

Q What was your --

A The report says: The President then told Sessions he should resign as Attorney General.

Q And it goes on to say that Sessions agreed --

A The President may have said maybe he should resign. I don't -- you know, that's not a direct quote, but that -- you know, that -- you know, going on 4 years' worth of memory, that's -- I don't quibble with the syntax.

Q But do you recall that?

A I do recall. Yeah, I recall that exchange.

Q And what was your reaction when the President said he thought Sessions should resign?

A Well, the discussion at that point was between the Attorney General and the President. My reaction was as an observer. I didn't have a reaction at the time.

Q You didn't have any reaction to the President saying to the Attorney General in the Oval Office that he should potentially resign as a result of the special counsel's appointment?

A What reaction would I have had?

Q Surprise, concern.

A Oh, I thought you meant sort of -- some sort of statement or some sort of

physical manifestation.

Q No, your personal reaction at the time.

A You know, it's not the sort of thing that happens every day. It's not the sort of thing one would anticipate happening. It's one of these things that what went through my mind was this is a rather historic potential moment here, where the President is having a showdown with his Attorney General. That doesn't happen every day. They don't teach you this in law school.

Q Did you think that was an appropriate reaction to the appointment of the special counsel?

A Appropriate from whom, the President or Jeff Sessions?

Q From the President.

A I don't think in terms of appropriateness. As counsel, I try to remain neutral in such things and try to play my role as a lawyer. So I don't really pass judgment on appropriateness. I try to advise in real time.

Q Well, as a White House counsel for the President, did you have any concern with the President suggesting that his Attorney General should resign as a result of the special counsel's appointment?

A Certainly.

Q What was your concern?

A That the President was asking the Attorney General to step down.

Q Why was that concerning?

A Because the Attorney General is the Cabinet-level, Senate-confirmed head law enforcement officer of the U.S. It's not an inconsequential moment.

Q Were you concerned there could be any legal consequences if the President asked the Attorney General to resign as a result of the special counsel's appointment?

A In that moment, potentially. I don't really recall specifically because things happened very quickly. But it certainly was an important moment.

Q What potential consequences could there have been?

A Well, now you're asking me a different question.

Q Yes.

A Right. And you're asking me sort of for a legal conclusion and a legal analysis of what could have happened and may have happened.

But what didn't happen was Sessions never actually left being Attorney General. So all that is hypothetical as to what could have happened if Jeff actually resigned.

Q But sitting there in your role as White House counsel, it was your responsibility to advise the President of any potential legal consequences that could occur as a result of him asking the Attorney General to resign, correct?

A I don't agree with that.

Q Why not?

A I don't see it as my responsibility to advise in this circumstance. I mean, it's certainly my job to be the counsel to the President, but this wasn't a situation where there is any indication that there was an opportunity to offer said advice.

Q So, as counsel to the President, you would not have advised him when you saw him ask his -- suggest that his Attorney General should resign as to what potential consequences that could occur from that?

A I don't understand the question. You're sort of taking a live moment where things happened very quickly and trying to put a very --

Q I'm just asking --

A -- cool gloss as if there was some --

Q -- at the time --

A -- academic moment to have a long discussion of consequences of things when that moment never occurred.

Q Okay. So, at the time, you did not consider whether there could be potential legal consequences to the President's action?

A That's not what I said.

Q Excuse me?

A That's not what I said, I don't think.

Q I'm asking you the question, sir, please.

A Okay. Repeat the question.

Q At the time, did you think there could be potential legal consequences for the President's actions?

A Certainly.

Q What consequences could there be?

A We'd have to find a new Attorney General would be the first problem. We were struggling to find an FBI Director that very day -- not struggling; interviewing people. Two, Sessions had recused from the matter.

Q Why was that concerning?

A Well, if he would be -- if he was recused from the matter, he wasn't in the chain of command. So sort of hoisting him up as the one to remove, I guess the good news there it wouldn't have affected whatever the FBI had been working on at the time. So I guess there's a legal consequence in there somewhere. But my point is that --

Q What legal consequence is in there somewhere?

A Say again?

Q You said there's a legal consequence in there somewhere. Can you just explain to me what that legal consequence in there somewhere --

A It would be theoretical, I guess. The Attorney General resigns, and then, from there, there could be various chains of events that could occur that raise other legal issues.

And that's the thing about legal issues; they tend to come, you know, in waves and down the road. But that's all hypothetical because Sessions actually didn't leave the job.

Q In the days following the special counsel's appointment, did the President express concern that Mueller had conflicts of interest that prevented him from serving as special counsel?

A Are you looking -- are you referring to something in the report?

Q Page 80, first paragraph.

A Okay.

Q Under No. 2.

A All right. Okay. So you're looking paragraph 2, bullet 2: In the days following the special counsel's appointment, the President repeatedly told advisers, including Priebus, Bannon, and McGahn, that Special Counsel Mueller had conflicts of interest.

Yes. Yes.

Q What was your reaction when the President suggested that Mr. Mueller had conflicts of interest?

A My reaction? Again, tough to put subjectivity into words. I think the report gets into some of this. Are you looking at something? Is there something in the report that reflects my reaction? Was there some reaction that's been attributed to me?

Q I'm asking you about an event in which you were involved and if you recall your reaction when the President said that.

As we just read, in the days following the special counsel's appointment, the

President repeatedly told advisers, including you, that the special counsel had conflicts.

So I'm asking you about your reaction to that, if you recall.

A The reaction was to listen to what he thought the conflicts were.

Q I'm sorry. There was noise in the background.

A It was to listen to what he thought the conflicts were.

Q And when he explained those conflicts to you, what was your reaction?

A Is my reaction memorialized in the report?

Q I'll direct you to page 85, third paragraph.

A Eighty-five, okay.

Q It says: McGahn --

A If you could, maybe if you can point me to where you're looking for the question, I could speed it along and --

Q Mr. McGahn, we're trying to ask you about these events.

A Right.

Q There are times when your exact testimony is written in the report. There are other times where I will be asking you about an event in which you are depicted as being present.

A Okay.

Q So I'll ask you, if you recall, to tell me what you recall.

A Got it.

Q If you need me to direct you to the report because you do not recall, I can do so. But if you recall, please let me know.

A Okay.

Q Okay?

A I'd appreciate it if you could direct me to the report, though. That could

probably refresh my memory a little quicker.

Q Happy to, but that said, I'm going to ask you some questions in which I'll first ask you if you recall on your own.

A Okay.

Q Pursuant to the scope of the agreement, you are directed to answer our questions completely and honestly to the extent they are within that scope. Okay?

A Yeah. I hope you're not suggesting I'm not answering honestly.

Q I'm just -- I'm asking you to answer if you recall. If you don't recall, then we can go to the report. Does that make sense?

A That makes sense.

Q Great. Do you recall your reaction when the President told you that he was concerned that the special counsel had conflicts of interest?

A No.

Q You don't recall at all your reaction when the President told you that, sitting here today?

A At what point did he tell me? You're blurring a lot of time with that question.

Q We're not blurring it. We've just read, sir, that, in the report, in the days following the special counsel's appointment, which was on May 17th, the President told his advisers, including you, that Mueller had conflicts of interest.

A That's right.

Q So we've just went over the dates.

A You confirmed that. That's right.

Q And now I'm asking you if you recall your reaction to that?

A And my reaction was I wanted to hear what the conflicts were.

Q And when --

A That's my recollection of my reaction.

Q And when he explained those conflicts to you, which he believed were conflicts, what was your reaction?

A My reaction was some I think the Department had already addressed, and others I didn't -- it wasn't convincing to me at the time that that was something that would require some sort of ethical recusal or the like for Director Mueller.

Q On page 85, it reads: McGahn and other advisers believed the asserted conflicts were, quote, "silly," end quote, and, quote, "not real," end quote, and they had previously communicated that view to the President.

Do you recall communicating to the President that you believed the asserted conflicts were silly and not real?

A The report is accurate, yes.

Q Do you recall the President's reaction when you told him you believed the conflicts were silly and not real?

A To the best of my recollection, he didn't agree with me. I don't have a crisp recollection beyond that.

Q As you've just referenced, the Department of Justice also reviewed Mr. Mueller's asserted conflicts of interest, correct?

A Say again? Sorry, I couldn't hear.

Ms. Istel. I'd just ask everyone in the room to keep it down, if they can.

BY MS. ISTEEL:

Q The Department of Justice also reviewed Mr. Mueller's asserted conflicts of interest, correct?

A It's my understanding, yeah.

Q On page 81, second paragraph of the report, referencing from May 23, 2017, it says: On May 23, 2017, the Department of Justice announced that ethics officials had determined that the special counsel's prior law firm position did not bar his service, generating media reports that Mueller had been cleared to serve.

Do you recall that the Department of Justice ethics officials had made that determination?

A I remember I became aware of it. I wasn't part of that discussion or part of the decision, but I became aware, and I don't recall how, but DOJ had looked at at least part of the ethics issues that the President had raised.

Q Do you recall the President being aware that the Department of Justice had made that determination?

A I don't -- I don't recall. I don't recall if he had learned it or -- or -- I don't have a recollection of that part of it, no.

Q Let me direct you to page 81 of the report, second paragraph. It says: On May 23, 2017, the Department of Justice announced that ethics officials had determined that the special counsel's prior law firm position did not bar his service.

The next sentence goes on to say: McGahn recalled that, around that same time, the President complained about the asserted conflicts and prodded McGahn to reach out to Rosenstein about the issue.

Do you recall that?

A Yes. I recall it to the extent that I can say what's in the report is correct. Yes, the President wanted me to reach out to the Deputy Attorney General.

Q What was your understanding as to why the President wanted you to reach out to the Deputy Attorney General?

A He wanted me to raise these conflicts of interest.

Q Do you recall what specifically he wanted you to say to Mr. Rosenstein when you reached out to him regarding the conflicts of interest?

A Not in specific terms, no.

Q Do you recall generally what he wanted you to say to Mr. Rosenstein about raising the conflicts of interest?

A Generally, one concern -- and the report reflects this -- that Director Mueller had been a partner at WilmerHale. WilmerHale was also representing Paul Manafort and Jared Kushner, and how could a partner from WilmerHale then take over an investigation that may or may not concern, you know, those individuals in some capacity. And I think this is what the report's referring to, that DOJ looked at that.

There was another issue about some sort of golf course dues. And that was not something that -- and the report reflects this. It's not the sort of thing I think the counsel to the President would raise. It's the sort of thing -- counsel to the President is an official lawyer, represents the President in an official capacity. He's not the lawyer to raise a conflict that sounds in a personal and/or business concern. That would be more for a personal lawyer to raise.

And as the report reflects, that was my thought at the time that I conveyed. It's not a White House issue. If the President wants to raise that issue, he'd be free to do so, but a personal lawyer should raise that sort of personal and/or business conflict over some sort of golf dues issue that he had with this Mr. Mueller.

Q Let's break that down a little bit, if that's all right.

A Okay. We can try.

Q By this time in May 2017, you had previously conveyed to the President that he should not communicate directly with the Department of Justice to avoid the perception or reality of political interference in law enforcement. And I'm reading from

page 33 of the report.

Is that what you were referencing when you just testified that you told the President that this was not a White House issue?

A No. I think you're looking at the part of the report that talks about -- and I have page 33 in front of me. I see you are reading it, but I didn't really -- I can't really see exactly where you're reading it, and I'm not going to try to peek at your version in case you have work product on there.

But where are you looking on page 33? Because 33 is earlier. That's not in May. That's at the beginning of the administration.

Q Right. So let me clarify.

A That's a separate conversation and --

Q Yes.

A -- I don't want you to get the impression that either I or you are conflating --

Q No, I'm asking. So let me rephrase.

A Okay.

Q By this time, in May of 2017, you had previously, on January 27th or around that time, conveyed to the President that he should not communicate directly with the Department of Justice to avoid the perception or reality of political interference in law enforcement.

I'm asking if you reiterated that instruction to the President when he asked you to reach out to Rosenstein about the conflicts issue?

A I don't recall if I repeated the same conversation. We certainly had that initial conversation in January, as the report indicates. Standard advice that I think all White House counsels give even the President.

Now, the President is permitted to call the Department of Justice, right. So this is

more of a policy issue, not a hard-and-fast norm or law. Obviously, the Attorney General serves in the executive branch at the pleasure of the President.

If the President wants to talk to the Attorney General or really anybody in the executive branch, the President is certainly lawfully permitted to do so. But there are prudential reasons developed over the years where all White House counsels and AGs usually give advice that we ought not just randomly call DOJ. It ought to be in a process.

Q In this particular instance, as reflected in the report on page 81, during that conversation, you instructed the President that he should consult his personal lawyer --

A Right.

Q -- about concerns with Mr. Mueller's conflicts because this was not a White House issue.

Can you explain why it was not a White House issue?

A Because an alleged conflict of interest regarding a dispute over some sort of golf membership or dues or whatever it was does not sound in the authority of the President or the role of counsel to the President. It is something that Mr. Trump -- I'll call him Mr. Trump on purpose to differentiate his personal role -- would be free to raise through a personal counsel. If he feels that there is something where a conflict occurs, he could certainly do that.

But it wasn't the job of the counsel to the President to raise that kind of conflict. And it's the sort of thing that, if a counsel to the President raises that, I would probably be here more in my personal capacity. You'd be asking me, why would you think the counsel to the President could raise a business dispute? There would be no good answer to that question.

So it was really me trying to color within the lines of role of counsel to the President and advise the President as such that if he wants to raise that kind of conflict,

he's just talking to the wrong lawyer. He needs to talk to his personal counsel to raise that.

Q Well, you also said, Mr. McGahn, in footnote 539 on the bottom of that page -- and I'll just read the full part of the report. It says: McGahn and Donaldson said that, after the appointment of the special counsel, they considered themselves potential fact witnesses and accordingly told the President that inquiries related to the investigation should be brought to his personal counsel.

So it was a bit more than just the wrong attorney. There was another reason why you felt that the President should not use you, correct?

A Potentially, sure. At that point, we didn't know. But in an abundance of caution, we assumed we could be fact witnesses. So I guess that could be a second reason. But --

Q You guess, or was that a second reason?

A Well, the primary reason was I didn't feel comfortable raising what I saw as a personal or business conflict on behalf of the President.

Q I'm not asking whether --

A His personal lawyer.

Q -- it was the primary or secondary reason. I'm asking if you told the President, as it says in the report, that inquiries related to the investigation should be brought to his personal counsel --

A Right.

Q -- because you considered yourself to be a fact witness in the investigation?

A That's certainly true, as far as it goes. I'm trying to answer your question, though, in the moment of May 23rd.

Q My question was just whether that was a reason.

A The conversation between me and the President and what drove my advice to the President was not that I was being a fact witness in that moment --

Q Sir, I didn't ask you what drove your advice --

A -- it was the nature of the role.

Q I asked you if that was a reason and if that portion of the report was --

A But I felt I answered that, and you chastised me for secondary or primary reasons. I'm not understanding the question, I think.

Mr. Burck. It is asked and answered.

Ms. Istel. Understood. When he's saying the driving or secondary reason, I'll just ask the witness to stick to the scope of the question. Thank you.

Mr. McGahn. But I'm entitled to my own answer.

Ms. Istel. Absolutely.

Mr. McGahn. Okay.

BY MS. ISTEEL:

Q Did you advise the President as to whether he personally could call Mr. Rosenstein about the investigation?

A I may have at some point in time. Do you have anything in particular? I mean, I was on the job quite a while so --

Q Understood. I'll direct you to page 81, bottom of the paragraph.

A Okay.

Q It says: Contemporaneous notes of a May 23, 2017, conversation between McGahn and the President reflects that McGahn told the President that he would not call Rosenstein and that he would suggest that the President not make such a call either.

A I don't have a clear recollection of my conversation with the President, but I can tell you my recollection at the time I talked to Mr. Mueller's team was much clearer. I

don't have any reason to disagree with what the report says, and I believe it to be accurate.

Q Do you recall why you would have suggested to the President --

A Sorry. You dropped.

Q Sorry. Do you recall why you suggested -- you would suggest to the President that he not make such a call to Mr. Rosenstein?

A Well, appearances matter in Washington. That's been always the case. And if the President calls Rosenstein directly, one, you don't really know what his reaction is going to be, "he" being Mr. Rosenstein; and, two, that would raise more questions than it would answer and probably lead to other potential thornier issues as to why the President would be calling.

So I think that's the reason any lawyer would give as to why they give that advice, and it certainly applied here.

Q Would you agree that it would also look like still trying to meddle in the investigation?

A Certainly. Certainly, it could look like that. It didn't mean the President was meddling, but certainly it would be easily made to look that way.

Q According to those same notes, you also told the President that, quote, "knocking out Mueller," quote, would be, quote, "another fact used to claim obstruction of justice," end quote. Do you recall saying that?

A I have a vague recollection of that, but I don't have a crisp recollection, sitting here today.

Q Well, let me direct you to page -- the bottom of page 81, top of page 82.

A Okay.

Q It says: McGahn advised that the President could discuss this issue with his

attorney, but it would, quote, "look like still trying to meddle in the investigation," end quote, and, quote, "knocking out Mueller," end quote, would be, quote, "another fact used to claim obstruction of justice," end quote.

Does that refresh your recollection?

A It does. I mean, I have the same vague recollection that this occurred. The report to me, my recollection is it's accurate.

Q Do you recall why you would say another fact used to claim obstruction of justice? What other facts were you referring to?

Ms. Shapiro. That's attributed to --

Ms. Istel. I'm asking if he recalls.

Ms. Shapiro. The quotation that you recited was attributed to Ms. Donaldson. I think you phrased your question in terms of it being Mr. McGahn's statement.

Ms. Istel. It's Ms. Donaldson's notes, which are contemporaneous notes. Ms. Donaldson was Mr. McGahn's chief of staff. So she was recalling Mr. McGahn's statements, and I'm asking if he recalls that.

Mr. McGahn. Right. She wasn't, though, part of the conversation with the President. So to say they are contemporaneous notes, they are contemporaneous notes of after the fact me reading out to her my recollection of what had just happened. So it's not a direct quote of a direct quote, just so we're clear.

BY MS. ISTEEL:

Q Would she have written down anything that you didn't tell me her occurred?

A Would she have what?

Q Written down anything in her notes that you did not tell her occurred?

A I doubt it. I don't have any reason to disagree with this characterization, no.

Q Understood.

A No, no. Not fighting on that point.

Q Great. I'll just repeat the question since we had a brief interruption.

According to those notes, as taken by Ms. Donaldson, you told the President that knocking out Mueller could be, quote, another fact used to claim obstruction of justice.

I'm asking, Mr. McGahn, if you recall what other facts you were referring could constitute obstruction of justice?

A Well, there was already a ton of news coverage over, you know, a number of other issues, including the removal of the Director of the FBI, the Michael Flynn situation. The report has -- I mean, you can read from prior to page 81 to 81, and that gives you the list.

Q Well, at the top of page 82 --

A Just to be clear, it's not that I was saying that I thought there was obstruction of justice or another fact, but it's to claim, right. I mean, these are all allegations. And sort of the atmospheric --

Q Understood.

A -- part of the job is to advise not just on the strict contours of black letter law but how people are going to perceive what black letter law may or may not be and how they perceive your actions, right?

So I just want to emphasize that, you know -- because the way you emphasized another fact, I want to make sure we're not saying different things here.

Q Another fact used to claim.

A Right.

Q That is correct?

A That's fair, yes.

Q If you thought there was no basis or no argument on which that fact could

potentially constitute obstruction of justice, would you have advised the President that it could be a fact used to claim obstruction of justice?

A Possibly. I could have the view that something isn't obstruction and wouldn't actually make the case, but also say someone else may think so. And it doesn't really matter what I think because I'm not a prosecutor, and although I dabble in criminal law, it's not really my specialty. So --

Q But you were White House counsel at the time?

A What's that?

Q You were White House counsel at the time?

A I was, yes. We established that at the beginning. Yes.

Q As reflected in those same notes, you told the President -- as reflected in those same notes by Ms. Donaldson, you told the President that his, quote, "biggest exposure," end quote, was not his act of firing Comey, but his, quote, "other contacts," end quote, and, quote, "calls," end quote, and his, quote, "ask re: Flynn."

Can you explain what other contacts and calls you were referring to?

A There was -- you know, again, you're putting me back 4 years and trying to remember what was going through my mind. Reading this, my recollection is the point I was making -- and I think it's rather clear -- removing Comey is something the President had the authority to do, but the perception was the dinner with the Director, that was alone. I think by this point, former Director Comey had managed to get out his -- sort of his versions of these meetings. So there was a perception that there was something off about these meetings.

The President had at other points -- and the report reflects this somewhere -- had indicated he had called Comey directly. And so there were -- and ask re: Flynn I think references the exchange that was in the news in the Oval Office where he had some sort

of discussion directly with Director Comey about Michael Flynn. So that's what that is talking about.

And I guess -- I guess, because it's in shorthand, I mean, I guess it doesn't all say that in the sentence, but that's shorthand for that -- those events.

Q We'll get to the portion of the report reflecting Comey's termination a bit later. But sticking on this sentence for a moment --

A Okay.

Q -- it says you told the President that his biggest exposure was not Comey but his other contacts, calls, and ask re: Flynn. When you said "biggest exposure," exposure to what?

A I don't recall if I used the word "exposure" to the President. I'm assuming I did with Annie. She probably accurately reflected what I said to her.

Exposure to this nebulous charge that was floating in the media of meddling or otherwise getting in the way of whatever this investigation was. And the narrative at the time, as I recall it, was that the removal of the Director of the FBI was its own problem. In my view, that wasn't. That was within the President's power.

But the real issues were more around former Director Comey's recounting of meetings, conversations he had with the President. That was more, as a lawyer, where I was looking to alert the President. That's more -- that's more what people seemed to be concerned about, right.

Q Do you recall how you left that conversation with the President?

A Do I recall what? Sorry.

Q How you left that conversation with the President?

A How I left that conversation? No, I don't recall. No. You rarely leave conversations with President Trump. There's never really a good beginning, middle, and

end. It's just -- especially when you're the counsel. You're always kind of around. And so I don't really have a crisp recollection of, you know, meeting adjourned sort of thing.

Q Was it your understanding that President Trump understood that you would not make the call to Rosenstein about the special counsel's conflicts?

A Well, you know, I guess there were days I thought that was clear, but there were other days it wasn't clear because it wasn't -- this wasn't the only time that he raised the issue. So --

Q During that conversation, did you tell the President that you would not make the call to Rosenstein?

A This is May 23rd?

Q Yes.

A Yes.

Q About a month later, as reflected on page 84 of the report -- and I'll give you a second if you want to get there.

A Thank you.

Q On June 14, 2017 --

A Yes.

Q -- The Washington Post reported for the first time that the special counsel was investigating President Trump personally for obstruction of justice. Do you recall your reaction to that reporting?

A I don't recall my reaction to it, no. No.

Q You don't recall your reaction, as a White House counsel, to learning that the press had reported that the President of the United States was under personal investigation by the special counsel?

A I don't recall my subjective impression on the evening of June 14th about a

news report. No, I don't.

Q Do you recall speaking to the President that evening?

A I do recall speaking to him, yes.

Q Can you describe that conversation?

A I don't have a crisp recollection of it.

Ms. Shapiro. As reflected in the report.

Mr. McGahn. As reflected in the report, okay. Well, I think the report gives more than I remember sitting here.

It was late in the evening. So it was around bedtime, and the report says about 10:31 p.m. That sounds right. It was certainly deep into the night.

It was the night before Neil Gorsuch's investiture at the Supreme Court. That was one topic we discussed. And then I have a vague recollection of a discussion about the -- I assume the news of the day, but I don't have a crisp recollection of that call other than talking about the Gorsuch investiture and what else is reflected in the report about what we have.

I do -- even when I spoke to Mr. Mueller, I didn't have a crisp recollection, and the report reflects this. I think we may have discussed the story. We may have had a similar discussion about calling Rosenstein and the like, and it could have been a repeat of the May 23rd. But the May 23rd discussion was one of many discussions, as was the discussion of June 14.

So, again, it's tough to really pinpoint particular conversations with President Trump. It was not really his style to have scheduled discussions. Instead, it would be much more fluid. And, you know, he would call, and you'd kind of just do your best to keep up with him.

BY MS. ISTEEL:

Q I think what you're referring to is, in the report, you were not quite sure when exactly the timing was of two calls. So let's just take a step back for a second. After The Washington Post reported that the special counsel was investigating the President personally, according to the report, the President called you at home twice and on both occasions directed you to call Rosenstein and say that Mueller had conflicts that precluded him from serving as special counsel. Is that accurate?

A Where are we reading? Sorry. One more time.

Q It's page 85, second paragraph, second sentence.

A Well, this is -- I think this is a paraphrase and reaches a conclusion as to what he directed me to do. The thrust of the President's direction was certainly to call Rosenstein. It was to raise the conflicts and that Rosenstein needed to act because Mueller had conflicts.

And given that Mueller had no other job other than to be special counsel, you know, if he recused, he'd be -- that's the same as sort of saying he has to leave the Department. So that sentence is accurate, but directed him kind of -- there's some facts in there that the report then spells out in a little more detail, right.

So I think that's a conclusion of -- I read that more as a conclusion, not a separate fact.

Q We'll go into the details shortly, but you just said that sentence is accurate, correct?

A Right.

Q So we'll go through those two calls, understanding that the timing of those two calls you don't recall exactly, but you do recall two calls. Is that correct?

A Right.

Q Can you tell us what happened during the first phone call with the

President?

A The first call that I remember -- and, again, I could be conflating this with a call from --

Q June 14th.

A -- from June 14th.

Q Correct.

A Because the 14th was a -- I think that was a Wednesday. I think -- I think justice Gorsuch's investiture --

Q June 17th was a Saturday.

A What's that?

Q June 17th was a Saturday.

A The 17th was a Saturday. I mean, that was certainly a Saturday. I was home on the 17th. And I was home the night of the 14th because it was after hours. And I think Thursday was Gorsuch's investiture. I don't remember dates; I remember events.

Q Understood.

A You know, what day of the week is Christmas? I don't know. It's Christmas, right?

Q December 25th.

A But I do remember it was Saturday because that was not a usual day. And the President, I think, my recollection, he was out of town at Camp David, as the report reflects.

And I remember -- it could have been a voicemail the President was looking for me that got me in, but I did talk to the President that day. And the first call was a continuation, for lack of a better word, of previous conversations that repeated many of the previous conversations, and the topic was conflicts and Mueller and advising

Rosenstein of conflicts.

And he wanted me to call Rosenstein and inform Rod that he had conflicts. And, in the President's view, Mueller shouldn't be able to serve as special counsel because of these conflicts.

Q Sorry, can you repeat that? I couldn't hear you, the last sentence you just said.

A No way I can repeat that. I was doing my best. You can read back the transcript.

Did the reporter get it? If the reporter got it, they can read back, and I can kind of pick up, but to try to capture exact wording again I think is tough.

[The reporter read back the record as requested.]

Ms. Istel. Thank you.

BY MS. ISTEEL:

Q So I am just going to, for the record, so we have a clear picture, on page 85, footnote 573 discusses the issue of the timing of the calls.

A Does what with the calls?

Q Discusses the issue of the timing of the calls.

A Right, okay.

Q And explains generally, I'm not quoting now but generally, that you recalled two phone calls.

A Right.

Q The first phone call and a second phone call.

A Right.

Q It was unclear whether both calls occurred on June 17th or one call occurred on June 14th and one call occurred on June 17th.

A There was certainly at least one call on the 17th. I believe there was two.  
But I don't really have a crisp recollection of --

Q So, for purposes of your testimony, we'll just refer to it as call No. 1 and call No. 2. Is that acceptable?

A That's fair. Okay.

Q Great. So, going back to the first call, you just testified what you spoke with the President. Do you recall his tone of voice during that call?

A Do I recall his tone? I do. It's tough to put into words. Give me a moment to think about how to describe the tone.

Q Take your time.

A It may be easier to state the negative. He wasn't angry. He was certainly focused. The tone certainly had an intensity to it.

Q Was it your understanding that this was an urgent matter for the President?

A Urgent is a word to be fair, yeah. I mean, more your word than my word, but I'm trying to look for words so that's as good as any. Yeah, there was an intensity and urgency, yes, in his voice.

Q So you'd agree there was an intensity, urgency in his voice, correct?

A Yes. Which is not uncommon, but yes.

Q I'll ask the witness to --

Do you recall what exactly the President said to you on that --

A I don't recall exactly, sitting here today, no. It was much crisper in my mind when I was interviewed by Mr. Mueller's team.

Q So, on page 85, third paragraph --

A Yes.

Q -- it says: On the first call, McGahn recalled that the President said

something like, "You got to do this. You got to call Rod."

A He was urging me that, yeah, and used those words, yes.

Q Okay. What did you understand him to mean when he said, "You got to do this; you got to call Rod"?

A My understanding was that I had to call Rod to tell Rod about the conflicts.

Q Anything else?

A Such as? I don't --

Q Was it your understanding that you just had to tell Mr. Rosenstein about the conflicts?

A Well, I took it as more of a direction. And this is -- this is why this is challenging here today because there is -- I mean, the President I think has publicly said that his view was I was merely -- he was merely wanting me to call Rod and get Rod to sort of police the conflicts or have Rod do it.

Candidly, I took it as a little more of a direction to press Rod harder on the conflicts issue and to tell Rod that the President thinks this is a conflict.

Q What was your reaction to the President's request?

A Well, my reaction was -- I think I pushed back and said it's not really a good idea, at least the first call. I probably said in one of the calls that I'll think about it, but I'm not inclined to do it. But that would not be my exact words at the time.

And I really -- at that point really wanted to get off the phone because I didn't want to continue having what had been the same conversation on more than one occasion on something that, as counsel, I wasn't really comfortable doing, raising some kind of personal or business conflict. So I was looking -- I was looking -- I think my reaction was getting off the phone.

Q What do you mean when you said you were not comfortable making that

call?

A Not comfortable making it? The same reasons I stated before. It's not the official counsel to the President's job to raise with the in this case I guess the Acting Attorney General a conflict that sounds in business or personal reasons. That would take me far out of the lane of my job. And given all the other atmospherics surrounding conversations about Flynn with Director Comey and the like, it just, in my judgment as a lawyer, this was not the right time to call Rod Rosenstein.

And I also had a concern I wasn't really sure how Rod was going to react. My fear was if you pushed Rod too hard on the point, he -- if I conveyed the tone that I heard on the phone from the President to Rod, Rod could do who knows what. He could resign himself. Who knows what Rod would do.

So what I was not going to do is cause any sort of chain reaction that would cause this to spiral out of control in a way that wasn't in the best interests, at least as a lawyer, what I thought was in the best interests of my client, which was the President.

Q When you said, "Who knows what Rod would do," what possible scenarios were you considering?

A He could resign.

Q Why would he resign?

A He may feel he was being -- he could take what he was being told as an order, and he may not want to execute the order. And he may feel his options would be ignore an order, which you really can't do if you serve in the executive branch. And if you have an order that you don't think you can follow, your option is then to resign.

Q Why would he not think he could follow that order?

A Well, maybe he wouldn't want to do it. Maybe he didn't think Mueller had conflicts. A lot of reasons you could ask Rod about, I suppose.

But, in my mind, the concern was Rod, maybe just as simple as he wasn't going to be pushed around; he thought it was his decision. There's a myriad of reasons why Rod could resign, but if he felt like he was being pushed to do something he didn't want to do in a way that he didn't think was consistent with what his job was, he could tender a resignation.

So, at that point, I was concerned that I would be putting Rod in a box and putting him in a spot that would cause him to potentially go a variety of directions that would not be in anybody's interest.

Q Were you also concerned about making the call to Rod about the special counsel because you could have been a potential fact witness?

A Absolutely. Sure. I don't want to get caught up in an appearance that somehow I was meddling in an investigation or I was a witness.

Q Why would that lead to the appearance that you were somehow meddling in the investigation when you were a witness?

A Well --

Mr. Burck. I'm going to assert attorney-client privilege. I was attorney at the time. I was advising him.

Ms. Istel. You were advising him not --

Mr. Burck. I'm not going to say what I was advising him about, but on that subject, on that question, that will elicit attorney-client information. So I'm going to direct him not to answer that.

Ms. Istel. At what point did you give him that advice?

Mr. Burck. I'm not saying what advice I gave him.

Ms. Istel. I'm not saying -- I'm just asking at what point in time you had that conversation because, according to the report, you're saying that you spoke with him

after the first conversation with the President?

Mr. Burck. I don't know. I'm not going to say exactly when because I don't recall, but it was contemporaneous representation at the time.

Ms. Istel. But if you hadn't spoken to him by the first conversation, then I can ask Mr. McGahn as to why he did not think he should make the call to Rosenstein, correct?

Mr. Burck. Okay. You want to link it up to a specific --

Ms. Istel. I do.

Mr. Burck. Okay. That's fair. Which call are you talking about?

Ms. Istel. I'm talking about the first call. I know you spoke with him after the second call. That's reflected in the report. I'm asking him about the first call.

Mr. Burck. Actually, I still -- because I was talking -- I was advising Mr. McGahn prior to that period, and I believe that -- that that would call for attorney-client information.

Ms. Istel. Can Mr. McGahn answer whether he, as an attorney himself, had an understanding, absent from his advice he received from you?

Mr. Burck. Yes, yes. Yes, that's fair.

BY MS. ISTEEL:

Q Mr. McGahn, did you, as White House counsel attorney, have a concern, absent your conversations with your personal counsel, as to why it would be problematic for you, as a fact witness in the investigation, to call Mr. Rosenstein to have the special counsel removed?

A It certainly would confuse my role as counsel to the President with potentially being a fact witness or sort of serving as a de facto personal lawyer. So certainly --

Q Can you explain what you mean by confuse your role?

A Say again? Sorry.

Q Can you explain what you mean by confuse your role?

A Sure. Counsel to the President represents the President in his official capacity, advises him on his authorities under the Constitution, statutes, other binding norms, international law and the like.

Counsel to the President is not a personal lawyer who deals with personal or business issues that may also affect the President as a person. And raising a conflict, it sounded in those concerns, seemed to be outside the scope of what the counsel to the President ought to be doing.

[11:06 a.m.]

BY MS. ISTEEL:

Q At the time, the special counsel was investigating the President personally for obstruction-related events, correct? We just went through the Washington Post report that --

A Well, there's reports to that effect, but it's not like the Department of Justice calls over and lets you know these things. So it seemed to certainly be in the air, and I think there were news reports to that effect, yes.

Q Were you perturbed by that phone call?

A Yes.

Q Why?

A It was a conversation we'd had many times before. I thought I had been clear on my views and my advice, but we were having the same conversation again and again and again, coupled with the fact it was a Saturday and it -- you know, after the investiture of Neil Gorsuch, I thought we were going to take a little pause over the weekend and smile for once. But we did not smile; we continued wanting to talk about conflicts of interest and Bob Mueller.

Q What did you say to the President when he asked you to make that call?

A One more time; sorry?

Q What did you say to the President when he asked you to make that call?

Ms. Shapiro. Can I interject for a second? I just -- when you ask about -- he can't talk about conversations with the President except as reflected in the report. So, when you ask open-ended questions, I am worried that he will volunteer out-of-scope and privileged information. So, if you could tie it to the report, it would avoid interruptions

like this.

BY MS. ISTEEL:

Q Page 85, bottom paragraph: "McGahn said he told the President that he would see what he could do."

Do you recall saying that to the President?

A Which part? Sorry. One more time? I think the answer is "yes," but I want to make sure I'm reading the same sentence. Read it again, please.

Q "McGahn said he told the President that he would see what he could do."

A I did say that, yeah. Yeah.

Q Did you intend to see what you could do?

A No.

Q Then why did you say that to the President?

A I was trying to get off the phone.

Q Bottom of page 85, top of page 86 of the report --

A Uh-huh.

Q -- it says, "McGahn was concerned about having any role in asking the Acting Attorney General to fire the special counsel because he had grown up in the Reagan era and wanted to be more like Judge Robert Bork and not 'Saturday Night Massacre Bork.'"

A I did --

Q Can you explain what you meant by that?

A I did say that to Mr. Mueller's --

Q You did.

A -- Mr. Mueller's team.

This was sort of my Irish Blarney way of explaining what I tried to explain earlier, that if I, as counsel to the President, called the Acting Attorney General and conveyed an

urgent message about the need for the special counsel to not be permitted to serve because of conflicts, that could cause Rosenstein to think he was being ordered to do something that he would find contrary to his oath of office.

And there's historical example of that happening. And when that happens, you had a succession of resignations at the Department of Justice. I didn't want that to happen, so I didn't call Rod.

My fear is, if I called Rod, given the atmospherics, given -- you know, I didn't know Rod well at that point, but what I knew of him, my concern was he could potentially react in a way that would cause him to potentially resign, and that would cause a chain reaction that would be not in anyone's interest.

Q Top of page 86, it says, "McGahn considered the President's request to be an inflection point and wanted to hit the brakes."

Can you explain what you meant by "inflection point"?

A "Inflection point," with that I meant a point of no return. If the Acting Attorney General received what he thought was a direction from the counsel to the President to remove a special counsel, he would either have to remove the special counsel or resign.

We are still talking about the "Saturday Night Massacre" decades and decades later. And, looking back, you always, as a student of history, wonder, could things have gone differently if different people made different decisions? And here my thought was, fast-forwarding, you know, what this is going to look like down the road.

This seemed to be an inflection point. It was time to hit the brakes and not make a phone call to Rod to raise this issue that the President had continued to raise with me. It seemed to me that it'd be easier for me to not make the call and take whatever heat or fallout there would be than to cause, potentially, a chain reaction that I think would not

be in the best interest of the President.

Sometimes lawyers have to do things that their clients maybe don't like in the moment, but you do them because, in your judgment as a lawyer, it's the correct thing to do.

Q Why, in your judgment as a lawyer, was this the correct thing to do?

A Well, I can say what I just said. But my fear was, delivering that sort of pressure onto Rosenstein, even if it was short -- and I use the word "pressure" to say, even if it was short of a clear direction, could've caused Rod to react in ways that were unforeseen and could've caused a major issue that would've been, you know, in hindsight, you know, an inflection point.

Q Can you just briefly explain for the record what happened in the "Saturday Night Massacre"?

A Explain what?

Q For the record, what happened in the "Saturday Night Massacre"?

A It's a matter of -- I mean, am I here to teach a history class or --

Q Well, you said it was a historic moment, so I want to understand why you made that comparison.

A Well, when I was a boy, my father bought me a book by a person named Archibald Cox on the Constitution. He actually had Archibald Cox sign it. He somehow managed to meet Archibald Cox, and I have an autographed copy of a book from Archibald Cox.

My dad also had Roy Cohn as a professor in law school, if you must know, but that's a separate issue. He went to New York Law School, Mr. Chairman, but --

Q We'll get there.

A So I always had kind of an interest in this sort of thing. And then being a,

sort of, young conservative type, Judge Bork was a role model to me as well.

And what happened, to paraphrase the "Saturday Night Massacre," was, President Nixon directed that the special counsel -- special prosecutor I guess they were called then -- be removed, and he instructed his Attorney General to remove him. The Attorney General refused and resigned. He tried to instruct the Deputy -- I think this was through the chief of staff. Nixon didn't make the call directly; he had a member of his team make the call. I think the Deputy Attorney General then resigned. And then Bork, as the next man in the chain, as solicitor general, being the Senate-confirmed person, executed the order.

Different than what we're talking about here. Let's not read too much into my invocation of "Saturday Night Massacre," because 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." This is different than what happened in the "Saturday Night Massacre." I think Bork actually kind of locked the office up, and they had to disperse for a while.

And, you know, that's my understanding of what happened in the "Saturday Night Massacre." And if a historian wants to quibble, that's fine. I'm not -- although I was a history major undergrad, it's not really my thing anymore either.

Q That's actually a very good recollection.

A What's that?

Q You got all the details right.

A Great. I'm glad -- I'm glad I did. Trying to be complete and accurate.

Q I appreciate that.

A Yes.

Ms. Istel. We're actually going to stop there for this round. We've hit our hour

mark, I've just been told.

Mr. Hiller. Let's go off the record, please.

Ms. Istel. Off the record.

[Recess.]

Mr. Castor. Back on the record.

Mr. McGahn, my name is Steve Castor. I'm with the Republican staff. How are you this morning?

Mr. McGahn. Morning. Well, all things considered, doing pretty good.

#### EXAMINATION

BY MR. CASTOR:

Q By any stretch, the Mueller probe was thorough, correct?

A I guess that's a fair characterization. I don't really have an opinion one way or the other. It's very thick.

Q It lasted 2 years, correct, approximately?

A That sounds right, yeah. I don't remember the precise start and end points, but it certainly had a lot of investigators and prosecutors and things, sure.

Q Mr. Mueller, I think, was appointed on May 17th?

A Sounds about right, yeah. I think we hammered that date in the earlier session to remind me what happened then. Yes.

Q And I think he turned over his final report on March 22nd, and the Attorney General released his summary of the report on March 24th, 2019?

A I think that's right. I was off the job by that point.

Q Sure.

A I was no longer counsel to the President. So it actually outlasted my almost 2-year tenure, almost. So yeah.

Q And news accounts have chronicled that there was something like \$32 million spent by the --

A If you say so. I don't have any reason to disagree with that, no.

Q And the report is about 500 pages --

A It's quite thick.

Q -- divided into --

A Yeah, there's two volumes, so the page numbers are tough. But it's a solid phonebook worth of paper, yes.

Q And, you know, on page 2 of the report -- I'm just going to read this; you can read it as well -- you know, sort of a bottom-line conclusion: "The investigation did not establish that members of the Trump campaign conspired or coordinated with the Russian Government in its election interference activities."

Did that conclusion surprise you?

A It didn't surprise me, no.

Q In a summary letter that the Attorney General sent up to Congress, he said that the facts did not support an obstruction-of-justice charge against the President, and that was irrespective of the OLC opinion. That's a March 24th letter that the Attorney General sent to Congress, not from the Mueller report.

A I wasn't on the job at that point, so I wasn't really part of the official government.

Q And did that conclusion surprise you, that there wasn't an obstruction-of-justice charge?

A Well, you know, I wasn't privy to everything going on, so I don't know if I could be surprised one way or the other. I know just what I know. And, you know, if I had seen what I had thought was a crime being committed, I would have not been a part

of that. So, at least from my point of view, it wasn't a surprise, but I didn't know what I didn't know.

Q Right. But, from your vantage point, you didn't witness anything that you considered to be criminal activity.

Ms. Shapiro. Sorry. Could I interject just for a moment? I just want to make sure that the scope limitations are the same, correct? That the scope is limited to part one, the information attributed to Mr. McGahn, excluding communications with the executive branch?

Mr. Castor. Right. But we're also free to ask Mr. McGahn any question we want, and he can respond as he will.

Ms. Shapiro. Okay, but I just want --

Mr. Castor. Yeah, we didn't negotiate -- we did not negotiate the scope arrangement. We're not necessarily objecting to the scope arrangement, but if Mr. McGahn feels that a question or Mr. Burck feels that a question is outside the scope and doesn't want him to answer, that's fine, but, you know, asking him whether he was surprised that at the end of the day Mueller didn't find any collusion or conspiracy with Russia is certainly a fair question for the former White House counsel.

Ms. Shapiro. Right. It's just not tied to this scope, because it's not about an event in which Mr. McGahn participated, as reflected in the report.

Mr. Castor. So, anyway, I'll just move on. I understand where you're coming from.

Ms. Shapiro. Okay.

BY MR. CASTOR:

Q Mr. McGahn, your lawyer, Mr. Burck, was quoted in The Washington Post -- and I have the article if you want it; I can read it to you --

A I've heard of The Washington Post, yes.

Q -- on August 7th, 2019.

I have copies if anybody wants it.

A If you're going to ask me about it, maybe I can get a copy.

Q Sure.

A If you're not going to ask me about it, I don't need a copy.

Q I'm just going to read one --

A But since you have photocopies prepared, my guess is there will be a question here.

Q It's the second paragraph on the second page. This is a news account about the litigation. And the part I'm referring to, McGahn's lawyer, Mr. Burck, said in a statement that McGahn will abide by the President's instructions, and Mr. Burck said, "Don does not believe he witnessed any violation of law" --

A Your mike dropped out on the "is that correct."

Q "Don does not believe he witnessed any violation of law." And I'm just asking you if you --

A Correct.

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.

Q How many interviews do you recall giving to the special counsel?

A Certainly more than one. I don't have a crisp recollection. We did them at different odd hours of the day to try not to interfere with business hours and the like. I can think of -- well, one, two -- at least four, but I don't really have a crisp memory of how

many times with any certainty, but multiple.

Q And the sum total of this is a big number of hours, correct?

A Probably all told, yeah. Yeah.

Q And, you know, if the President, if White House officials felt that there was, you know, anything wrong, I mean, they certainly wouldn't have sent the White House counsel over to fully cooperate, correct?

A You wouldn't think so.

Q And your intention when you showed up to Mueller's offices to cooperate fully was to just, you know, answer all questions as completely and candidly as humanly possible, correct?

A As the President wanted.

Q And, at the end of the day, I mean, this probe, you know -- and I think it's fair to say that the President was frustrated by the pace of the probe and also by the origins of the probe. Is that something you can concur with?

A I think he's been very public about that.

Q And --

A I don't think you need me to confirm --

Q Right.

A -- what he has said a number of times publicly.

Q And his frustration -- I mean, he's characterized it as a witch hunt. And a lot of our members of the committee certainly feel that way.

And if you go back through some of the depositions and transcript interviews and witness testimonies that have been taken, those frustrations have, you know, in fact, been borne out. Would you agree with some of that?

A I wouldn't disagree with it. I'm not really in the business of, you know,

judging the accuracy of rhetoric or that kind of thing. And it's not -- it's not like I'm still living in the world of the Mueller report. So I don't really have a --

Q Right.

A -- view one way or the other. And, you know, I know the President told me to cooperate. I went over, did the best I could. That's what I know.

Q Right.

Director Comey, he testified here before us in December 2018?

A Okay. If you say so. I wasn't here, but okay.

Q And Director Comey told us -- and these transcripts have been published. I'm not revealing any secret information here. But Director, you know, Comey told us that, generally speaking, an FBI professional knows after a year whether he's got a case or not, irrespective of Crossfire Hurricane. And he also said that by the time he left in May of 2017 they didn't have a case; there was no evidence of collusion, no evidence of, you know, any wrongdoing between the campaign and Russia.

Around the same -- you know, a little bit earlier, transcripts were released, depositions, transcribed interviews conducted by the House Permanent Select Committee on Intelligence on James Clapper, Loretta Lynch, Ben Rhodes, Sally Yates, Mary McCord, Susan Rice, Samantha Power. And all of them testified that they did not have any evidence of collusion or conspiracy between the Trump campaign and the Russian Government.

Were you aware of those reports?

A You mean the transcribed interviews and things? I --

Q Well, just the reports that came out that, you know, James Clapper testified to Congress.

A Vaguely I guess I was aware. Yes.

Q So it wasn't just President Trump that had, you know, concerns; it was Director Comey, it was James Clapper, it was all -- you know, a long list of, you know, adversaries of the President. Didn't have any firsthand evidence --

A I would think their testimony speaks for itself on that point.

Q And before you came to the White House, you served on the campaign, correct?

A I was -- I represented the campaign, yeah. I never actually was an employee. I was in a law firm representing the campaign, yeah.

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

A Did I? Well, ordinarily -- I was assuming you were going to get to something that might be attorney-client privilege, because I was in private practice. But the absence of something, I guess, is not privileged. So, no, 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.

Q And, absent attorney-client privilege, did anybody from the campaign ever express concerns to you that there was, you know, some matter that needed to be looked at for, you know, 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 --

Q Uh-huh.

A -- recollection that would be responsive to your question.

Q I want to turn to the Mike Flynn matter.

A Okay.

Q He was interviewed at the White House on January 24th. Peter Strzok and Joe Pientka from the FBI came over to interview Flynn. Did you have any awareness that interview was taking place before --

A At the time?

Q At the time.

A No.

Q And the first you heard about the interview was when Sally Yates came to meet with you?

A I believe that's right, yes.

Q On January 26th?

A Again, I'm not good at dates, but if that's -- are you looking at something in the report? That may refresh my memory --

Q Sure.

A -- on a specific date.

Maybe page 31.

Q It's page 31, right.

A Right, 26th. That's when Attorney General Yates came over. Yeah.

Q Yates with Mary McCord, another White House counsel lawyer met with you. During the meeting -- this is from page 31, the first paragraph --

A Uh-huh.

Q -- "Yates said the public statements made by the Vice President denying that Flynn and Kislyak discussed sanctions were not true and put Flynn in a potentially

compromised position because the Russians would know he had lied."

What else do you remember from that meeting?

A Well, you know, reading the report, it refreshes my memory that that's when Sally -- Attorney General Yates --

Ms. Shapiro. Excluding executive branch communications.

Mr. McGahn. Understood. Understood. But if it's in the report, that's okay for me to remember that and then say it, right?

Ms. Shapiro. If it's in the report, yes, but excluding executive branch communications.

Mr. McGahn. Okay.

Ms. Shapiro. I'm sorry.

Mr. McGahn. Okay.

She came over to talk about Flynn, as the report reflects. She informed me that the Bureau had interviewed Flynn. I had asked her, I think my phrase was, "How did he do," and by that I meant, was there an issue with truthfulness of his responses?

She wouldn't give me -- she wouldn't tell me the fine point of that answer, but she did convey that they were similar to the statements that she had raised -- had just raised with me in the conversation about statements that Flynn allegedly made to the Vice President that were not necessarily accurate. So I took from that that if he repeated the same things to the FBI there may be a potential issue there.

But my impression, as the report indicates -- and, again, my recollection was much better at the time of being interviewed for the report than it is now. My impression at the time was that they did not have Flynn on a 1001 charge. And by that, that's lawyer shorthand for lying to the Bureau in the course of the interview. And that's the extent of what I remember from that first meeting.

It wasn't the clearest discussion. It was, Attorney General came over, brought Mary McCord. I do recall it was on the classified phone, so I took it as a serious matter. It was in my office, which is a SCIF. You know, it was not -- and the lawyer that accompanied me, I made sure he had his clearance. Early in the administration, not everyone has clearances. So, you know, I took it as a serious matter.

So, you know, it was something that I was intently listening to, and then --

Q Did Yates come in person, or was this on the phone?

A She came in person.

Q Okay.

A She called first --

Q Oh, okay.

A -- and then she said, I need to come over and talk to you about -- I think she may have -- I don't remember her characterization specifically, but I remember it was on the high-side phone. And she came over to talk about something that -- by calling on that phone, told me it was something she thought was serious.

Q Okay.

A Yeah.

Q Were you aware at the time what they were investigating Flynn for?

A Not really. No. No. It was less than clear. There had been some news reports. I recall there was something about Turkey, but I just -- I don't remember the details of Flynn, sitting here today, and I didn't really know the details then.

I was focused on trying to be counsel to the President. I'd just come off trying to be counsel to transition. There's a lot of moving parts. I was not really able to --

Q Okay.

A -- focus 100 percent on every little coming and going of what the

newspapers were saying about Mike Flynn. So I was not particularly read in on any details, and Yates was really the first one to bring me in the loop on --

Q Okay.

A -- the issue that you see in the report.

Q But the conversations Flynn was having with Kislyak, I mean, that's official business, correct, in conjunction with the transition?

A Are you asking me as a lawyer, like, my view, like, legal -- that's kind of a legal conclusion, is transition --

Q Right.

A -- official business or not. It is an official entity. Congress passed a law creating an official transition --

Q But he wasn't operating in his personal capacity?

A You know, you're on transition. He was the incoming National Security Advisor. There's a statute that creates the transition entity. GSA gives us office space. That sounds like government to me.

Q Right. But he --

A That sounds like an official kind of thing.

Q But he wasn't operating in a personal capacity --

A I have no idea. I was not aware of what Flynn was doing with respect to these calls. I learned all this after the fact. So I can't really speak one way or the other --

Q Okay.

A -- as to what he was doing or what capacity or any of that. I understand the gist of the question, but I wasn't there, so I can't --

Q Okay.

A -- really offer a fact-witness perspective on that question.

Q Okay. Were you surprised, though, that the FBI, you know, somehow made their way in the White House and started interviewing him?

A "Surprised" is a good word, yeah. Yeah. I mean, we had already been -- the President had been sworn in. We were on the job. And, you know, I had thought the protocol would've been some sort of courtesy notice to the counsel's office. And, you know, if for some reason they didn't know me, I had other people on the job who had been --

Q Right.

A -- Department of Justice alums, so they certainly would've had comfort with somebody in the office. But, as far as I know, we had no heads-up at all that they wanted to interview Flynn. So, yeah, "surprised" is as good enough a word as any.

Q Director Comey, I think he, in an MSNBC townhall, said that he, you know, thought he could get the agents in because the White House wasn't yet organized. I mean, he admitted there was sort of a breach of protocol.

A I think he did, yeah. Yeah. You know, my office was stood up. I had hired my office. I think a press release had gone out. I had a number of folks, again, who had worked at the Department. One even, I think, worked for Director Comey when he was at the Department. So the phones worked; phone did not ring.

Q Handwritten notes that came out during the course of the Flynn prosecution and the unwinding of that case --

A Uh-huh.

Q -- you know, the FBI was recorded saying that the purpose of the interview was to, quote, "get him to lie so we can prosecute him or get him fired."

Is that something that you think that the FBI ought to be using as a purpose or predicate for an interview with the National Security Advisor?

A Are you just asking me as a private citizen?

Q Well, as the White House counsel. I mean, if the FBI has evidence that there's a crime committed and that, you know, Lieutenant General Flynn was a witness to it --

A I don't think the FBI has decision rights over whether or not the President fires his National Security Advisor.

Q Yeah.

A So I think that stands out as a goal that the Bureau -- seems to go beyond the scope of what they --

Q Right.

A -- what we think they're doing. I mean, they're the Federal Bureau of Investigation. That doesn't seem like part of an investigatory function.

Q Right.

And so, I believe, going back to the January 26th meeting, Yates raised the Logan Act with you. And, according to the report, you had, you know, one of the NSC lawyers go look at this.

A I had John Eisenberg take a look. He -- brilliant lawyer. He clerked for Clarence Thomas. He had served at DOJ, I think in Office of Legal Counsel handling national security issues. And although I had done some postgraduate/post-law-school work on national security law, I thought it best to have my expert take a look.

Q Uh-huh.

A And, you know, I had him take a look at the potential legal issues that the Attorney General had raised.

Q Right. And, you know, it probably doesn't take somebody of John Eisenberg's ilk to know that the Logan Act is not a frequently prosecuted statute, correct?

A I think even I knew that no one really -- my recollection is, no one had ever really been prosecuted under the Logan Act. There may have been one a long, long time ago that fizzled out, but certainly in recent history that it was not something that I --

Q Right.

A I didn't have any recollection of any prosecutions under the Logan Act.

Q So, if the FBI is coming in to interview Flynn based on the Logan Act, on one hand, or they're coming in to interview Flynn because they want to get him to lie, either one of those -- and those seem like the two options here -- either one of those is not an honorable way to conduct oneself, you know, in terms of being a Federal agent conducting a Federal investigation of the President's National Security Advisor. Is that fair?

A It's a fair view to have, I suppose.

Q And so, going back to the President's concerns about the witch hunts, you know, his concerns that Crossfire Hurricane was unfair, the Mueller report was unfair, and now there's another data point where, you know, the rungs of government are coming after one of his top advisors -- you know, he's not the chief of staff, he's not the White House counsel, but National Security Advisor is certainly in that upper echelon of most critical advisors to the President.

Isn't it fair to say that, everything we now know about the Flynn matter, the President was right to be frustrated about what was going on?

A Are you asking about something in the report, or are you asking me for my own view of whether the President was justified in feeling that something was off?

Q Well, the backdrop to a lot of this, you know, the Mueller -- the second part of the Mueller report goes into these episodes. I mean, the whole second part, the whole 180-page, you know, obstruction report, you know, walk through these episodes. And

many of the episodes chronicled in the second part of the Mueller report, you know, deal with things that ultimately never came to fruition and were, you know, against the backdrop of the President just being frustrated.

Is that something you can concur with?

A Like I said, I don't disagree with it. I don't know.

Q For example, the second part of the Mueller report goes through -- and we talked a lot about this in the first hour -- the President's concerns about Mueller's conflicts and whether Mueller wanted to be removed. But, at the end of the day, Mueller was never removed, correct?

A That is correct. Mueller was never removed.

Q And his office and his scope limitation was never -- he was never limited in anything he could look at, correct?

A That was up to the Acting AG, and Rod Rosenstein set that forth, and that was never modified outside of his --

Q Right.

A -- decision rights.

Q And anytime he needed his scope to be broadened, he would go to Rod, correct? And, for the most part, I think news reports indicate Mr. Rosenstein granted the scope broadening.

A Based upon news reports, that appears to be correct. I wasn't privy, obviously --

Q Right.

A -- to any of those discussions or part of them. I really have no way of knowing whether the news reports are accurate or not. But --

Q Right.

A -- you are correct that I think there were news reports to that effect.

Q But, you know, your role as White House counsel, I mean, you have the obligation to think about the best interests of the President and the best interests of the Office of the President, correct?

A Right. Yeah.

Q And the same goes for the chief of staff and the other, you know, senior people. And a lot of the vignettes or episodes chronicled in the second part of the Mueller report, you know, really deal with things that never came to fruition, correct? I'm talking about the firing of Mueller, the not-firing of Mueller, the limiting of Mueller --

A That's true. Right. Mueller was never removed.

Q Uh-huh.

A I take your point.

Q You know, when news accounts came out that revealed that, you know, perhaps you and the President were on a different page with whether he ultimately wanted Mueller fired, you know, there was some discussion about whether you ought to write a memo to the file, and, you know, according to the Mueller report, you weren't comfortable doing that, and so you didn't, right?

A Say it again. Sorry.

Q There was, in the Mueller report, a discussion of how, when news reports came out about the firing-of-Mueller story --

A Right. That's in the report, yes.

Q -- you know, your recollection or your view of whether the President wanted you to ultimately fire Mueller and the President's view of that differed, correct?

A Apparently.

Q And he wanted you to write a memo about it, that the Mueller team looked

into --

A It's in the report -- I remember -- I have a recollection of other staff coming to me and saying that was the President's desire.

Q Right.

A Yeah. I don't recall the President ever telling me to do that directly.

Q Okay. But, ultimately, no memo was ever created.

A I never wrote a memo.

Q Right.

A That's correct. Right.

Q Okay.

Another one of the episodes chronicled in the second part of the Mueller report was whether, you know, the Attorney General would unrecuse himself. You know, the Attorney General recused himself in March of 2017, and I think, you know, Dana Boente then took over as the Acting Attorney General, and subsequently Mr. Rosenstein.

But nobody ever pressured the Attorney General to ever unrecuse. Is that correct?

A Well, I don't know if I know all the facts. I think there's a -- I have not read the report in full. I've read --

Q Right.

A -- portions. But I have a vague recollection somewhere in here that the President may have talked to Sessions about that or something. So I don't know if I could really say conclusively. I --

Q No, but from your perspective --

A What I do know is, Jeff Sessions never unrecused.

Q Right. And from --

[Audio malfunction.]

[Discussion off the record.]

BY MR. CASTOR:

Q Your communications with Sessions, you never had a -- you never asked Sessions to unrecuse, did you?

A Once he recused, no, I never asked him to unrecuse.

Q Okay.

Just going back to Lieutenant General Flynn's case briefly. Director Comey, in testimony before --

[Audio malfunction.]

Mr. Hiller. Let's go off the record for 1 minute and try to resolve this.

Mr. Castor. Okay.

[Recess.]

BY MR. CASTOR:

Q I just have a couple followup --

A Sure.

Q -- questions on the Flynn matter.

A I think I'm here all day, so --

Q Comey testified that he had authorized the closing of the Mike Flynn investigation, you know, at some point before -- before -- Strzok and Pientka came into the White House. Were you aware of that fact?

A That he testified to that? I'll take your word for it.

Q That he testified to it or that, in fact, they had made a decision to close the Flynn investigation.

A I recall that Flynn was under the impression it was going to be closed and he

thought the agents were telling him it was going to be closed. But I don't have another -- I mean, I've never met Comey in my life, so he's never told me what he was going --

Q Fair enough.

A -- to do with Flynn, because I've never actually spoken to him.

Q Assistant Director McCabe also testified here. And he testified as well, that, to the best of his recollection, our assessment by the middle of December of 2016 was that we really had not substantiated anything particularly significant against General Flynn.

Were you aware of that fact or --

A Not at the time, not in December. But if McCabe said that in testimony, I may have become aware of it at some point.

Q Okay.

And then, after the middle of December, the early part of January --

A '17? We're in '17 now?

Q '17.

A Okay. Thank you.

Q -- there was an Oval Office meeting with the former President, the Vice President, where the former Vice President, now President Biden, raised the prospect of using the Logan Act to go after Flynn.

Are you aware of that?

A I wasn't in the meeting. I wasn't at the White House, so --

Q Okay.

A -- I wasn't aware in real-time. I think I've heard that from news reports and others, and you just told me. So I don't have any reason to --

Q I mean, that came out during --

A -- agree or disagree with what happened.

Q -- the course of the Flynn prosecution --

A Okay.

Q -- that they had decided to close the case because they didn't have anything, and then on January 5th there was a decision to possibly use the Logan Act to go after Flynn.

When you communicated to Sally Yates in the second meeting you had with her -- she came back on January 27th. Is that correct?

A Correct, the next -- well, whatever the next day was. Yes.

Q And did she come -- what was the purpose of that meeting?

A I asked for the meeting --

Q Okay.

A -- to get further clarification.

Q And did you --

A It wasn't clear to me what -- I was going to call her "Sally" again; apologies -- Attorney General Yates was really telling me in the first meeting. I thought I got it, but there was still fuzziness as to what she was really asking me to do or not do.

Q Okay. And what do you remember from that meeting?

Ms. Shapiro. Could you refer him to the report, please?

Mr. Burck. Could you please stay to the report?

BY MR. CASTOR:

Q It's all on 31 and 32 of the --

A I generally remember the meeting, but I don't -- yeah, I would appreciate going to the report, because it's -- when you have multiple meetings on similar topics,

sometimes it's easy to blur them.

Give me a moment to read the report. It might refresh my recollection.

Okay. What I remember about the meeting is, I called the meeting. It was also in my office. Same basic structure. I asked questions about Logan Act prosecutions and conveyed that it didn't seem that DOJ would really bring a Logan Act prosecution. Eisenberg had done some research on the point to confirm our instinct that that didn't seem to be a real thing. And then the other point I do remember making to Yates was that we didn't want to interfere in any ongoing investigation.

So I was less than clear as to what I was really supposed to do. The Attorney General brings over information about the National Security Advisor. The gist of the follow-up meeting was, okay, what are we supposed to do with all this now? And that's what I remember about the meeting. I came out of that second meeting without a clear answer to that question either.

Q Okay. When you communicated to the Attorney General, the Acting Attorney General, that you didn't think a Logan Act prosecution was something to be concerned about in this instance, what was her reaction? Do you remember?

Mr. Burck. If it's in the report, you can answer. She's an executive branch official, so --

Mr. McGahn. Yeah.

I don't really recall her reaction. It could be she didn't have a reaction. I just don't remember one way or the other, because she's not -- you know, she had been, I guess, DAG before, Deputy Attorney General; you know, this was not her first rodeo. So I don't remember her breaking character one way or the other or anything out of the norm. But I don't have a recollection of her reaction to it.

BY MR. CASTOR:

Q Okay. But, to the best of your recollection, you don't remember her telling you that, "Oh, no, we now have a new initiative at the Justice Department to pursue Logan Act violations"?

A I don't remember anything like that, no.

Q Okay.

I want to turn to the --

Mr. Jordan. Could I just ask one thing?

Mr. Castor. Absolutely.

Mr. Jordan. Mr. McGahn --

Mr. McGahn. Yes, sir.

Mr. Jordan. -- you said earlier that you were under the impression that General Flynn thought that when the agents came to the White House they were going to tell him that the investigation was done. Is that right?

Mr. McGahn. Yeah. I think that's in the report somewhere. I can't put my finger on it. But, yeah, that was --

Mr. Jordan. And he communicated that to you? Or how did you know that?

Mr. McGahn. He conveyed that to me, yes.

Mr. Jordan. Okay.

Mr. McGahn. Yeah.

BY MR. CASTOR:

Q Was that maybe one of the reasons that he took the meeting and didn't alert White House counsel? Is that possibly what was going on?

A Possibly. You'd have to ask General Flynn that. I don't know.

Q I want to turn to the termination of FBI Director Comey.

A Okay.

Q Ultimately, before Director Comey was relieved of his duties, there was a memo prepared by Deputy Attorney General Rosenstein. Is that what you remember?

A Yes. Well, that there's a memo, yes.

Q And --

A Do you know, are you in a portion of the report? Maybe I can --

Q Well, on page 66 --

A -- flip ahead here and --

Q On page 66 --

A -- keep up with you here. Page 66. Hang on one second.

Thank you.

All right. I'm on page 66.

Q You know, according to the report, you and your colleague Mr. Dhillon --

A Uttam Dhillon, yes.

Q -- yes, Uttam -- said the fact that neither Sessions nor Rosenstein objected to replacing Comey gave you both peace of mind that the President's decision to fire Comey was not, you know, an attempt to obstruct justice. Is that correct?

A Yes, that's correct.

Q Okay.

So what I'm getting to is, it was your sense that, at that point, both Sessions and Rosenstein had come to the conclusion that removing of Comey was the right move.

A I'm sorry. You tapered off. What was it? That Sessions and Rosenstein what? Sorry. I just didn't hear you.

Q That relieving of Comey was the right move?

A That was my sense, yeah. You know, they didn't object. That's for sure.

Q And so you became a little -- you became more comfortable with letting

Comey go at that point?

A That's fair.

Q And also by that point the inspector general had, you know, a probe going about the conduct of the Director towards the tail end of the Hillary Clinton email investigation?

A That could be. I don't recall what the IG did or didn't say, but that doesn't mean it didn't happen. Just timing-wise, I'm not -- sometimes I don't remember when I learned various things, so I don't want to --

Q Right. But there were concerns from both sides of the aisle with the conduct of the FBI Director at the tail end of that.

A Director Comey certainly was in the news a lot.

Q Yeah.

Did you have an awareness that the removal of Comey would certainly lead to the appointment of a special counsel?

A The potential was certainly there, yeah. I don't know if "concern" captures it, but news reports that there was some sort of investigation. My recollection is, Director Comey testified in front of the House Intel Committee to that effect. So that was public. So I think one had to be mindful of that when one is going to remove the Director of the FBI, yes.

Q In your conversations with Rosenstein on May 8th before Director Comey was fired, did he give you any indication that a special counsel would be appointed? Did you know it was coming?

Mr. Burck. You've got to tie that to the report.

Mr. McGahn. Well, the report certainly doesn't say that there was any such discussion.

BY MR. CASTOR:

Q Getting back to this concern the President had with former Director Mueller's --

Mr. Gaetz. Mr. Castor, may I draw a finer point?

Mr. Castor. Yes, sir.

Mr. Gaetz. Mr. McGahn, on your discussions regarding Director Comey -- and I'm referring to pages 66 and 67 -- it appears as though the President had made the decision to terminate Director Comey. The report indicates that you sought input from the Attorney General, Jeff Sessions, and from the Deputy Attorney General, Mr. Rosenstein. And then it says on page 67 that the response you got from Attorney General Sessions was that he had previously recommended that Comey be replaced.

In that discussion, did Attorney General Sessions describe the basis for that prior recommendation?

Ms. Shapiro. Limited to the report.

Mr. McGahn. I don't recall specifically if that was discussed in that moment. I apologize for not recalling. And that's aside from whether or not it's in the report. I just -- I don't recall.

Mr. Gaetz. And, again, I'm just trying to understand how the words in the report played out in this particular meeting.

Mr. McGahn. Uh-huh.

Mr. Gaetz. Did you seek a basis from Attorney General Sessions regarding that viewpoint? Or was --

Mr. McGahn. Well, I certainly wanted to consult the Attorney General prior to the President, you know, when whoever he made the -- when he actually executed on what he may or may not do. Certainly wanted to seek the advice of the AG and Deputy AG.

Mr. Gaetz. And I sympathize with the fact that I'm asking you about fine points of a meeting many years ago, but do you recall whether or not the Attorney General offered, without prompting, that he had previously recommended that the FBI Director be replaced or whether you prompted him to that input?

Mr. McGahn. I --

Ms. Shapiro. Anything outside the report would be privileged.

Mr. McGahn. Okay.

Mr. Gaetz. I'm sorry, Ms. Shapiro. This is directly in the report.

Mr. McGahn. If I could look --

Ms. Shapiro. Okay. If you could point to the report, that would be great.

Mr. Gaetz. Page 67.

Mr. McGahn. Okay.

Mr. Gaetz. "Sessions responded that he had previously recommended that Comey be replaced."

I'm simply trying to ask whether that was a response that was volunteered by the Attorney General or whether or not that was one you had elicited specifically.

Mr. McGahn. If I recall, it was that -- I'm juggling a lot of privileges here and ethical obligations, so apologies for the question of DOJ's counsel.

Ms. Shapiro. Are you asking whether there was an elicitation, there was a request? I'm not -- can you repeat the question?

Mr. Gaetz. Certainly.

On page 67 of the report, it reads, "Sessions responded that he had previously recommended that Comey be replaced."

Was that response solicited by you, or was it offered sua sponte by the Attorney General?

Mr. McGahn. Sua sponte.

Mr. Gaetz. Very well. Thank you.

Mr. McGahn. Yeah. I didn't ask if he had done it before the AG offered that.

Mr. Gaetz. Okay.

Mr. McGahn. I think that's what you're asking.

Mr. Gaetz. No, it is. And it's quite illuminating that, even without asking, the Attorney General would say that he believed that there ought to be a replacement for the FBI Director.

And while you don't recall at this moment if he provided a basis for that, it does appear in the following sentence on page 67 that the Deputy Attorney General, Mr. Rosenstein, did provide a basis, and it was the handling of Hillary Clinton's email investigation.

What do you recall about Mr. Rosenstein providing the Hillary Clinton email investigation as a basis for the termination of Director Comey?

Mr. McGahn. His memo speaks for itself. I recall he put together a memo on that. He raised that issue, as the report reflects, around this time. And that's what I recall. That was his view.

Mr. Gaetz. And did you ask Deputy Attorney General Rosenstein specifically whether or not the Clinton email investigation was a basis, or do you recall whether or not the Deputy Attorney General offered that sua sponte?

Mr. McGahn. I don't have a crisp recollection. It was part of the same conversation with Attorney General Sessions. And to the extent I do have any recollection, I think Rod offered it as his perspective. I don't recall asking him the question, "What do you think about Hillary Clinton's email thing?" directly.

Mr. Gaetz. Yeah, no, that's incredibly helpful. And just as it was with the Attorney

General, with the Deputy Attorney General, quite illuminating, that it seems, from your testimony today, that it did not require a prompting of the Deputy Attorney General to suggest that Mr. Comey's handling of the Hillary Clinton email investigation would justify his termination. That was something that was offered without a specific request on your part.

Mr. McGahn. My goal of bringing the Department of Justice to the discussion was to get their views.

Mr. Gaetz. And did you expect them to offer greater resistance to the prospect of terminating Mr. Comey?

Mr. McGahn. I don't think I had an expectation one way or the other. I wanted their views.

Mr. Gaetz. So you went there because you felt, if the FBI Director was to be terminated, it required at least a discussion with the Attorney General and Deputy Attorney General.

In that discussion, without prompting, the Attorney General said, "I believe that Comey ought to be replaced," and the Deputy Attorney General said, "Not only do I believe that, I have a specific reason," and offered that.

Is that correctly reflected in the report?

Mr. McGahn. You got a lot in that question, sir. There's a lot going on there.

I think that's in the report. And I think -- I think I understand the gist of your question. And I think it's consistent with what I'm reading in the report and the facts that are attributed to my recollection in the report. So I don't --

Mr. Gaetz. Thank you very much.

Mr. McGahn. So I don't think I'm disagreeing with you, to the extent that is responsive.

BY MR. CASTOR:

Q Even before that, with Mr. Boente, Dana Boente, who was the Acting Attorney General for the Russia matters in March, you had a conversation with him, and he relayed to you -- and this is on page 55 of the report, at the very top.

A Okay. Thank you.

Q "McGahn recalled Boente telling him in calls that day that he did not think it was sustainable for Comey to stay on as FBI Director for the next 4 years."

Do you remember that as being accurate?

A That part of the report's accurate, yes. Now, I don't know whether or not Dana -- he said Dana didn't recall discussing. I wasn't part of his interview, so I don't know if that's --

Q Right.

A -- accurate or not. But I assume, if he says he didn't remember, he didn't remember. But my part, yeah.

Q But, to the best of your recollection, Dana Boente didn't think it was sustainable for Director Comey to --

A That's my recollection of the conversation, and it's reflected in the report accurately, yes.

Q Okay.

I want to go through a couple statements or a couple of the Dana Boente back-and-forth --

A Okay.

Q -- that you had.

On page 54, you contacted Boente, you know, regarding the President's concern that there was a false perception out there that he was under investigation. And, you

know, this is in March of 2017, so this was before Comey was fired, this was before the Comey memos were produced or, you know, leaked to news outlets.

And, you know, Boente -- it's reported here in the report that you told Boente that the President was concerned that he's under a cloud and it was hard to govern. And that certainly was a fact, right?

A That's what I told him, yeah. Yep. The President had said that. And, at that point, that was, I think, behind closed doors, but the President, I think, eventually said that --

Q Right.

A -- publicly. But, yeah, that's -- that is accurate. That's what the President said.

Q And Boente said that there's no good way to shorten an investigation, which, obviously, is a fact of life.

A Right. Yeah. Yeah. I wasn't expecting him to answer really any other way.

Q Right.

And Boente -- and this is on page 59. As the President was having communications with Comey, Boente was looped in by the Director. And Boente did tell you -- and this is on page 59 -- that -- this is the sentence that begins after footnote 378.

A Okay.

Q "McGahn recalled that Boente said Comey had told him there was nothing obstructive about the calls from the President but they made Comey uncomfortable."

Do you remember Mr. Boente telling you that?

A I have a vague recollection of the conversations with Dana. As I said, you know, earlier, you're asking me about stuff from 4 years ago, so -- but my recollection was better at the time I talked to Team Mueller. And as best I can tell sitting here, that's an

accurate statement of what happened, yes.

[12:17 p.m.]

Mr. Castor. And then, further on, according to -- and this is the sentence that begins after footnote 379.

Mr. McGahn. Uh-huh.

BY MR. CASTOR:

Q According to McGahn, Boente responded that he did not want to issue a statement about the President not being under investigation because of the potential political ramifications.

Do you remember Mr. Boente telling you that?

A I have a vague recollection of the call, and that rings true to me sitting here today, but I don't have a vivid memory of --

Q Okay.

A -- every back and forth with Dana on that or other calls.

Q So did it catch you by surprise, then, when Director Comey testified before HPSCI a short time thereafter, you know, confirming the existence of the investigation? You know, Comey came and testified before HPSCI, and he confirmed that there was --

A This is the public hearing where he first said --

Q Yeah.

A Yes, it surprised me because I was actually on the Senate side sitting behind Neil Gorsuch for his confirmation hearing, and meanwhile, over here, a hearing on the House side, we have Director of the FBI announcing some sort of investigation into something. So, yeah, it was -- when I learned about it, it was not in real time. It was after --

Q Okay.

A After the day had kind of come and gone.

Q Okay.

A So yeah. That was -- I -- yeah. Again, like, I don't remember dates, but I remember certain --

Q Right.

A I remember Christmas was Christmas day, and I remember the Gorsuch hearing was --

Q Uh-huh.

A -- just getting kicked off.

Q Yeah.

A And Comey would -- testified about some kind of investigation.

Q Right. So, on one hand, your discussions with Boente about whether they can put a statement out saying the President is not under investigation and Boente told -- relayed to you that he didn't want to do that, you know, there might be political problems with that, but he didn't deny that, in fact, that was the case, that the President wasn't under investigation?

A I don't recall that.

Q Yeah.

A I mean, you know, I guess the context -- and the report says this, so that the President had talked to Comey directly about whether or not the President was actually under investigation. And the President's impression of the call, Comey said he was not, and the President was trying to figure out if he can get that a little more public.

Q Right.

A And this was -- this was these calls, and -- and, you know, my relationship with Dana Boente was quite good, and I was really curious to get his honest take. He

gave me his honest take.

Q Uh-huh.

A And he didn't think it was -- it was the proper move as reflected in the report. That's the gist of what I remember. But I don't remember excruciating amounts of details. So I'm just trying to do the best I can here.

Q Right. So, on one hand, you had Boente saying there is not going to be a statement that the President is not under investigation; there would be political problems with that. But you -- you had the belief -- the President certainly had the belief that he was not under investigation. He believed Comey had told him that.

And then, subsequently, Comey goes out and talks about the fact that there is an investigation, raising the specter that, in fact, the President was under investigation. Comey didn't say the President was under investigation because the President was not, but Comey, at the HPSCI hearing, certainly raised the specter that that was something that was afoot?

A My recollection was the news certainly covered it that way.

Q Yeah.

A And, again, I was not watching Comey in real time. I was doing another aspect of my job, and, you know, I -- how I learned, my recollection is kind of news reports, and the headlines were --

Q Right.

A -- you know, investigation.

Q So, from the President's perspective, I mean, it certainly -- you know, any reasonable person in the President's position would certainly be frustrated with that development, correct?

A One would think.

Q Did you ever have any follow-up with Boente to try to figure out what -- what happened because Comey testified that his statement regarding the Russia investigation that he made at the HPSCI Committee hearing was blessed at the highest levels, presumably Mr. Boente.

A We may have discussed that. I don't recall specifically.

Ms. Shapiro. But that wouldn't be in the report.

Mr. McGahn. Is there something in the report to that effect, or no?

Mr. Castor. I'm just asking for your best recollection.

Mr. McGahn. I -- I don't recall.

Mr. Gaetz. Mr. McGahn, in the first hour, the majority counsel asked you a number of questions and -- regarding the assertion of potential conflicts of the special counsel and President Trump's desire for you to convey that to Deputy Attorney General Rosenstein. And you described in your responses to majority counsel's questions that potentially one of the chain reactions that you would want to stop --

Mr. McGahn. Uh-huh.

Mr. Gaetz. Would be a mass series of resignations, including the resignation of Deputy Attorney General Rosenstein.

So, just for clarity of the record, regarding the assertion of potential Mueller conflicts of interest, did Rod Rosenstein ever threaten to resign in your presence?

Ms. Shapiro. If it's not reflected in the report, that would be privileged.

Mr. Burck. Can we just go off the record for a second so we can discuss that? I just want to make sure that --

[Discussion off the record.]

Mr. McGahn. I want to make sure I heard the question correctly. I think I can respond.

Mr. Gaetz. I'm simply trying to confirm that the discussion was hypothetical in nature that you had with majority counsel and that there wasn't some actual event that you have personal knowledge of that you witnessed or Rosenstein said that, based on arguments related to Mr. Mueller's potential conflicts, that he was not qualified to serve as special counsel?

Mr. McGahn. Never heard Mr. Rosenstein say anything of the sort, correct.

Mr. Gaetz. And, when we say "anything of the sort," you never heard Mr. Rosenstein threaten to resign over the assertion of the conflicts related to Mueller, correct?

Mr. McGahn. No, correct.

Mr. Gaetz. Very well. Thank you.

Mr. Castor. Another aspect of the "is Mueller conflicted" dialogue or question that's out there is whether Mueller was considered to be FBI Director. Was he?

Mr. McGahn. My recollection --

Ms. Shapiro. That's --

Mr. Burck. I think it's in the report.

Mr. McGahn. I think so, too, but it's --

Ms. Shapiro. Do you know where it is in the report?

Mr. McGahn. DOJ may want -- seems to be motioning here.

Mr. Burck. I remember seeing it on --

Mr. McGahn. Yeah. Good.

Mr. Castor. The conflicts section begins on page 80, as Mr. Jordan indicated.

Mr. Burck. Okay.

Mr. McGahn. Okay. I'm on page 80, so apologies, but --

BY MR. CASTOR:

Q So, on page --

A What was the question?

Q On page 81, after footnote 531, as for Mueller's interview for FBI Director, Bannon recalled the White House had invited Mueller to speak to the President to offer a perspective on the institution of the FBI?

A Sorry. I was reading when you sort of --

Q Yeah.

A -- got to the question mark. Could you just give me the question part one more time?

Ms. Shapiro. It's attributed to Bannon.

Mr. McGahn. Right.

BY MR. CASTOR:

Q It's attributed to Steve Bannon.

A Yeah. Bannon recalled. Okay. I assume he did. I don't know if he did or didn't.

Q Right. Just going back to page 80, the President had cited -- I'm sorry. Going back to page 80. I don't mean to toss you around here with -- go back to page 80, that sentence that begins after footnote 528.

A Uh-huh.

Q The President cited as conflicts that Mueller had interviewed for FBI Director shortly after being appointed -- shortly before being appointed special counsel as being one of the conflicts the President was concerned about. So it wasn't just a golf course --

A That's right. I wish this was just pointed out to me earlier, right.

Q Right.

A There were three different conflicts. One was Mueller, his partnership at

WilmerHale and their representations of others. Two was the golf dues. Three was he had just been in --

Q Right.

A -- to see the President about being the FBI Director --

Q Right.

A Right. As part of the interview process that we --

Q Right.

A It went over a couple days, right.

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.

Q So you thought Mueller wanted to be the FBI Director?

A Well, the President never offered him the job. That was never a direct part -- again, the absence of things, I don't think raise privilege issues, so that wasn't -- but Bannon's recollection is consistent with mine, which is part of what Mueller was there to do was to talk about the institution of the FBI and assist the President with his thinking on how the Bureau had functioned in the past and the like.

Mr. Gaetz. Mr. McGahn, do you recall if anyone on White House staff was advocating for the job to be offered to Mr. Mueller, the FBI Director job?

Mr. Burck. Again, that's --

Ms. Shapiro. Yeah, I mean --

Mr. Burck. If the answer is no --

Ms. Shapiro. -- you can't talk about --

Mr. Burck. -- the answer is no. That's fine.

Ms. Shapiro. -- what White House staff --

Mr. Gaetz. The absence of wouldn't be privileged.

Mr. McGahn. Anyone on the White House staff recommending that Mueller should be appointed head of the FBI? No. Not that I recall. Now, there could be something I don't know about. Maybe there -- you know, there --

Mr. Gaetz. I'm just speaking to your recollection.

Mr. McGahn. You know, the President has a style of leadership, and it didn't necessarily mean that there is a formal structure on everyone in the room at the same time, so there could have been other people pushing things that I'm unaware of. But, as far as I know, no one was recommending Mueller to be FBI Director.

BY MR. CASTOR:

Q Just to wrap up -- my time is coming to an end for this round -- you didn't witness any evidence of collusion with any Russian people, right?

A No.

Q And, in your mind, you didn't witness any violation of the law by the President? And this is going back to the statement your lawyer made, you know, in the realm of obstruction.

A I don't believe I did. No, nothing along those lines, no.

Q And, in your mind, you know, after consulting with Boente and Rosenstein and Sessions, in addition to the White House folks, that it was the right decision to fire Comey?

A Would I -- I was in support of removing Comey, yes.

Q Yeah.

A Told the President as much, yeah.

Q And, I mean, is it fair to say that the procedural aspects of what they did to Flynn, you know, raised a lot of concerns? And, by "they" --

A You mean my own --

Q -- I mean the FBI.

A My own subjective?

Q Yeah.

A Yeah. The thing -- it was off. It never -- it never made sense. And, even to this day, it still doesn't make sense to me. And, again, I'm not read in on all the details. I did not track the Flynn prosecution in detail. Then maybe some of these unanswered questions in my mind would have been answered --

Q Uh-huh.

A -- but my view is it just never made total sense as to how that was handled.

Q And certainly 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.

Mr. Castor. I think that's where I'm going to end it for now.

[Recess.]

Ms. Istel. We're back on the record. The time is 12:43 p.m. We'll start with our next round, Mr. McGahn, if you're ready? Okay.

Mr. McGahn. Yes.

BY MS. ISTEEL:

Q So, before I left off, we went over the first call that you had with the President, which we called call No. 1?

A Okay.

Q I'd like to turn now to call No. 2, and I'll direct you to page 86 of the report, bottom paragraph.

Let me know when you're ready.

A I am on page 86. Thank you. Ready.

Q The report reads: Donaldson recalled that McGahn told her the President had called and demanded he contact the Department of Justice and that the President wanted him to do something that McGahn did not want to do. McGahn told Donaldson that the President had called at least twice and, in one of the calls, asked, "Have you done it?"

Do you recall that?

A I recall talking to Annie Donaldson. I don't -- I can't speak to what she recalled, that part of it. But I don't have a reason to disagree what's in the report. It's accurate.

Q Do you recall the President, on either call, asking, "Have you done it?"

A He did say that, yes.

Q Do you recall which call that was on?

A It would be the second call.

Q And was he referring to whether or not you had called Mr. Rosenstein?

A That's my recollection, yes.

Q Why did you tell Ms. Donaldson about your call with the President?

A Why did I tell her?

She was -- she had title chief of staff. She's also deputy White House counsel. She

was my main lieutenant, and I was going to tell her that -- you know, to what was sort of going on without telling her everything.

Q Did you want to have a record of that conversation?

A I don't know if I was thinking that at the time, but possibly, but I don't remember that being the reason. Annie was my main lieutenant, and I tended to tell her many things, large and small. So it was part of my usual practice, would be to reach out to her.

Q What was your response when the President asked if you had done it?

Mr. Burck. It's got to be tied to the report.

Ms. Shapiro. If the report says it, yeah.

Mr. McGahn. I don't recall if I responded or if he kept talking. I don't have a clear recollection of that point of the conversation.

BY MS. ISTEEL:

Q Were you concerned when the President called you again and asked if you had done it when you knew you had no intention of making that call?

A Was I concerned? Certainly.

Q Why?

A As I indicated earlier, we had had a number of conversations on this topic. We were having the conversation yet again. I was uncomfortable making the call to Rosenstein. I had conveyed that to the President previous occasions, but yet here we were having the same conversation again, him asking me to do something that I thought had been clear that I wasn't going to do.

Q On page 86 of the report, second paragraph, first sentence, it reads: When the President called McGahn a second time to follow up on the order to call the Department of Justice, McGahn recalled that the President was more direct, saying

something like: Call Rod, tell Rod that Mueller has conflicts and can't be the special counsel.

Do you recall that?

A I do to the extent that I remember the second call was more direct and the President was more direct in the way that the report reflects. I don't sit here today being able to claim that that's an accurate quote, but, again, at the time that I was interviewed by Mr. Mueller's team, my recollection was much better. So I believe that to be correct.

Q Do you recall why you thought these words were more direct than his previous call?

A Well, by the -- kind of a metaphysical question. It just -- it speaks for itself. That's a more direct way of saying the same thing. It was more of a direction. I took it as more of a direction to reach out to Rod and be more direct that Mueller certainly has conflicts and, therefore, that precludes him from being special counsel. I don't know how else to describe it other than I took from it to be --

Q More direct?

A -- more direct.

Q That was helpful.

A That --

Q Page 86, the next sentence after we just went through, it says: McGahn understood the President to be saying that the special counsel had to be removed by Rosenstein.

Is that accurate?

A That was what I took from the call, yes. I understand the President disagrees with that, but that's still my -- that's still my view today.

Q Thank you.

When the President said, "Mueller has to go, call me back when you do it," what was your response?

A I don't recall my response. I was trying to get off the phone.

Q But do you recall the President telling you, quote, "Mueller has to go," end quote, and, quote, "Call me back when you do it"?

A I do recall -- I do recall that, yes.

Q So was it your understanding --

A And the "it" to me meant call Rosenstein.

Q And convey to him that Mueller has to go?

A Convey the message to Rosenstein, yes.

Q Page 86, first full paragraph, after it says, "McGahn understood the President to be saying that the special counsel had to be removed by Rosenstein," it says, "to end the conversation with the President, McGahn left the President with the impression that McGahn would call Rosenstein."

Do you recall what you said to leave the President with that impression?

A I don't recall specifically if I said something like, "I'll call Rod," or, "Okay," or something. But, at that point, I was trying to get off the phone.

Q The next sentence reads: McGahn recalled that he had already said no to the President's request and was worn down, so he just wanted to get off the phone.

When you say "worn down," is that what you were referring to, that you --

A Yes. Yeah.

Q Was it your understanding that the President believed you would call Rod after this call?

A I can't really say. Maybe. Maybe not. It's tough to say. He kept wanting to have the same conversation, so maybe he didn't think I was going to call Rod. I really

don't know.

Q But, at the time, you had twice now left the President with the impression that you would carry out his directive to have the special counsel removed, correct?

A I think I left that impression with him, yes.

Q At this point, were you concerned about potentially exposing yourself to any liability by agreeing to have the special counsel removed?

A Certainly a concern in my mind, yeah.

Q What were you concerned about?

Mr. Burck. I'm going to direct the witness not to answer to the extent that it calls for any communications between his counsel at the time. You can answer it beyond that.

Ms. Istel. We can clarify for the record.

BY MS. ISTEEL:

Q At the time, leaving aside any advice you had been given by your personal attorney, did you, as a White House counsel and a lawyer, have concerns with leaving the President with the impression that you would carry out his directive to have the special counsel removed?

A Did I have concerns about leaving the impression with the President?

Q [Nonverbal response.]

A I wasn't concerned about that, no.

Q What were you concerned about?

A I was concerned about, if I were going to reach out to Rod, Rod's reaction, how it would be perceived after the fact, and that it would cause potential eventualities to occur that would not be in anybody's interests, including my own. To answer the question you asked before, I did not want to insert myself into something that would cause me to be my own -- that would compromise my own ability to remain as counsel.

And I thought, as I've said before, counsel to the President is not the one to raise at least the golf course conflict, right? So that -- my own -- my own role in it certainly crossed my mind, and how that role would be perceived certainly was on my mind.

Q In addition to your own role, were you concerned about any personal liability you could face if you directed Rosenstein to have the special counsel removed?

A Was I concerned? Sure, I was concerned. Liability is a broad term. Anything from congressional oversight hearings, where you'd be asking me different questions about why did you think it was within your job as counsel to the President to raise a conflict of interest about golf dues? I would not have a good answer to that question if you were asking me that question and I had made the call.

So, to -- with an ongoing investigation of some sort that we could not possibly know the contours of, you don't want to end up inadvertently inserting yourself into that narrative in a way that would be unnecessary.

Q Did you have any other concerns in addition to potential congressional oversight if you'd carried out the President's directive?

A Anything else? I may have at the time. I can't think, sitting here today, of other things. But doing the best I can here.

Is there something else in the report that maybe would refresh my memory that maybe there was another reason? If you have something in mind, I'm happy to maybe look at something. I don't want to leave anything out.

Q Well, you had previously advised the President that looking -- that, quote, "knocking out Mueller," end quote, would be, quote, "another fact used to claim obstruction of justice."

Now, we've gone over that that could be used to claim. Were you concerned that, if you had any part in removing Mueller, that could be a fact to use to claim obstruction of

justice?

A My own concern? Sure, yeah.

Q After you hung up with the President on that second phone call, how did you feel?

A After I got off the phone with the President, how did I feel? Oof. Frustrated, perturbed, trapped. Many emotions.

Q What --

A Concerned.

Q I've just gone over concerned, so I won't ask about that again.

Can you explain why you felt trapped?

A Felt trapped because the President had the same conversation with me repeatedly, and I thought I conveyed my views and offered my advice, and we were still having the same conversation. And I figured, at some point, he'd want to have that conversation again. And, at that point, I wasn't exactly sure how -- how to navigate that one, so I felt that I was trapped.

Q So fair to say that the President was not following your advice on this issue?

A Well, he didn't remove Mueller, so maybe he did follow my advice.

Q Did he ask you to remove Mueller?

A He did not ask me to remove Mueller, no.

Q Did you understand what he said on the call to be saying that the special counsel had to be removed by Rosenstein?

A I -- that's what I took from the call, that he wished Mueller -- now, you know, again, there is a distinction between padlocking the independent -- special -- independent counsel, that's an antiquated statute -- a special counsel's office and disbanding the whole operation versus Mueller would not give him a fair shake. But I took from that call

he didn't think Mueller could play that role.

Q And you'd previously advised him against making that phone call to Rosenstein, correct?

A I think we covered that. It's in the report, yeah. That's right.

Q So is it fair to say that he was not following your advice when he continued to ask you to make that call to Rosenstein?

A Stated that way, I guess so. We kept having the same conversation, so he wasn't taking the answer the first time or subsequent times. I guess that's fair, yeah.

Q After your second call with the President -- and I'm on page 86 now, bottom paragraph.

A Okay.

Q It reads, McGahn recalled feeling trapped because he did not follow through with the President's directive, but he would not -- did not want -- he did not know what he would say the next time the President called. McGahn decided he had to resign.

Can you explain what led to your decision that you had to resign?

A Well, the report speaks to it. I've spoken to it already today. It was the feeling of being trapped and being felt that I was being pushed to do something that was really not in the best interests of the President, in addition to my own concerns about my role that we've already discussed here today. And I felt, at that point, you have to be prepared to walk away, particularly as a lawyer, in certain situations.

And it made sense at that point to begin those preparations in the event there was a subsequent call or other events that would require me to have to say, "I just -- I can't -- I can't do that, sir," or something to that effect, and be prepared to say I'm willing to resign if need be.

Q So --

A So --

Q -- ultimately you were willing to resign rather than carry out that directive from the President, correct?

A Yes. I'm always -- I think everyone that takes these jobs has to be willing to resign. I think that's something I've counseled younger lawyers on. You don't take these jobs to make them permanent or enjoy them. You take them because you may have to make a tough call, and, if that means you have to go, you have to go. So, yeah, I was prepared to walk if I had to walk.

Q The bottom of paragraph -- bottom paragraph, third sentence on page 86, it says: He -- meaning you, Mr. McGahn -- called his personal lawyer and then called his chief of staff, Annie Donaldson, to inform her of his decision, and that was referring to your decision to resign.

Can you describe your call with Ms. Donaldson in which you informed her of your decision to resign?

A Well, where are we in the report? Sorry. I guess I lost my place.

Ms. Istel. Sorry?

Ms. Shapiro. It's in the report.

Mr. McGahn. Were you reading from the report?

Ms. Istel. Yes.

Mr. McGahn. Where? Sorry.

Ms. Istel. Page 86, bottom paragraph, third sentence.

Mr. McGahn. All right. Where -- okay. Sorry. Restate the question. Now I see where you are. I apologize.

BY MS. ISTEEL:

Q No.

A I appreciate your --

Q Take your time. It's a long report.

A I appreciate your patience. Question one more time, please.

Q Can you describe your phone conversation with Ms. Donaldson in which you informed her of your decision to resign?

A I --

Ms. Shapiro. Without relating the contents of the communication if it's not in the report.

Mr. McGahn. I -- I -- thank you. I appreciate that. I understand that.

I don't have a crisp recollection of talking to her. The -- my recollection is what I was trying to convey, which is reflected in the report, was that something was up, to use -- lack of a better word, but I did not read her in on the details. So the conversation was not particularly involved as I recall it, and I did not give her blow by blow what was actually going on.

BY MS. ISTEEL:

Q Why did you not read her in on details of that conversation?

A Well, this was -- you know, in my mind, this was a very high-level discussion with the President of the United States, and there is a point when you're actually the counsel, you just -- you do it. You do your thing, and you don't have to read in subordinates.

And, in a way, you know, I probably -- at the time, I was thinking more self-protection for Annie. You know, you hear this phrase: need-to-know basis. She didn't need to know the details, so there was no reason to tell her the details. And it was something that concerned a direct communication with the President of the United States when with his counsel.

Q You said this was partly because of self-protection for Annie.

A For her, yeah.

Q What were you trying to protect her from?

A Well, it didn't need to -- she didn't have a need to know, and there was no need to bring her into these -- the events of that day, and --

Q Well, there is a difference between not needing to know and self-protection. So can you explain what you were trying to protect her from?

A I don't -- you're drawing a distinction between my words. I don't really see much of a distinction. So, if I -- if I -- it created the appearance that I'm creating two different concepts, that was not my intent.

Q Okay.

A Given --

Q Well, can I direct --

A And, look, we've talked about this a little bit before. Given the ongoing investigation, given the significance of this, given the perception that this could be seen as some form of meddling in the investigation, the last thing I want to do is bring Annie into that narrative any more than she needs to be. Talented lawyer, went to Harvard Law School, bright future. Last thing I want to do is have her honestly sitting in the chair I'm sitting in right now.

So, you know, if we weren't going to -- we weren't going to go there, I didn't need to bring her in. But she's my right -- she was my right hand. She deserved to know that I was heading to the office to pack.

Q So it's fair to say that, at least part of your reason for not informing her of the specifics -- and you were consciously trying not to involve her in the investigation -- was to protect her from this aspect of potentially being perceived as some

form of meddling in the investigation?

A Your voice dropped at the end, but I think I agree with what you just said, yeah. No need to drag her in unnecessarily.

Q I'll just direct you to page 87, second paragraph, second sentence of the report, where it says: McGahn recalled that, after speaking with his attorney and given the nature of the President's request, he decided not to share details of the President's request with other White House staff.

Without commenting on your communications with your personal attorney, is that what you were referring to when you said that you wanted to help Annie have self-protection?

A To the extent I can differentiate between advice from my personal attorney and my own views -- and I think there probably is a sliver there between the two -- yes, that's another way of stating what we just discussed.

Q Thank you.

Going back to page 86, bottom page -- to the top of page 87, after you told Ms. -- after you told Ms. Donaldson about your decision to resign and you consciously avoided trying to tell her the specifics of the President's request, it says: Donaldson inferred -- and I'm reading now from the report -- Donaldson inferred that the President's directive was related to the Russia investigation.

Do you recall why Ms. Donaldson would have that inference?

A I'd hate to say you'd have to ask her, because the last thing I want to do is have you ask her, but I don't -- I know why she would infer that other than the general atmospherics of what was already going on in the news and elsewhere, so no.

Q It said: Ms. Donaldson prepared to resign along with McGahn.

Why was Ms. Donaldson prepared to resign along with you?

A You have to ask her. Ultimately, maybe she trusted my judgment. Maybe she figured, if I was getting out, it was probably time to get out. She was -- you know, I -- I hired her, and maybe she figured, if I leave, it would be time to leave. There is a lot of reasons why, but --

Q Do you recall whether she agreed with your decision to resign?

A Whether she agreed or not? Well, I didn't read her in on why, so she didn't really have a -- if you can get a little closer.

Since I didn't read her in on why, I'm not sure if she would be in a position to agree or disagree with the actual merits. But my sense was she certainly supported me in whatever I was going to do and prepared to walk with me.

Q Were you serious about your decision to resign?

A Was I -- sorry?

Q Can you hear me? Is this --

A Not really. And then you put --

Q Okay.

A -- your hand on your mouth, and it's -- maybe you can get a little closer to your mic. And what's tricky is I don't hear so well sometimes. Many years of rock music. So, when the mic is right on your -- right. I can't see the mouth move. So, if you can -- that's why I kind of angle off the mic. Maybe I could hear you better if I --

Q Yeah. I'm going to bring this a little closer. Is this better at all?

A That's better, yeah.

Q Okay. We'll try to --

A I apologize. I hate to --

Q No. It's not your fault.

A -- put a personal thing about my hearing on the record, but --

Q Anything with rock music is allowed on the record here, so --

A I'm trying to hear you here.

Q -- but there is a lot on the record here, so --

A Right. You know, many things have already been said about many things, so

I want to make sure I capture everything.

Q If at any point you can't hear me, just let me know, and I'll lean in.

A That's what I just did, yes.

Q Were you serious about your decision to resign?

A Yes.

Q According to the report, you drove to --

A That would be something if I wasn't and we were sitting here today, wouldn't it? All of this for something I wasn't serious about. I was serious.

Q I'm sorry. Can you --

A I was serious about it, yes. I said it would be something if we were sitting here today and with litigation over something I wasn't serious about. I was serious.

Q It says in the report that you drove to the office to pack your belongings and submit your resignation letter. Did you, in fact, drive to the office to pack your belongings?

A I did, yes.

Q And had you drafted your resignation letter?

A Yes. It had -- it had already been drafted. There was a --

Q What do you mean when you said --

A First day on the job, I drafted a letter, a simple, "Respectfully, I can no longer serve as counsel to the President." And I believe I instructed my staff to do the same. It's part of my previous statement where, these jobs, you have to be ready to go, and

sometimes it's good to have a letter.

Something I learned from a political consultant years ago that you get some of these jobs, it's always good to have a little reminder that, you know, it's not about you; it's about the job, and if you've got to leave, you've got to leave. So there was not a separate, brand new draft, as I recall, so yeah.

Q But you had ready your resignation letter in your --

A There was a fresh one -- there was a fresh one prepared, I guess, is my recollection, yeah.

Q Did you speak with anyone else that evening about your decision to resign?

A I did. I did. I talked to Priebus -- Reince Priebus, who was chief of staff, and Steve Bannon, whose title still remains murky to me. I think it was senior adviser or something, something like that. And I talked to both of them and informed them that I was -- I was -- I was resigning.

Q Did you speak to them together in one phone call, or separate?

A Separately. No, separately.

Q Okay. Well, let's start with Priebus. Do you recall what you said to Priebus about your decision to resign?

A I don't remember the specific conversation with -- with Priebus. Being chief of staff and me being counsel, we talked a lot about a lot of things, so it's tough to really differentiate for me, you know, particular conversations. But I -- I remember conveying to him that I had it, something to that effect, and I was going to resign. And I didn't get into details with him either as to -- as to why.

Q Direct you to page 87, first full paragraph, third sentence down. It says: Priebus recalled that McGahn said that the President had asked him to do, quote, "crazy," expletive.

A I said the f-word earlier on the record. You can -- not to tell you how to ask the question, but we've already gone there, counselor, so --

Q We can agree to disagree on using that word on record.

A I'm fine. You're not going to offend me if you read it out loud.

Q Well, for the record, it's not the f-word here.

A No.

Q But --

A No.

Q Will you just read that sentence aloud for the record, please.

A You know, I don't remember saying that to the chief of staff, but I must confess that does sound like something that I may have said. That's kind of -- that probably -- I probably said it, but I don't remember saying it.

Q Can you just read the sentence aloud for the record so that we have it.

A Okay. Priebus recalled that McGahn said that the President asked him to do, quote, "do crazy shit," unquote, but he thought McGahn did not tell him the specifics of the President's request because McGahn was trying to protect Priebus from what he did not need to know.

Q So, even if you don't recall saying those specific words, is that a fair characterization of how you viewed the President's request?

A Well, the President probably thinks this is an unfair characterization, but I --

Q I'm asking for your opinion.

A -- think -- I think it's fair.

Q Can you just repeat that for the record? You think it's fair?

A I think it's fair.

Q Thank you.

Page 87, first full paragraph, halfway in, it says: Priebus and Bannon both urged McGahn not to quit.

A Right.

Q Do you recall what they said to you when they urged you not to quit?

Mr. Burck. You can answer yes or no if it's not in the report.

Ms. Shapiro. If it's reflected in the report.

Mr. McGahn. I remember some. I don't remember all. It -- you know, at this point, it's fuzzy. So, if it was something not in the report, I can't --

Mr. Burck. Right.

Ms. Shapiro. That's correct.

Mr. McGahn. Okay.

Ms. Istel. Well, no. To be clear, he can't discuss conversations with the President he had outside of what's reflected in the report because of privilege, attorney-client privilege. However, he is allowed to comment on events as reflected in the report in which he was involved, even if --

Ms. Shapiro. Excluding executive branch communications.

Mr. Burck. Excluding --

Ms. Istel. Excluding executive branch communications.

Mr. McGahn. And Bannon was in the executive branch.

Mr. Burck. As is Priebus.

Mr. McGahn. As was I.

So what do I do here? Sorry.

Mr. Burck. You can't --

Mr. McGahn. Sorry.

Mr. Burck. You can't answer it.

Ms. Shapiro. So it's outside the scope, so maybe you can ask another way.

BY MS. ISTEEL:

Q According to the report, it says: McGahn ultimately returned to work that Monday and remained in his position.

Can you explain what led you to decide not to resign?

A Bannon talked me into it. That's my recollection. I don't remember specifics of why, but --

Q Can you explain why you felt comfortable returning to work and not resigning when you had previously decided that you had to resign?

A Well, the President hadn't called again.

Q I'm sorry?

A The President hadn't called again and asked about calling Rod yet again.

Q He had not called again, or had called again?

A Well, he -- I'm having trouble hearing. What I'm saying is, if I'm hearing your question correctly, the President didn't call me on Sunday. He didn't call me Sunday night. There was Saturday calls, but it had -- it seemed to maybe -- maybe it would blow over was my hope.

I now had the chief of staff and the senior adviser essentially talking me out of leaving. So that made me feel like there was some solidarity at the staff level. And, with their assurances that we would, you know, get through this, I thought it made sense to show up Monday for work.

I think I'm answering your question, but --

Q You are.

A -- I had trouble sort of hearing some of the --

Q No. That's helpful. Thank you.

A Okay.

Q Okay. I'd like to move now to January 2018, and I'll direct you to page 116 of the report.

A What page? Sorry.

Mr. Burck. 116.

Ms. Shapiro. 116.

Mr. McGahn. 116. Thank you.

BY MS. ISTEEL:

Q We'll be going back and forth between 113 and the next couple pages, but I'll direct you specifically as the questions come up.

A Okay. I'll do my best.

Q On January 25th, 2018 -- and this is on page 13.

A Thank you.

Q 113. Sorry. The New York Times published an article stating that the President ordered you to fire the special counsel.

Do you recall that article?

A I recall the article, yes.

Q What was your reaction when that article came out?

A My reaction?

Q [Nonverbal response.]

A I don't remember if I manifested a reaction. My thought was there were parts of the article that seemed correct. There were parts that seemed, for lack of a better word, overcooked and got some things not quite right.

Q Can you explain what parts of the article seemed accurate?

A Explain what? Sorry.

Q What parts of the article seemed accurate?

A Well, the gist of the article, as I recall it, was that, as we've discussed, you know, other parts of the report, the notion that the President asked me to call Rod and raise conflicts and that sort of thing. I don't remember the article and specific details, so I may be confusing it with another article or not, but that's my recollection of the article.

But then the article got into -- and as the report says, that the article claims that the President ordered me to have DOJ fire special counsel, you know, I don't remember the President ever using the word "fire," right? So, in that way, it was -- it was a little oversold and -- "sensationalize" is probably too strong a word, but it put -- it put some icing on the cake was my impression of the article.

Q You previously testified today, and it's reflected in the report on page 86, that you understood the President to be saying on that second phone call that the special counsel had to be removed by Rosenstein, correct?

A Right. That was my -- that was my -- that was what I took from the President's conversation, that's right.

Q And I'll direct you to page 116, first full paragraph --

A Uh-huh.

Q -- where it says, McGahn -- and we're skipping ahead a little, and we'll get back to this, but Porter was asking you to deny the reports, and you, quote, "shrugged off the request, explaining that the media reports were true."

A Right.

Q Is that accurate?

A That is. I mean, it's consistent with what I just said. The article in the main was correct, but there was some -- there was some extra sauce put on the facts.

Q The next sentence reads: McGahn told Porter that the President had been

insistent on firing the special counsel and that McGahn had planned to resign rather than carry out the order, although he had not personally told the President he intended to quit.

Is that correct?

A Where are you reading? Sorry.

Q Page 116, first full paragraph. It's right after the sentence we just went over.

A Porter told McGahn -- wait. Sorry. What's --

Mr. Burck. McGahn told Porter.

Ms. Shapiro. Right after 804.

Mr. McGahn. That helps. Thank you.

Well, wait a second. Right after 804, it says: Porter told McGahn.

You just said McGahn told Porter. Which sentence are you looking at?

Ms. Shapiro. Right here.

Mr. Burck. No. I'm sorry.

Mr. McGahn. We're up here. Oh, okay. Thank you.

BY MS. ISTEEL:

Q Let's start with: McGahn shrugged off their request and then --

A Right.

Q -- through "quit." So you can just review that, take your time, and let me know when you're ready.

A I don't recall using the word "fire" when I talked to Porter about this, and, you know, perhaps -- perhaps -- perhaps he recalled me using that word. I don't have a recollection of that part.

The part -- the part I do recall of that conversation is later in the paragraph about the idea of sort of doing some more formal correction, writing a memo, that sort of thing,

and -- and, you know, this -- it saves you the question of my reaction. It's accurately in the report. I kind of shrugged it off and wasn't particularly concerned about getting fired at that point --

Q Well, that sentence --

A -- in the --

Q -- to both your 302s and Mr. Porter's, but is it a fair characterization that you felt the media reports were generally true?

A Fair characterization of what?

Q Your understanding -- of this -- these two sentences in the report. Are you disputing --

A It could be what I told -- I'm not disputing it. It could be what I told Porter. I'm not disputing it.

Q Thank you.

A Yeah.

Q I'll direct you now to page 114, first sentence under No. 2. It says: On January 26th, 2018 --

A Uh-huh.

Q -- the President's personal counsel called McGahn's attorney and said that the President wanted McGahn to put out a statement denying that he had been asked to fire the special counsel and that he threatened to quit in protest.

Do you recall that?

A Yes, somewhat.

Q Was it your understanding after speaking to your attorney that the President wanted you to put out a statement denying that you had been asked to fire the special counsel and that you threatened to quit in protest? Is the report accurate?

A It -- well, you threw the attorney in there. That's why I'm pausing because, as the report reflects, other people came to me with similar --

Q We're going to get to those, but just the --

A -- requests, right, so --

Q Yeah.

A -- I'm trying to be accurate here and not --

Q Just the time when he told your personal attorney.

A Okay.

Q We'll go through each one.

A All right. So we're going through, or who -- which one?

Q Page 114, first sentence under 2 that I just read aloud.

A That's a correct statement.

Q What was your reaction to learning that the President wanted you to put out a statement denying that he'd asked you to fire the special counsel and that you had threatened to quit in protest?

A My reaction was I wasn't going to do that.

Q Why not?

A One, although, on the edges, I can quibble with The New York Times report, in the main, it was -- it was in the ball game of being accurate. So it didn't make sense to go and correct something that wasn't provably false in The New York Times v. Sullivan way of thinking.

Two, as a lawyer, I thought it would make matters worse, not better, by all of a sudden going out and trying to pick out a fight with The New York Times over something that had kind of [inaudible].

Q Your mike just turned off.

A Yeah. Sorry. Went off, so the -- as I was saying, in my judgment, it didn't make sense to revisit the issue and make more of it than it was. There had been The New York Times piece, and there was a subsequent Washington Post piece that I thought got it a little closer. And to go out with some public statements just made no sense to me as a lawyer to do. I just didn't think that was a smart move.

And then, third, you know, given that I had been -- was deemed a fact witness and had already spoken to Mr. Mueller's team about this very issue, it made no sense to me personally to go out there and start re-litigating the details of something that I had already discussed with the -- with the Special Counsel's Office.

I -- as I mentioned and as the report confirms, the President had instructed full cooperation, and it seemed to me that it would be perceived as -- as something off that -- off that path. And I thought, as one who tries to respect processes and that sort of thing, the time to tell my story was to Mr. Mueller and his team, not to The New York Times and the public at large fighting over a newspaper article. So it just seemed to be not something that made a lot of sense for a whole host of reasons that I just articulated.

Q So a lot there, but we'll parse that out.

The third thing that you mentioned was that you had already talked to the special counsel's team about this issue, correct?

A Right.

Q And, as we see in the report -- lost my page -- you testified -- you spoke -- your statement to the special counsel included that you understood the President to be saying the special counsel had to be removed by Rosenstein, correct? That's on page 86.

A That's what I took from what the President was telling me. He wanted Mueller out, yes, for the conflict of issue, but he didn't think he'd get a fair shake with

Mueller, right.

Q So, if you had put out a statement that the President was requesting denying that he had asked you to fire the special counsel and that you threatened to quit in protest, would that have conflicted with your prior testimony to the special counsel?

A I suppose so, yeah. I mean, it seems like -- that sounds like the opposite to me.

Q I would agree.

A Yeah. Yeah. Now --

Q So --

A And the report says this. I never conveyed to the President my intent to resign. So, to be fair to him --

Q Let's just stick with the first part of that right now?

A You know, he could have read the story and said, "Gee, that never happened," unaware of the fact that I had talked to Reince and Bannon and --

Q Understood.

A -- the other guys, right? So I just want to make sure I'm not going down a wrong path and I'm hearing your question right. I'm not overstating.

Q And let's be specific.

A Okay.

Q You would agree that it would be the opposite of your testimony to the special counsel if you'd put out the statement that the President was requesting. Yes or no?

A I assume -- I didn't write any such statement, but, if I had written the opposite of what I had testified to, that would make it the opposite, yes.

Q And what -- what would happen if you told the special counsel false

information?

A Given his track record of prosecuting people for violations of one thousand and one -- 1001, I would have probably been next. He had already publicly made clear he was going after various people for that, and that certainly is one that would weigh on anybody's mind.

Q So, if you had put out the statement that --

A To be clear, I already testified, right, so this --

Q Correct.

A -- exchange had nothing to do with what I had already told Mueller.

Q But, if you put out a public statement that was the opposite of what you told Mr. Mueller --

A Right. Then he would probably think, was I lying then, or was I lying now, sort of thing.

Q Correct.

A Fair point.

Q So you could expose yourself to liability if you put out --

A Right.

Q -- the statement that the President was requesting?

A Potentially, sure.

Q Thank you.

Now, in your answer previously, you also brought up The Washington Post article, which you --

A Right.

Q -- said got it more right. So I just want to read for the record the sentence to that.

A Uh-huh.

Q The Washington Post article -- and I'm reading now from page 114, is footnote 782 for reference. The Post article stated, quote, and despite internal objections [inaudible].

Mr. Burck. You're off.

Ms. Istel. That's on.

Mr. Burck. You're back.

Ms. Istel. Is it better if I go this way?

Mr. Burck. No. I don't think he can hear you.

Mr. McGahn. The problem is he's transcribing it. I can't, but --

Ms. Istel. Just go off the record for a second.

[Discussion off the record.]

[1:55 p.m.]

Ms. Istel. We'll go back on the record to finish our round. It's 1:55 p.m.

Mr. McGahn, are you ready?

Mr. McGahn. Yes.

BY MS. ISTEEL:

Q When we left off, you had said that the Washington Post article was more accurate in describing, and so I just wanted to read for the record that portion of the report.

I'll direct you to page 114, footnote 781, where the Post article stated, "Despite internal objections, Trump decided to assert that Mueller had unacceptable conflicts of interest and moved to remove him from his position. In response, McGahn said he would not remain at the White House if Trump went through with the move. McGahn did not deliver his resignation threat directly to Trump but was serious about his threat to leave."

Was that accurate?

A Yes.

Q Okay.

What was your understanding of why the President's counsel called your personal attorney to ask you to put out this statement rather than call you directly?

A I don't really have a window into that. I had personal counsel, and my understanding is the personal lawyers would talk, but I don't think I have a real window into the whys and whens and all that.

Q Was it your understanding that whether or not the President directed you to remove the special counsel was a legal issue?

A Was it my understanding that it was a legal issue? Sure, it's a legal issue,

whether the President has the constitutional authority to remove someone. Sure, absolutely a legal issue.

Q I will direct you to page 115, top paragraph.

"Also" -- and I'm reading from the report now. "Also on January 26, 2018, Hicks" -- and that's referring to Hope Hicks, who was at the time White House communications director -- "recalled that the President asked Sanders" -- and that's referring to Sarah Sanders, then White House press secretary -- "to contact McGahn about the story."

Do you recall speaking with Ms. Sanders about that story?

A I do remember that we spoke. I don't remember much about the conversation. It was brief, as I recall it. And, you know, being press secretary, I saw Sarah all the time, so it wasn't, like, a special scheduled meeting or anything like that, but I remember that she came to talk to me.

Q And did you tell her you would correct the New York Times story?

A I said I would not. Yeah, there was no need. Yeah.

Q Turning to the first full paragraph on page 116, it says, "Later that day, Porter spoke to McGahn to deliver the President's message."

A Uh-huh.

Q Do you recall speaking to Porter?

A I do remember him coming to my office to talk, yeah. Yeah.

Q What do you recall about that conversation?

A What do I recall about it?

Ms. Shapiro. As reflected in the report.

Mr. McGahn. If I could look at the report, I think that will bring back some of my memory. I -- Porter --

BY MS. ISTEEL:

Q How about I'll just read you the first --

A Okay. That'd be -- yeah, because we're going to end up in the same place anyway probably, but I appreciate that.

Q "Porter told McGahn that he had to write a letter to dispute that he was ever ordered to terminate the special counsel."

Do you recall that?

A Yes.

Q And what was your response?

A My response was -- the report calls it "shrugged off." I think that's a fair characterization. I declined the overture, you know, to make a correction, but my recollection was I wasn't particularly upset, nervous, or put off by it.

Q But this was now the third time you had denied the request to write the letter disputing the article, correct?

A I guess so. Yeah.

Q You guess so or yes?

A Well, you know, I talked to Sarah Sanders and Porter. That's two.

Q And your personal counsel also conveyed --

A Well, if you want to call that three, we'll call that three. But that wasn't -- that wasn't a White House staffer coming and telling me directly. So we can call that three, but I think of it as two, because -- we're saying the same thing, just differently. So --

Q So we're saying the same thing.

A I think so. Yeah.

Q There were three separate occasions where you denied the request to issue

a statement correcting the news reports, yes?

A Right.

Q Was it your understanding that Porter was requesting that you issue that statement on behalf of the President?

I'll just read the end of the first full paragraph --

A No, I --

Q -- in case it helps refresh your recollection.

"Porter told McGahn that the President suggested that McGahn would be fired if he did not write the letter."

A Right. Yeah, he -- yeah, that came up. Yeah.

Q That came up?

A Yes.

Q What was your reaction when you learned that the President would fire you if you did not write a letter disputing that story?

A I was -- I was -- I shrugged that off.

Q Why did you shrug that off?

A Because he wasn't going to fire me for that.

Q Why would he not fire you for that?

A Because I was doing a great job at so many other things. I took it as bluster, and I took it as he told Porter to come tell me this. And I think -- you know, my recollection is, I think I was the one that said, "What's he going to do, fire me?" And Porter said, "Actually, kind of, yeah, that's what he said." Like, come on. Really?

Q Let me direct you to the report. Page 116, end of the first full paragraph, it says, "McGahn dismissed the threat, saying the optics would be terrible if the President followed through with firing him on that basis."

So I'm sure it was also because you were doing a great job in other things. Did you also think that the President wouldn't fire you because the, quote, "optics would be terrible" --

A Yeah, I --

Q -- "if the President" --

A -- certainly thought that. Yeah.

Q What did you mean by "the optics would be terrible"?

A I mean, the real -- I mean, how much was this really Porter? You know, it's a middleman coming, so I think instinctively I discount these sorts of exchanges. Because if the President wants to talk to me, he's the President; he's never had a problem talking to me directly.

So Porter's coming and saying, "The President told me to tell you this," that didn't quite convey the urgency that maybe you would think it would because of other, you know, context.

Q At the time, you told the Special Counsel's Office that you dismissed the threat, saying, "The optics would be terrible if the President followed through with firing him on that basis."

Why did you think the optics would be terrible if the President fired you for refusing to dispute that he ever ordered you to remove the special counsel?

A Well, it would create a separate issue. It would revisit an issue that had already been in the press. And, as a lawyer, in my judgment, it would not be in the interests of the President to have that out, that somehow I was putting out a statement contesting a news article about something I already testified to with the special counsel.

So that would cause him headaches that I don't think were being anticipated by maybe some of the others coming to me to deliver this message. I can't read their minds

as to what they were thinking or not thinking, but that's what I was thinking at the time, that it just was not in the President's interest. Maybe there was a short-term press benefit, but, long term, it was just not the right call --

Q Why was it not the right call, long term?

A -- for the President. Because the perception would've been what essentially the report says, in the news report, that he's -- it would be perceived as him trying to potentially get me to alter my testimony, even though that's separate and apart from doing a story about a newspaper article.

So, as counsel, the last thing I would want is somebody reading into or otherwise thinking that either I was changing my story or that I was being pressured to actually change my testimony.

So that is, I guess, an elaborate way of explaining, you know, the optics would be terrible for the President.

Q If I could just skip ahead for a minute.

A Sure.

Q Turning to page 117 in the report --

A Okay.

Q -- it says, "The President" -- and now this is referring to an Oval Office meeting on February 6 in which you spoke to the President directly. And it says, during that meeting -- and then I'm quoting now directly from the report -- "the President also asked McGahn in the meeting why he had told the Special Counsel's Office investigators that the President had told him to have the special counsel removed."

Do you recall the President asking you that?

A Yes.

Q So, at that point, the President was aware that you had told special counsel

investigators that the President told you to have the special counsel removed, correct?

A He was aware I talked to the special counsel. That was in the newspaper. I did not talk to the President directly about my actual testimony and what I said. So I can't really say what the President knew or didn't know in that context.

But, you know, his issue was whether he said fire or not. And then the other issue, which I mentioned earlier, was whether, on the resignation, whether I conveyed it directly to him, right?

So I think part of it was, he was trying to figure -- he was also -- he had questions and was also trying to figure out some things. So I don't think I'm in a position to really say what he knew or didn't know.

Q Is this sentence in the report accurate?

A Which one? The one you just read?

Q "The President asked McGahn in the meeting why he," meaning you, "had told the Special Counsel's Office investigators that the President told him to have the special counsel removed."

A Yes.

Q So the President asked you why you told the special counsel investigators that he told you to have the special counsel removed?

A Right.

Q So it's fair to say that he believed that was your testimony to the special counsel, correct?

A That's fair to say, yeah.

Q And he was still asking you to issue a public statement disputing that he had said that, correct?

A Well, I assume so, because of Sanders and Porter, but I don't recall the

President ever telling me that I had to put out a statement.

Q Let's go back to the report.

A But maybe he did, and --

Q Yeah.

A -- maybe it's in the report. But --

Q We can just go to the report.

A He may have suggested it, but I don't really remember, sort of, an order to do that.

Go ahead. Where are we in the report?

Q Page 117, end of top paragraph: "The President asked McGahn whether he would do a correction, and McGahn said no."

A Right.

Q So the President did ask you to do a correction, correct?

A He asked, right. He didn't order me or direct me or, you know --

Q He didn't ask -- did he ask you to do a correction?

A Yes.

Q And when he asked you to do a correction, he knew you had already told the Special Counsel's Office that he told you to have the special counsel removed, correct?

A I assume he knew that based upon news reports. Yeah.

Q And you testified previously that, if you had made that statement, it would have been the opposite of what you told the special counsel investigators, correct?

A Yes.

Q And you testified previously that then the special counsel could have inferred that you were either not telling the truth then or in your subsequent statement, correct?

A Possibly. You're bootstrapping a lot together there, but possibly. Because I didn't put out a statement, I didn't correct and that sort of thing. But you're, sort of, assuming a lot of links in the chain that never really --

Q We can go through it.

A -- never really became a chain.

Q We can go through it more slowly.

A No, it's not a question of speed. It's just you're linking stuff together that -- I know it's just not --

Q It's based on your prior testimony.

A -- this stuff didn't happen. I understand. Right.

Q So, going back to the meeting with Porter --

A Okay.

Q -- you told Porter that you would not write the letter the President had requested, correct?

A Right.

Q Did Porter tell you about his conversation with the President earlier that day?

I'll direct you to page 115 of the report --

A Okay.

Q -- end of the last paragraph.

"Porter thought" -- and Porter is now describing his conversation with the President earlier that day. And it says, "Porter thought the matter should be handled by the White House Communications Office, but the President said he wanted McGahn to write a letter to the file for our records and wanted something beyond a press statement to demonstrate that the reporting was inaccurate."

Did Porter convey to you that the President wanted you to write a letter for records?

A I don't know if he used the word "for our records," but that's consistent with what he was telling me the President wanted. So I don't -- I have no reason to disagree with this, but this was a conversation I wasn't a part of, apparently between Porter and the President.

Q And it was consistent with your understanding that the President --

A Consistent with what Porter said to me when I actually talked directly to Porter, yes.

Q So it was consistent with your understanding that the President wanted a formal written statement.

A Yes. Yeah.

Q Page 115, last paragraph -- and this is the President talking to Porter -- it says, "The President said that McGahn leaked to the media to make himself look good."

Did you leak that story to the media?

A Not to The New York Times, no.

Q Did you leak it to any other media sources?

A I didn't leak, no. I did talk to The Washington Post. I was a source for that second story over whether or not I -- I thought it was worth -- because the press shop did not seem to be knowing how to get out that I never told the President directly I was going to resign, and I didn't think that was fair to the President to have that out there. So I made sure the second story was more accurate.

Q And so --

A But I was not a source for the first story.

Mr. Gaetz. Do you think you can get him to project a little bit more without the

microphones?

Ms. Istel. Feel free to ask him yourself.

Mr. Gaetz. I didn't want to interrupt the questioning. I just --

Mr. McGahn. I'll try. Yes, sir. I'll try.

Ms. Istel. Did you hear?

Mr. McGahn. Yeah, more volume. I'm going to try to project. Yes, I heard.

Ms. Istel. Is this loud enough for everyone else in the room?

Mr. Gaetz. We can hear you clearly.

Ms. Istel. Okay.

BY MS. ISTEEL:

Q When you spoke to The New York Times, was your understanding that -- wait, sorry -- when you spoke to The Washington Post --

A Right.

Q -- was your understanding that their story accurately characterized what happened?

A That the Post --

Q The Washington Post story.

A The Post was -- it was much closer to accurate than The New York Times, yes.

Q According to Porter's statements, the President also told him during that conversation that the article was, quote, "BS," and claimed -- it uses the full word -- and claimed that he had not sought to terminate the special counsel, referring to you as a "lying bastard."

Did Porter convey that to you when you spoke to him?

A Not that I recall, no. I think I learned -- I learned about that one once the

Mueller report was released.

Q And what was your reaction when you learned that?

A Disappointing.

Q Why?

A Well, because it's not true. And --

Q Why isn't it true?

A Because I'm not a lying bastard.

Q What was your understanding of why the President said that?

A You'd have to ask him. I don't know. I mean, the report kind of speaks for itself on this point.

Q Did Porter convey to you that the President had told him you were lying?

A No. Not that I recall. No.

Q During or after your conversation with Porter, did you have the impression that he felt uncomfortable asking you to write such a letter?

A That Porter felt uncomfortable? You know, it's tough to step in the shoes of somebody else. I sensed there was some discomfort, that he was not coming in guns a'blazing, so to speak.

Q Why did you sense that?

A It's tough to -- it's tough to put into words. Body language, you know, tone of voice, that sort of thing. It's just, he was not strident. My recollection is it felt almost apologetic.

Q The President had suggested you were lying, and you told Porter that the media reports were accurate. Do you think Porter believed you?

A I don't know if he did or didn't. I don't know.

Q I'm skipping now to page 116, second paragraph, in the report.

A Okay.

Q It says, "The next day, on February 6, 2018, Kelly scheduled time for McGahn to meet with him and the President in the Oval Office to discuss the Times article."

A Uh-huh.

Q Do you recall Mr. Kelly setting up that meeting?

A I remember the meeting was set up, and I think chief of staff handled the details, but I -- that's what I recall. Yeah.

Q What was your understanding was the purpose of that meeting?

A The purpose was to talk about the same topic that Sarah Sanders and Rob Porter talked to me about.

Q You had already, at this time, on three occasions said that you would not put out a statement. So was it concerning to you that the President was calling you into the Oval Office to have the conversation a fourth time?

A Concerning, maybe. I thought talking directly to the President was a good idea. I was in favor of having the meeting with the President. So it wasn't a bad thing. I thought it was a good idea to talk directly about this. The middleman and all that, it just never made sense to me. So, if we want to have a conversation, we ought to have a conversation.

Q You testified previously that the President never had a problem calling you directly. But, on this occasion, at least two different people had reached out from the President, instead of him speaking with you directly.

A Uh-huh.

Q Did you have an understanding as to why he didn't just contact you directly about this?

A No. I wouldn't have any reason to know why.

Q Page 116, the second paragraph, it says, "The morning of the meeting, the President's personal counsel called McGahn's attorney and said that the President was going to be speaking with McGahn and McGahn could not resign, no matter what happened in the meeting."

Do you recall learning that?

A I think I probably did learn it. Yeah, I don't remember the details of how and when, but I don't have a reason to disagree with what's in the report there.

Q What was your understanding of why the President would suggest that you could not resign, no matter what happened during the meeting?

Mr. Burck. I don't think that's a fair representation of what the report says.

Ms. Istel. It says, "McGahn could not resign, no matter what happened in the meeting."

Mr. Burck. But you said "the President told McGahn." That was what your question was.

Ms. Istel. Of why the President had conveyed that to his personal counsel to convey to you, to McGahn.

Mr. Burck. That's not what you said. You did not say the President conveyed that. That's not -- you literally --

Ms. Istel. So it says, "The President's personal counsel called McGahn's attorney." Are you implying that the President's personal counsel did that without -- not on behalf of the President?

Mr. Burck. No, but that's a different question. You can read the line in the report, and then you can ask questions around that, but you can't mischaracterize what the report actually says.

It's right there. I'll read it. "The morning of the meeting, the President's personal

counsel called McGahn's attorney and said" -- "said" referring grammatically to the President's personal counsel -- "that the President was going to be speaking with McGahn and McGahn could not resign, no matter what happened in the meeting."

So that does not say that the President conveyed that, either through his lawyer or directly.

Ms. Istel. I'm not trying to imply that the President conveyed that, so let me rephrase.

Mr. Burck. Well, that was your question. That's why -- that was my objection. You said the President conveyed that he could not resign. If that's not your question, then I have no objection.

BY MS. ISTEEL:

Q What was your reaction to being told that, no matter what happened at the meeting, you could not resign?

A I didn't really have a reaction. It was just one of these things you keep in mind, and -- you know, I --

Q Was it surprising to you to hear that instruction?

A It wasn't surprising, no. It wasn't not surprising. It was just -- it was said, I guess.

Q Did you understand the President's counsel to be conveying that on behalf of the President?

A I didn't have the discussion with his personal counsel, so I have no idea. I can't really give you much information on that dynamic.

Mr. Burck. If you want it on the record, I can tell you that he was not conveying on behalf of the President. He was conveying on behalf of himself.

Ms. Istel. The President's personal counsel was conveying on behalf of himself?

Mr. Burck. Yes.

Ms. Istel. Can you explain why he would do that?

Mr. Burck. I don't know. You'd have to ask him.

Ms. Istel. So all he said on the call was that the President would be speaking with McGahn and McGahn could not resign, no matter what happened in the meeting, and he was conveying this on behalf of himself?

Mr. Burck. Yes. And I believe that was conveyed to the Mueller team. I'm not -- I don't have those 302s, I know you don't have those 302s, but --

Ms. Istel. And which personal counsel was this?

Mr. Burck. John Dowd.

Ms. Istel. I'm told that my time for this round has expired. To be fair to the minority, we'll stop and give them equal time to respond, and then we'll pick up where we left off.

Mr. Hiller. Let's go off the record, please.

[Recess.]

Mr. Castor. Back on the record with mics. All right.

BY MR. CASTOR:

Q Well, we just spent a long time talking about a memo you never wrote, a statement you never wrote.

A Right.

Q Were you a little bit surprised when the Mueller report came out that there was so much blow-by-blow of these things that never really came to fruition?

A I don't know if I was surprised. You know, I think prosecutors write reports and they put a lot in them even if it doesn't -- it supports not drawing a conclusion just as it would draw -- support drawing a conclusion.

And I think their intent was to put it all out there. I can't speak to their intent, it's just my own subjective view. But I don't think "surprise" is the word.

You know, again, I think I said this; I never read the report cover to cover, but, there are, you know, a lot of things in here that I learned probably for the first time and other things that I was a part of. So I, you know -- probably not "surprise." But it is what it is, I think.

Q But, by anyone's measure, the President was extremely frustrated about all aspects of the Russia probe, right?

A I think that was clear. Look at his Twitter account, for example. I think that speaks to that in a very public way. He wasn't hiding that at all, no.

Q And part of the reason he was frustrated, I think, is because it hampered his ability to govern. I mean, there was this black cloud over him relating to the investigation.

A I think he used the word "dark cloud." I think this is in the report. He certainly expressed that to me, that it hampered his ability to be President, there was a cloud over his Presidency, it made it much more difficult to deal with foreign leaders and the like. He certainly conveyed that to me, and then later he said that publicly. No secret there.

Q And he felt it was unfair.

A He certainly felt that, yes.

Q And when the report came out, I think we all learned that, since there was no evidence of collusion -- and you didn't witness any evidence of collusion -- you testified to that -- with the Russian Government.

A I wasn't at the White House when the report came out, so I can't really speak to any goings-on there, but yeah.

Q But his frustrations turn out to be well-founded, because they're -- you know, this whole effort to look into collusion, which he knew didn't exist, boiled down into whether, you know, Sessions was going to unrecuse, whether you were going to write a memo that you didn't write. And now we're talking about the fact that you didn't write the memo for about an hour.

And so, obviously, his frustrations, which were well-founded, are going to continue to become an issue. Isn't that right?

A If I understand the question, I think it's right. I mean, I think how I would state it is the cliché of "there's no there there."

Q Right.

A It's tough to obstruct something that doesn't -- when something -- the underlying thing didn't turn out to exist. You know, but that's -- you know, that's -- sometimes that happens, I suppose. It certainly seems to have happened here.

Q When we were discussing his request that you contact Rosenstein and look at the conflicts issues, he never used the word "fire." You acknowledge that --

A Not that I recall, no. No.

Q And he never wanted you to fire Mueller. He wanted you simply to place a call to the Deputy Attorney General and to discuss it.

A I agree, he never told me to call Mueller and fire Mueller directly. That is correct.

Q But, had you gone ahead and had that conversation with the Deputy Attorney General, it's possible the Deputy Attorney General would've given you some information, some feedback, and you would've been able to take that back, and you would've been able to -- you know, that was, sort of, the next step in the President's request at that time, for you to call Rosenstein.

A That's a possibility, sure. We never found out one way or the other.

Q And, you know, you were asked whether or not the President was taking your advice, and you testified that, you know, he may have taken my advice.

And when you're in service to a principal --

A Uh-huh.

Q -- that's frustrated, a lot of times, staffers -- and you've now been, you know, a staffer for the most consequential, you know, person in the United States, the President. If you know your principal is frustrated, sometimes, isn't it fair to say, you just have to let things blow over?

A That's fair. Happens all the time. It happens in this building all the time.

Q And --

A I'm not saying you've ever done that with any Members you've been employed by, but, you know, I've heard that that sometimes happens even here in the House.

BY MR. CASTOR:

Q And when you, you know, went back to work on Monday, June -- whatever the date was -- 19th I guess it would be --

A I don't know. Monday. Again, whatever the Monday -- we'll call it Monday.

Q You know, by that point in time, you hadn't told the President you were anticipating that you'd resign, right?

A Correct.

Q And when you next saw each other, the report says, the President did not ask you any further information about whether you called Rod, the Deputy Attorney General.

A Right.

Q And so, at that point --

A It didn't come up again.

Q It didn't come up again.

A Right.

Q So is it fair to say that, in your mind, that it had passed?

A At the time, it seemed that way. Yes.

Q And so, with some of these other episodes that we had talked about, such as the memo --

A Uh-huh.

Q -- you know, it's one thing if Rob Porter relays a message to you from the President. It's another thing if the President asks you to do something. But, at the end of this, you decided not to do it, you didn't do it, and it blew over, didn't it?

A Well, I'm still here talking about --

Q Yeah.

A -- it today, so it hasn't quite completely blown over all of us. But, for the context of your question --

Q Right.

A -- right, it wasn't just a tree falling in the forest with no one there to hear it; the tree never fell.

Q Right. And the same can be said for many other things in the Mueller report, like the K.T. McFarland memo, correct?

A I guess so. I don't remember being involved in the K.T. chapter. I think I may have, in glancing through the report, saw something about it, but that's not something -- I don't think I --

Q Okay.

A I don't think I can offer much in the way of factual --

Q Okay.

A -- testimony on that.

Q But you're aware at some point there was a request that K.T. McFarland write a memo to the file or a memo to --

A I think there was something in the report about it. That's, I think, the extent of my awareness. But I take your point.

Q And she didn't do it, correct?

A Apparently not.

Q And yet, you know, it becomes the subject of a, you know, Federal inquiry. And, consequently, that's frustrating to the President, and it sort of informs a lot of the subsequent facts in this matter.

Now, after you left the White House, the inspector general started to release reports on the Carter Page FISA. Did you follow those developments?

A Not in detail. A little bit in the media. I'm familiar with -- that the issue was looked at, but I can't really quote you chapter and verse as to what happened. You know, my recollection is that some of the representations to the FISA court were either incomplete or not true, something to that effect. So I know there are significant issues on that, but I did not follow it in extensive detail.

Q The inspector general found 17 significant errors in the FISA applications to surveil Page, 51 factual assertions in the FISA applications that lacked supporting documents, didn't have the Woods file, and the supporting document did not state facts or the supporting document contained inaccurate factual assertions.

When that all came to light, were you surprised about how bad it actually was?

A I mean, at that point, I was a private citizen, so my opinion is as valuable as any other. But, from what I read, it was very disappointing. You would expect candor to that court, particularly given the secrecy of that court. It's not an open hearing. So, just as a private citizen, sure, I found it troubling. I think everyone -- I hope everyone would.

Q Right.

And the text messages between the two FBI agents, the reporting of that came out in December 2017, I believe. You were still in the White House when the reporting on that came out.

A Right.

Q I mean, the level of animus those two agents, who were very crucial officials at the FBI -- they were not low-level people; they were senior, consequential officials at the FBI demonstrating remarkable animus about the President of the United States. And, you know, it wasn't just animus against the President of the United States; it was, they were then involved with investigative activities against the President.

What can you tell us about that development?

A Tell us about what?

Q That development. And, you know, did it surprise you when you found that --

A Are we looking at, there was something in the report that chronicles -- was there some event that --

Q There's not.

A There's not. Okay.

You know, at that point, we had hired a separate lawyer within the White House to handle, you know, how to defend the President. So I wasn't really involved in any of that stuff.

You know, certainly disappointing. You see that, and, you know, just, again, as a private citizen, it -- and even at the time, it told me, look, the President is not wrong to think that maybe the fix is in.

Q One of the lawyers involved with the FISA submissions, you know, doctored evidence. Did you subsequently learn of that? Now, he's since pleaded guilty to that.

A Yeah, there has been a guilty plea on that, yeah. Yeah. Yeah, that was disappointing to learn as well.

Q And some of his text message traffic, you know, revealed that he was identified -- he self-identified as part of the resistance.

A I wasn't -- I don't think I was aware of that, but it's always disheartening when someone wants to affirmatively say they're part of the resistance, whatever that may be.

Q Right.

A It doesn't sound like you're a fan of what's happening in the current day.

Q So we just wanted to go through some of those facts because they play on,

you know, what the President was going through during this time, and any reasonable person would be rightfully frustrated. And I think you've agreed to that.

A I don't disagree, yeah. Frustrating for all of us in many ways, yes.

Mr. Gaetz. Mr. McGahn, I'd like to bring you back to page 49 of the report.

Mr. McGahn. Page 49?

Mr. Gaetz. Forty-nine.

Mr. McGahn. Forty-nine.

Mr. Gaetz. And in the first full paragraph, the second-to-last sentence reads, "McGahn continued to try, on behalf of the President, to avert Sessions' recusal by speaking to Sessions' personal counsel, Sessions' chief of staff, and Senate Majority Leader Mitch McConnell and by contacting Sessions himself two more times."

Is that accurate?

Mr. McGahn. Yes, that's accurate.

Mr. Gaetz. What was the substance of your conversation with Sessions' personal counsel?

Mr. McGahn. I called -- I reached out to Chuck Cooper. My understanding was he was counsel to Sessions. I tried to ascertain whether he was involved in the Attorney General's decision to recuse. I tried to ascertain whether there was any additional information I was unaware of that may inform the recusal situation.

That's the extent of that. I don't recall learning anything particularly earth-shattering from his personal counsel. But I thought, as part of, sort of, due diligence in what I was trying to do, it made sense to see if there was something else out there, so I called his personal lawyer.

Mr. Gaetz. Was his personal lawyer a part of this decision-making process for the Attorney General?

Mr. McGahn. I don't recall if he was or wasn't. I think he was in the loop to a certain extent. I'm not sure he was actually a strong voice in that decision-making.

And why it's tough to answer that question is, I know, subsequently -- and this is in the report -- I learned that the Attorney General had run this through DOJ Ethics and there was a process inside Ethics and all that.

So it's less than clear to me at what point Chuck Cooper may or may not have been involved. But, given where I was at that point in the day, it made sense to me at the time to call Chuck Cooper.

Mr. Gaetz. Were you seeking to simply ascertain whether or not Mr. Cooper was involved in the process, or were you seeking to prevail upon Mr. Cooper that recusal would be improper?

Mr. McGahn. Calling Cooper was not to prevail on Chuck Cooper. No one really -- with all due respect, no one prevails on Chuck Cooper. So it was me trying to do due diligence and figure out what was going on.

And recall, you know, the context. The Attorney General had an issue with his confirmation testimony, an exchange with Senator Franken. He was in a political hotspot.

And, you know, speaking separately from the issue, sometimes people think, if I recuse, it makes all of that go away. And recall the Attorney General Holder had an issue on a case where he recused, right? So, if you do a recusal, it's not something you do lightly.

And all this was on my mind when I called Mr. Cooper to see if he was in the loop or was this, sort of, a home brew. And I was really just trying to ascertain where we were. Because I was not trying to prevail on him; I was trying to get information to make sure that there was a sound decision-making process.

Mr. Gaetz. Did you seek to prevail upon Attorney General Sessions' chief of staff

that recusal would be improper?

Ms. Shapiro. Without disclosing those conversations.

Mr. McGahn. Well, then, how do I answer that if I don't disclose conversations?

Ms. Shapiro. Well, those conversations would be privileged unless they're reflected in the report.

Mr. McGahn. Got it. Okay. Understood.

Mr. Gaetz. I mean, it is reflected in the report. "McGahn continued to try, on behalf of the President, to avert Sessions' recusal by speaking to Sessions' personal counsel, Sessions' chief of staff."

Is there a dispute as to whether or not that's in the report?

Ms. Shapiro. No, but the contents of that conversation is not in the report. And if it is, you can point us to it. But then the content would be privileged.

Mr. McGahn. I certainly was attempting to avert the Attorney General's recusal if recusal was not warranted. Okay?

Mr. Gaetz. As it relates to -- let's move outside the executive branch, so as to not --

Mr. McGahn. That's fine, but I was actually going to finish the thought, but --

Mr. Gaetz. Please.

Mr. McGahn. So, when talking to the chief of staff, you know, per what's reflected in the report, it was similar to calling Cooper to ascertain, but because he was the chief of staff, there would be more discussions as to some details, which are not in the report. So I think I have been instructed not to get into those.

Mr. Gaetz. So, as I understand it correctly, you sought information from Mr. Cooper but did not seek to prevail upon Mr. Cooper a particular viewpoint relative to recusal.

When you then had a discussion the same day with the Attorney General's chief of staff, you were, in fact, advocating against a recusal, if I understood your testimony correctly.

Mr. McGahn. I think that's fair, "advocating." I don't know how good an advocate I was, because he recused. But, certainly, I wanted the AG to follow the applicable ethics standards and not recuse unless recusal was required. Recusal just to recuse in the air from some topic is not a real recusal, right? Is there a process, that kind of thing.

And, now, sitting here today, after the fact, I look in the rearview mirror and realize there was a lot going on that I wasn't privy to with DOJ Ethics and that kind of thing, but I had no way of knowing that at the time.

Mr. Gaetz. What was the substance of your conversation with Leader McConnell?

Mr. McGahn. I don't recall it in detail other than talking to him generally about Sessions and what do you think Sessions ought to do. Taking political temperature on how bad he thought it was for Sessions, how the exchange with Franken that had just been sort of blown up in the media was playing on the Hill, that kind of thing. Information-gathering is sort of the thing that I would describe it as.

I would call a number of elected officials, both chambers, you know, to try to gauge a sense that would help me inform whatever sort of recommendations I'd be making to the President. So I was sort of taking temperature to see what was going on in the Senate.

Mr. Gaetz. And what information did Leader McConnell provide?

Mr. McGahn. I don't recall with any specificity him -- you know, he doesn't say much even on a good day. I don't have a recollection, really. It was a short -- my recollection, it was a short call, and he didn't really have anything new, different, or special.

Mr. Gaetz. Do you recall whether the leader had an opinion on whether or not recusal would be --

Mr. McGahn. I don't recall his opinion on that. I wish I could, but I don't recall whether he had one and, if so, what it was.

Mr. Gaetz. Shifting now to the conflict-of-interest inquiry relative to Director Mueller and his service as special counsel, you identified succinctly three different areas that were presented as potential conflicts, one being his work at WilmerHale, one being a golf dispute, and the third being this FBI interview.

And you said in your testimony earlier today that -- and I believe it's reflected in the report as well -- DOJ's process had reflected that these were not conflicts. Have I understood that correctly?

Mr. McGahn. Sort of. Let me clarify then.

Director Mueller's partnership at WilmerHale and leaving WilmerHale to become counsel, my understanding is that was vetted by DOJ.

I believe they also took a look at -- and, again, I'm not privy to this; this is all secondhand hearsay within hearsay. But I believe they also kicked the tires on, if he had interviewed for FBI Director, would that be something that would require an issue. I don't remember if that was a formal thing or if I just assume they did that.

I don't believe DOJ ever ran the trap, so to speak, on the business/personal-golf-dues issue. I don't think that was something -- but they may have. I just may not --

Mr. Gaetz. Yeah.

Mr. McGahn. -- be remembering it correctly.

So I wanted to clarify that the DOJ Ethics piece that I recall was primarily focused on the WilmerHale issue and whether that would preclude him from being special

counsel.

Mr. Gaetz. And the nature of my question is to ascertain whether or not you had personal knowledge of whether or not the FBI Director interview was a part of that review. Because I recall at the time there being some factual disagreement about whether or not this was a discussion or an interview. Today, you've classified it as an interview.

And so I think I understand your testimony to be, you're not certain, as you sit here today, whether or not the FBI Director interview itself was reviewed under a conflict-of-interest analysis, but --

Mr. McGahn. I'm not certain, no, no, no. And I -- you know, I think it was an interview. Maybe other people were told something else before they came. I don't know. I don't want to -- but it --

Mr. Gaetz. I would trust your judgment as to whether or not something was an interview.

Mr. McGahn. I was there. I was part of the interviews. I thought it was an interview.

Mr. Gaetz. One would think --

Mr. McGahn. I think the President thought it was an interview too, but I can't speak for him. But --

Mr. Gaetz. Well, gosh --

Mr. McGahn. -- he was also in the room, so --

Mr. Gaetz. -- if you and the President were conducting the interview and you thought it was an interview, that would seem to be pretty dispositive that it was, in fact, an interview.

And, as I sit here today, I have no idea whether the Department of Justice

reviewed an interview for the FBI Director position and subsequently not being offered that position as a conflict. I think that remains an open question for history.

Pardon me if these questions seem a bit foundational, but we're on the back nine here of our questions.

Part of the job of the White House counsel is to advise the President as to whether or not actions are lawful or unlawful, correct?

Mr. McGahn. Correct.

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

Mr. McGahn. No, never advised him that. Quite the contrary.

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

Mr. McGahn. And I said earlier I actually supported a recommendation.

Mr. Gaetz. And you never advised President Trump that seeking to undo the recusal of Attorney General Sessions was unlawful, did you? Not ill-advised, not politically ill-astute, not bad from a PR standpoint, but --

Mr. McGahn. I don't recall if we ever had a conversation where I gave formal advice on whether or not someone could be unrecused. It may have come up; it may not have come up. I don't know.

I mean, my own view was, once you recuse, you've recused, and that ends up being a decision over at DOJ that you can't really undo.

Mr. Gaetz. We're all aware --

Mr. McGahn. But I don't recall one way or the other that point.

Mr. Gaetz. We're all aware of the record evidence that President Trump sought to undo the recusal --

Mr. McGahn. Right.

Mr. Gaetz. -- of Attorney General Sessions.

Mr. McGahn. That's all over the report. Yeah.

Mr. Gaetz. Correct.

Mr. McGahn. Yeah.

Mr. Gaetz. As you sit here today, you have no recollection of expressly telling President Trump that efforts to undo a recusal were illegal, right?

Mr. McGahn. I don't recall ever telling him that directly, no.

Mr. Gaetz. And one would think, since the job of the White House counsel is to advise as to the legality or illegality of certain acts, and there were these certain acts happening, and you never said they were unlawful, does that strike you now, upon reflection, as an important moment?

Mr. McGahn. Well, what I said was I don't recall. You're making it a moment. I don't think there was a moment. And what's tricky is you're asking me whether there was a -- I don't recall a conversation.

Were there other conversations related to this topic that I am sure you will jump in and say, hang on, it's not in the report, I can't elaborate on? Probably there were.

Mr. Gaetz. I'm just speaking about the acts of the President to effectuate an undo of the recusal in the report. That's the four corners of my question.

So, since there wasn't a moment where you said to the President, "Your efforts to try to create an undoing of the recusal is unlawful," presumably you did not perceive those actions as illegal by the President, right?

Mr. McGahn. Well, you're assuming -- you're assuming some things: that I was aware of everything that the President was doing at all times, right? So I can't really give a crisp answer to what I'm sure you think is a crisp question, because there's things I

wasn't aware of.

And now, you know, in the report, there's this -- where he had a meeting with Sessions, kind of, one-on-one about -- I wasn't in that meeting. So I can't really give you a crisp answer to what I'm sure you think is a pretty easy question.

Mr. Gaetz. Well, let me try to crispen the question.

Mr. McGahn. All right. But I've answered the initial question, that I don't recall ever having a direct conversation with the President that, you know, trying to undo a recusal was unlawful. But I don't remember that barely being a direct topic of a direct conversation.

Mr. Gaetz. Right. And the fact that it wasn't a topic, to me, is illuminating.

Beyond Sessions, now, to Special Counsel Mueller, did you ever advise the President that firing Mueller would be illegal?

Ms. Shapiro. Without revealing anything that you might've discussed with the President that's not reflected in the report.

Mr. McGahn. So you're asking, black letter law, ever tell the President it'd be unlawful to remove Mueller?

Mr. Gaetz. Correct.

Mr. McGahn. No. No.

Mr. Gaetz. No. So --

Mr. McGahn. No. He has the authority. He's the President.

Mr. Gaetz. That is the essence of this line of uncrisp questions.

Mr. McGahn. Same answer to the question that we talked about with Comey. Yes, you have the authority.

Mr. Gaetz. Right. So --

Mr. McGahn. Whether one thinks it's a good idea or not is a separate question.

Mr. Gaetz. I appreciate you helping me tweeze through that which is unadvisable, perhaps, and that which is illegal or unlawful or criminal.

Mr. McGahn. Right.

Mr. Gaetz. And, as seen in the report, it appears as though the President, you know, worked to undo a recusal. You never told him that was illegal.

The President fired Comey. Not only did you not tell him that was illegal, you agreed with the decision.

And, as the President was seeking the departure of Robert Mueller from the Office of Special Counsel in a bunch of ways, you never told him that getting rid of Mueller would be illegal.

Have I misunderstood any of your testimony?

Mr. McGahn. No. No.

Mr. Gaetz. Very well.

Mr. McGahn. That's what lawyers do.

Mr. Gaetz. I understand and appreciate that.

Those were the remainder of my questions.

BY MR. CASTOR:

Q And just to put a finer point on that, I mean, 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 know, 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.

Mr. Castor. That's all the questions we have for this round.

[Recess.]

Ms. Istel. The time is 2:56 p.m. We're going back on the record.

Mr. McGahn, are you ready?

Mr. McGahn. Yes.

Ms. Istel. Begrudgingly.

BY MS. ISTEEL:

Q I just want to briefly go over one part of Mr. Castor's questions from before, and then we'll get back in.

A Okay.

Q Mr. Castor suggested that the President just wanted you to discuss the issue of the special counsel on his call when he called you about the special counsel.

I want to direct you to page 86 of the report, where it says you understood the President to be saying that the special counsel had to be removed by Mr. Rosenstein.

Is that statement accurate?

A It's accurate. I think the President and I disagree on that communication, but my --

Q But that was your --

A I took from the conversation what the report says, and it's accurate.

Q Thank you.

A Yep.

Q Okay. So we'll get back into the February 6 meeting in the Oval Office.

You have said previously that you didn't recall if the President asked you to make a statement correcting it or whether it was just Porter and Ms. Sanders. So I'll direct you

to page 116 of the report, last paragraph. And you can just let me know when you get there. Take your time.

A Okay, I am there, 116, last paragraph. Thank you.

Q I'm reading from the report. It says, quote, "The President began the Oval Office meeting by telling McGahn that the New York Times story did not 'look good' and McGahn needed to correct it. McGahn recalled the President said, 'I never said to fire Mueller. I never said fire. This story doesn't look good. You need to correct this. You are the White House counsel.'"

Do you recall that?

A Yes.

Q Do you recall the President's tone when he said that to you?

A Do I recall the President saying that to me?

Q Tone when he said that to you.

A It was not particularly adversarial. It was matter-of-fact. The meeting in general was a professional meeting without a lot of raised voices or anything of the sort. So it was President Trump speaking like President Trump. It was not -- there was nothing extra-significant about tone or anything out of the norm, other than he was being very direct.

Q When you say "very direct," you understood that he needed you to correct this story, correct?

A He was being very clear in his view. Yes.

Q Page 117, after going back and forth a little bit with the President, you responded, "What you said is, call Rod Rosenstein, tell Rod that Mueller has conflicts and can't be the special counsel."

Do you recall that?

A That's what I said to the President in that meeting. Yes.

Q The President responded, quote, "I never said that," end quote.

Do you recall the President denying saying that?

A Yes.

Q Was it your understanding that the President did say those words on your call with the President?

A Yes, or similar. Again, multiple conversations, he may phrase it a little differently, but that is what he said at one point, yes.

Q Was it surprising to you that he denied saying that?

A I wasn't surprised, no. At that point, I wasn't surprised.

Q Why not?

A Given all the other context from other staff, he was certain about what he was saying was accurate. He thought he was remembering the conversation correctly, and I thought I was remembering the conversation correctly, and we just couldn't agree on that point.

Q Two sentences down, it says, "McGahn told the President he did not understand the conversation that way and instead had heard: Call Rod, there are conflicts, Mueller has to go."

Do you recall that?

A Yes. That's what I told the President. That's the gist of what I took from the various conversations with the President. The President never said that directly to me on any of these other calls. This was me talking to the President about what I took from the conversations that we had.

Q Did the President deny saying that?

A I don't recall if he denied saying that. I don't recall him doing that. My

recollection is the conversation continued moving to whether I would do a correction. I don't recall a response to the quote you read.

Q Did you agree to do a correction for the President?

A No. No, I declined.

Q Why not?

A Why not? I didn't think it was necessary. I thought, although I can quibble with some of the reporting in the New York Times and some of it wasn't quite right, I didn't think it was a smart move to 2 weeks later, give or take, put out a statement correcting a New York Times story when there had been other news reporting that was a little more accurate. And I thought, in my judgment, it didn't make sense to go out there and draw attention to something that had come and gone.

Q If you had put out a statement disputing that the President ever asked you to have the special counsel removed, would that have been accurate?

A Say again? Sorry. I didn't hear all that. One more time.

Q We just went over that --

A I just didn't hear you.

Q No, I know. It's okay. I'm going to --

A I just didn't hear you.

Q You're fine. That's okay.

We just went over that, on page 86, McGahn understood the President to be saying that the special counsel had to be removed by Rosenstein, correct?

A Right. On 86, okay, yes.

Q So, if you had put out a statement disputing --

A Right.

Q -- that the President ever asked you to have the special counsel removed by

Rosenstein, that would not have been accurate, correct?

A It must be me. I'm sorry. One more time.

Ms. Istel. Can anyone else hear me?

Mr. Burck. We're having a little -- there's some kind of weird -- I don't know if it's the direct -- there's a little bit --

Ms. Istel. Can you guys hear me?

Mr. McGahn. I think I know what you're asking, but I don't want to guess and then start answering a whole other question.

Mr. Burck. I think the question is, if you had said the opposite of what you just read --

Ms. Istel. If it's okay, I'll ask the question.

Mr. McGahn. Okay. That gives me context.

Ms. Istel. I appreciate it. I just want to make sure we get it correctly so that we're clear for the record.

Mr. McGahn. One more time.

BY MS. ISTEEL:

Q If you had put out the statement the President was requesting disputing that the President ever asked you to have the special counsel removed by Rosenstein, would that have been accurate?

A That statement would not have been accurate.

Q So the statement the President was asking you to put out would not have been accurate, correct?

A Would not -- right. It would not have been accurate, right.

Q Thank you.

A Right. He may have thought it was accurate, because, again, we disagree.

But it would not have been accurate to me, no.

Q After you said that you would not do a correction -- and I'm reading now from page 117 of the report, end of the top paragraph.

A Okay.

Q It says, "McGahn thought the President was testing his mettle to see how committed McGahn was to what happened."

Can you explain what you meant by that?

A My sense was, based upon his directness early in the meeting, my experience with him -- I had, you know, represented him for quite some time. And, in my experience with him, sometimes he will say things to see -- and gauge a reaction to see how confident you are in your views.

And I think some of that was present here, where he came at me and wanted to see if I was going to flounder around or was I 100 percent confident in what I think happened. And I think that was part of what he was doing there.

It's something he does quite often in other contexts. And that's, you know, part of long practice with him, that I think he was testing to see if I was going to hold my ground or if I was going to fumble around and change my story.

Q Was it your understanding that he wanted you to change your story?

A I think, in his mind, he was right. He was unaware that I had tried to resign. He thought that was false. He didn't think he said what I took from the conversation and what I think he said. So I think, in his mind, he thought that the news report was not accurate, and he wanted it fixed.

That's the best I can think. You know, again, this is years ago, and I'm going from memory here.

And it says, "Kelly described the meeting as a little tense." Eh, no more tense than

some other meetings. I mean, it wasn't -- there was not -- there wasn't raised voices or anything of that sort that certainly -- there wasn't any joking around either.

So that's kind of my take, and I think that may be all I can recall. But I can keep trying, if you have another question.

[3:05 p.m.]

BY MS. ISTEEL:

Q Second paragraph on page 117. We briefly talked about this earlier, but it says: The President also asked McGahn in the meeting why he had told special counsel office investigators that the President had told him to have the special counsel removed.

And you recalled that, correct?

A Yes.

Q At this time, the President was aware that he was personally under investigation by the special counsel for obstruction-related events, correct?

A I assumed so. That was reported in the press, well-known, yes.

Q I'll direct you to page 119 of the report, second paragraph. It explains: The President was also aware that the special counsel was investigating obstruction-related events because, among other reasons, on January 8th, 2018, the special counsel's office provided his counsel with a detailed list of topics for a possible interview with the President.

Is that correct?

A If that's what the report says, that's what it says.

Q So fair to say that the President was aware at this point that the special counsel was investigating obstruction-related events?

A Again, it was in the press. I think he was aware, yes. Yeah. And as I mentioned earlier, there were other lawyers handling this at this point as far as being lawyers on the questions and all that --

Q Understood.

A -- so it wasn't as if I was intimately involved in that discussion.

Q What did you say when the President asked you why you shared that information with the special counsel's office? And I'll direct you to page 117 of the report so my colleague at DOJ is aware of the communication.

A Well, when he asked why I did it, I said I had to. I was --

Q What did you mean by "had to"?

A Well, if you have a special counsel asking questions under oath and you're supposed to answer their questions and the President had said be fully cooperative, so I was answering the questions. You don't really have a choice in that context. I mean, ordinarily, maybe, you know, as a lawyer, you're not used to answering questions, but when the client says cooperate, you have to go and do your best to answer the questions. I didn't really have an option not to answer their question.

Q Would there have been legal consequences if you provided false or incomplete information to the special counsel's office?

A I think we all know the answer to that is yes. Right?

Q Under what statute?

A Well, the same one he cited earlier -- well, that's Congress. 1001 I think is what --

Q 18 U.S.C. 1001?

A Yeah. I think that's what they read to you at the beginning of an interview with prosecutors or bureau agents, yeah.

Q You had said that the President said to be fully cooperative. Then why was he asking you why you had told the special counsel's office investigators that he told you to have the special counsel removed?

A Why did he ask me why? I don't know why he asked me why. Maybe he knows why he asked me why.

Q After he asked you why you had told the special counsel's office that?

A It could be that he figured as my -- as a lawyer, there were still conversations that would be privileged and that if they asked a question, I wouldn't be obligated to answer. Perhaps. I don't know that. You'd have to ask him or his other counsel at the time. So I'm unaware of how much he was informed of nuances of that, but that could be a reason why he --

Q Was it your understanding that he didn't want you to convey that information to the special counsel's office?

A Well, it was a fast-moving conversation. He didn't -- I don't recall him pressing back on my answer. So he moved to the next topic, and this was a rather quick sort of rat-a-tat kind of exchange. He'd ask, I'd answer. He'd move to the next topic. And sometimes if he doesn't agree, he will pause and sort of drill down, but here he kept moving. So I just, you know, kept with the conversation he was leading.

Q But you explained to him that conversations with the President were not protected by attorney-client privilege. And I'm reading from page 117 of the report, second paragraph. Is that correct?

A Uh-huh. That's what the report says, yeah. That's correct. That oversimplifies the issue, of course. They are privileged, in my view, even under attorney-client. There's the Lindsey case out of the D.C. Circuit that speaks to this. I can pierce the privilege and all that, but here he did not assert privilege when it came time for me to testify with Mueller's team.

So when he -- I think it's a pretty mainstreamed view among lawyers that if you don't assert the privilege, then you have to answer the question. So that's why -- that's kind of a shorthand way of explaining something that's much more nuanced than maybe this presents, but it's a legal point; it's not a factual point that I'm talking about here.

Mr. Burck. Okay. Can I just raise one thing, just for the record, so that it's clear? It wasn't that it wasn't asserted; it was waived. It was expressly waived by Ty Cobb at the White House to me, and I assumed to Mueller's people, that they were not going to assert -- may not have said waived; they're not going to assert attorney-client privilege.

BY MS. ISTEEL:

Q You previously testified earlier today that you told the President that knocking Mueller out could be a fact used to claim obstruction of justice, correct?

A Right. That's in the report. We talked about that, yeah. Right.

Q Was it your understanding that the President was concerned that him asking you to have the special counsel removed could be harmful to him in the special counsel's investigation?

A Certainly, yeah.

Q Why?

A Well, for the same -- for the same appearance reasons, among others, that if you are -- if it is known that you're under investigation by a special counsel and you seek to remove that special counsel, someone, probably more than one person, is going to suggest that you did that to end the investigation. So that's a pretty obvious point. Doesn't mean that's the reason why you want to remove. This case, you know, I think the President's view is conflicts of interest. Again, that's different than pad locking the door and removing the investigation in its entirety, but it certainly is a concern.

And although it's long ago, I do remember, you know, the press coverage was running hot, as we say, on this point. So the idea that you were going to go down another road that would raise even more questions was something that I think any lawyer would be concerned about.

Q During that meeting on February 6th, as you mentioned, there is a bunch of

different topics discussed, did the President raise the issue of why you took notes during meetings?

A Yes. Yes. He did. He asked about -- he asked about why do I take notes.

Q And what was your reaction to that?

A My reaction was -- timing was rather quick and his recollection -- what he said here, it's in the report. So his side of the story is in the report where he says, What are these notes? Why do you take notes? Lawyers don't take notes. Never had a lawyer took notes. And --

Q I'll just ask you to speak a little slower for the court reporter.

A Well, okay, but I'm trying to give you -- because you want the tone, you know, sort of the atmospheric; I'm trying to give you the sense of the pace.

Q For the record, he was speaking quickly in the pace to reflect the President's tone.

A Right. And I said, Look, I take notes because, you know, I'm a real lawyer. Real lawyers take notes. It's a way to keep track of things. And I conveyed that, with all that is going on in the West Wing, you need to keep track of things, right. And that's generally how government works is you make notes. I mean, the truth is, I, actually, didn't really take a lot of notes, but that didn't seem to be the place to sort of have that dispute.

So I responded that notes create a record and it's not a bad thing, and oftentimes it can be helpful. And then as the report indicates, his response is in the report, and he invoked, you know, Roy Cohn apparently didn't take notes.

Q So was it your understanding that he thought great lawyers like Roy Cohn did not take notes?

A He said that, yes. Not only did I think that, I heard him say that, yes.

Q And what was your reaction to that?

A I didn't really have one. My recollection is I didn't really respond. I've made my point. And this was not the first time that Roy Cohn has sort of -- the ghost of Roy had come into the Oval Office, so it didn't seem to be a point worth responding to and, you know, he's the President, he gets the last word.

Q What was your reaction to being compared to Roy Cohn?

A What was my reaction to what?

Q To being compared to Roy Cohn.

A My reaction -- well, this wasn't the first time. Report speaks to an earlier time. You know, I really didn't want to be compared to Roy Cohn --

Q Why not?

A -- in any way, shape, or form. I understand he was, you know, a brilliant lawyer in certain ways but had some ethical trouble later in his career.

Q And by "ethical trouble," do you mean he was ultimately disbarred for unethical conduct?

A Yes. Yes. You know, I may have mentioned that at some point in some of these exchanges. I don't recall specifically, but Roy Cohn was not really my role model anyway, so saying I was no Roy Cohn, in a weird way, I thought, that's good, he doesn't think I'm that sort of lawyer.

Q But the President was suggesting that you should be more like Roy Cohn who was a great lawyer, correct?

A Well, you know, I think he had already made his point that he really had a fondness for Roy Cohn.

Q After the report became public on April 19th, 2019, the President tweeted, quote: Statements are made about me by certain people in the crazy Mueller report in

itself written by 18 angry Democrat Trump haters, which are fabricated and totally untrue. Watch out for the people that take so-called notes when the notes never existed until needed.

Do you recall that tweet?

A Vaguely, yeah. Yeah.

Q What was your reaction when he said that the so-called notes never existed until needed?

A I thought he was talking about Director Comey and those sort of after-action memos that Comey wrote for the file.

Q What happened after you left the Oval Office meeting on February 6th?

A We left. Kelly and I left at the same time. Had a brief conversation with Kelly. Reassured him that I remember what I remember and the conversation, you know, that, even though the President doesn't remember it that way, I remember it that way. And that's what I recall. I'm sort of looking at the report to refresh my recollection, so forgive me, but --

Q Can I direct you to page --

A I did make the point to Kelly that I didn't waver, you know, to the extent he was testing me. I didn't -- I didn't budge from it or try to negotiate a middle ground or anything of the sort, so -- and that's what I recall right after --

Q Why didn't you budge?

A What's that?

Q Why didn't you budge?

A Because it was what I remembered happened.

Q I'll direct you to page 118, the top of the page, please. It says: Following the Oval Office meeting, the President's personal counsel called McGahn's counsel and

relayed that the President was, quote, fine with McGahn.

Do you recall that?

A Well, I wasn't on the call, so, no, I don't recall the call. I remember being made aware of that. I don't remember exactly when or that sort of thing, but I don't have a reason to disagree with that in the report. I became aware of that at some point.

Q Porter had suggested to you previously that if you did not issue a correction you would be fired, correct?

A The Porter thing? That's what I took from the conversation with Porter, yeah, that that was potentially on the table, but I didn't see that as a real thing.

Q And during that meeting, as you just explained, you did not budge and you refused to issue a correction, correct?

A Right.

Q Were you surprised that you were not fired?

A No.

Q Why not?

A I would say not surprised I wasn't fired, because when the President and I were in sync, we did a lot of great things and he trusts me to do a lot of important work and a lot of his legacies and judicial selection and that kind of thing. So I was adding value in a lot of ways, and I thought he's not going to blow up and fire me over this when I was as certain as he was as to what we said in the conversation. What he said to me in that conversation we've talked about at length. So I didn't really take seriously the idea that he would summarily fire me. It just wasn't really something that would have been consistent with our relationship as attorney and a client.

Q So it was your understanding that you were fine with the President, correct?

A What?

Q It was your understanding that you were fine with the President after that meeting?

A Well, I guess with respect to this, I don't know if anyone's ever completely fine in all respects, but, yeah. It seemed to me that that resolved the matter and I don't recall it coming up again. So I guess if one defines fine as that, it's fine. It's why, you know, talking to the President directly sometimes ends up getting to the heart of the matter as opposed to staff saying President said this and President said that.

Q We'll come back to that in a minute, but we've been talking about 18 U.S.C. 1001, so I just want to clarify a couple things for the record.

You testified earlier today that if you had made the statement the President was requesting, that would have been the opposite of what you told the special counsel, correct?

A I feel like you've asked that question like five times already, so I'll let my answer to previous questions stand.

Q Yes, for the record?

A I think yes. Yeah. Yeah.

Q And you mentioned that if you had made that statement, the special counsel had a record of going after people for making false statements. So you could have subjected yourself to potential liability under 18 U.S.C. 1001, correct?

A Right. Wouldn't want to do that, right?

Q And 18 U.S.C. 1001, just for the non-lawyers who are potentially reading the transcript, can you briefly explain what that statute entails?

A It's a statute that requires that if you make a false statement to law enforcement, it can be a crime, according to statute. I'm paraphrasing it, but I think we all are familiar with it.

Q It's a fair characterization.

On page 31 of the report --

A Page 31?

Q -- last paragraph, from January 26th, 2017, it says: McGahn recalled that he describes the FBI interview of Flynn, and that you explained section 1001 to the President. Is that correct?

A That's correct. Yeah, we had a discussion about what 1001 is, because I probably said 1001 and he said, what's 1001, just as you did.

Q So you had explained to him what that statute meant?

A Yeah. Gave him the gist of it, right.

Q And ultimately the President had to fire Flynn because he had lied to the FBI, correct?

A Ultimately, Flynn was fired, yes.

Q And by this point that we're talking about now in 2018, Flynn had been publicly indicted for violating 18 U.S.C. 1001, correct?

A He was, yes.

Q So by February of 2018, the President was very aware that it was a Federal crime to lie to the special counsel and you could be indicted for doing so, correct?

A Suppose so, yeah.

Q And when you entered the Oval Office on February 6th, 2018 --

A Sorry. Can you move the hand away from your mouth? I apologize.

Q Sorry.

A I'm trying to understand you.

Q When you entered the Oval Office on February 6th, 2018, the President said, you need to correct this, and asked you to issue that statement, correct?

A He said what he said. We've covered that, yeah.

Q So if you had done what the President asked, you would have exposed yourself to liability under 18 U.S.C. 1001, correct?

A Well, no, not necessarily. Because I had told the truth to Mueller, so I wasn't exposed to 1001. If I put out a statement, I'm sure Mueller would've wanted to talk to me about it and said, which is it, right? And so it's a nuanced difference, but it is a difference between --

Q You had said earlier, though, that the special counsel would have been unsure if you were telling the truth --

A Right, because --

Q -- in your initial interview. So it could have exposed you? He could have been concerned that you were lying in your initial --

A Potentially, but the statement -- if I put out a statement, that wouldn't have been the crime; it would have been the testimony.

Q Right. But your original testimony --

A Could have been called into question.

Q -- could have had concerns, so it could have exposed you to potential --

A But the original testimony was true.

Q But if you put out a statement disputing it, then he could have had a reason to believe that your original testimony was untrue, correct?

A Potentially, sure.

Q So you could have exposed yourself to liability if you'd issued that statement, correct?

A Potentially, I suppose. If you say it that way, yeah.

Q Okay. Since the publication of the report, the President has made multiple

public comments and tweets denying certain portions of your testimony to the special counsel. I'd like to start with the President's interview in June 2019 with George Stephanopoulos, which aired on June 16th.

During that interview, the President said, quote: The story on that is very simple: I was never going to fire Mueller. I never suggested firing Mueller.

Do you recall that?

A No.

Q What's your reaction to hearing that?

A Disappointing. Disappointment, but at that point, I was no longer in the job and --

Q Why is that disappointing?

A Well, you know, he certainly entertained the idea. Certainly seemed to ask a number of people about it. Certainly had a number of conversations with me about something along those lines. And, you know, I've learned other things in the report; apparently, that he had a conversation with Chris Christie on the same topic. So, you know, it was disappointing that he'd come out and say, oh, it was never on the table when, certainly, at least the conflict of interest issue and whether that would preclude Mueller from being special counsel, certainly was discussed.

Q So it's your understanding that it is not accurate to say he never suggested firing Mueller, correct?

A Say it one more time.

Q So it's your understanding that it was not accurate when he said he never suggested firing Mueller, correct?

A Well, again, you know, he didn't use the word "fire," so I could see him -- I can see him saying he was accurate because he didn't actually suggest firing Mueller, in

those words, but we've covered for hours now discussions relating to whether Mueller could be special counsel. So, you know, is it semantics? Is it more than semantics? I leave that to others to judge. It's not really for me to say. I've given you what I can on the actual underlying facts, and I'll let others draw conclusions from the facts.

Q When Mr. Stephanopoulos asked the President about your testimony, he said, Why would he -- meaning you, Mr. McGahn -- lie under oath? And the President responded, Because he wanted to make himself look like a good lawyer. Do you recall the President saying that?

A I kind of remember it. I don't remember -- I don't think I watched the interview in real time, but I've obviously heard something about it and I'll take your word that that's what he said.

Q Was your testimony to the special counsel true and accurate --

A Yes.

Q -- to the best of your knowledge?

A Best of my knowledge, yes.

Q Did you say anything to the special counsel to make yourself look like a good lawyer that was untrue?

A No. Probably quite the contrary.

Q On April 25th, the President tweeted, quote: As has been incorrectly reported by the fake news media, I never then told White House Counsel Don McGahn to fire Robert Mueller, even though I had every legal right to do so. If I wanted to fire Mueller, I didn't need McGahn to do it. I could've done it myself.

Do you recall that tweet?

A I do, yeah. Yeah.

Q He elaborated on May 11th, quote: I was not going to fire Bob Mueller and

did not fire Bob Mueller. In fact, he was allowed to finish his report with unprecedented help from the Trump administration. Actually, lawyer Don McGahn had a much better chance of being fired than Mueller. Never a big fan.

Do you recall that tweet?

A I do, yes.

Q You just testified a few minutes ago that you thought the President would not have fired you because he trusted you, you were doing great things together, it was your understanding that you were fine, correct?

A Right.

Q So is it surprising to you to hear that the President said, quote, "never a big fan"?

A Nothing the President tweets surprises me.

Q Why not?

A He tweets a lot of different things. Since I didn't think I had a chance of being fired, maybe he was trying to convey to the public that Mueller was never really in jeopardy. I don't know. You'd have to ask him what he meant by the tweet.

Parts of it certainly are correct. He would have the authority, that sort of thing. So that was -- that was nice that he heard that, but, you know, no one likes to see a tweet like that. And this idea that he was never a big fan, that didn't make a lot of sense, given that how long I'd represented him and how much we had kind of had helped accomplish and that sort of thing. But, you know, he tweets things.

Q When you say it didn't make sense, what do you mean by that?

A Well, if he wasn't a big fan, why did I represent him for so long?

Q So your understanding, prior to that tweet, was that you had been on good terms with the President, correct?

A Yeah. I mean, we've had our ups and downs. I have ups and downs with all clients; all lawyers do. But at the end of the day, when the dust settled, we got along fine and we could be candid with each other and, you know, one of those things. And it's still -- you know, you don't get to be counsel to the President every day and it's something that I really appreciate the opportunity of being able to do.

Q That first tweet where the President publicly attacked your credibility was on April 25th. Do you recall the date this committee issued a formal subpoena for your testimony?

A I don't recall the dates.

Q It was April 22nd. Does that refresh your recollection?

A Could be right. It's your subpoena. You can tell me and I'll -- I don't --

Q Happy to show you a copy if that's helpful.

A I don't have any reason to contest the date.

Q Did you have a view as to whether the President's public statements undermining your credibility issued 3 days later and as you just described, surprising to you, were connected to this committee's request for you to appear for testimony?

A I have no idea, but to the extent it matters, it's not that it would influence what I would say before the committee or influence me in any way, shape, or form. So it was just another tweet, and at a certain point, tweets are tweets.

Q So I'd like to turn to the events leading up to Michael Flynn's departure from the White House briefly, which I believe Mr. Castor asked you about earlier today.

In January of 2017, just to clarify for the record, Flynn was serving as the President's National Security Advisor, correct?

A I believe so, yeah.

Q And as reflected on page 31 of the report, on January 26th, 2017, Acting

Attorney General at the time, Sally Yates, informed you that the FBI was investigating Flynn, including for potentially making false statements, correct?

A Is that what the report says?

Q I'll read you the direct quote. I was paraphrasing, so we can just --

A Yeah. I don't think that's -- if you could give me where you're getting that from, that would help.

Q Yeah. Top of 31, it says: Yates said the public statements made by the Vice President denying that Flynn and Kislyak discussed sanctions were not true and put Flynn in a potentially compromised position because the Russians would know he had lied. Yates disclosed that Flynn had been interviewed by the FBI. She declined to answer a specific question about how Flynn had performed during that interview, but she indicated that Flynn's statements to the FBI were similar to the statements he had made to Pence and Spicer denying that he had discussed sanctions.

Does that refresh your recollection?

A It does, but your question asked -- you made a declaratory statement in your question that Yates told me Flynn was under investigation, and nowhere in that series that you read -- that does not support in any way your assumption, I guess, right? Because the word "investigation" is not used there anywhere.

Q It says that Flynn had been interviewed by the FBI, correct?

A It says that, sure.

Q So was he part of an ongoing investigation by the FBI at the time?

A No. I was interviewed by the FBI as part of my background check. The FBI interviews people all the time on national security issues. I don't want to get into details here in this forum, but there's a lot of reasons why the FBI interviews people who are not under investigation. Witnesses, interested persons, and the like. So that doesn't

mean -- you know, that's not the same as Sally Yates telling me what you suggested she told me.

Q Apologies for the --

A I'm not sure it's a point worth quibbling over, but I just want to make sure I'm clear what you're asking.

Q I appreciate the clarification.

Well, if you read a few sentences down, it says: McGahn came away from the meeting with the impression that the FBI had not pinned Flynn down in lies, but asked John Eisenberg, who served as legal adviser to the National Security Council, to examine potential legal issues raised by Flynn's FBI interview and his contacts with Kislyak.

Correct?

A Right.

Q Why did you think it was worth discussing legal issues with Mr. Eisenberg if you had no concerns that Flynn was potentially under investigation?

A You're putting words in my mouth, with all due respect.

Q Okay. Sorry. Please help me clarify.

A You just said I had no concerns about Flynn being under investigation.

Again, that's not in the report and I'm not sure where that's coming from. I don't know if you have access to somebody else's 302s or something, but that's just not --

Q No. I'm just asking based on the text of the report what your concern was.

A Right. Well, the concern is when the Acting Attorney General comes over and asks for a meeting and uses the high side secure phone to ask for the meeting and comes over with someone from the National Security Division at the Department of Justice, usually there's going to be legal issues. And given the nature of what was discussed, it made all the sense in the world to run down what the legal significance

would be, if any, of what the Attorney General had shared. And that would be, as reflected in the report, whether Flynn had an issue with the FBI interview, did he lie in the interview, to what's this -- and the issue of this Logan Act theory of law that's really never been prosecuted.

So that's why I asked Eisenberg to run down the legal issues. I thought it was the logical next step to take for action what the Attorney General came in and shared with us.

Q That was my question.

A Okay. All right.

Q According to the report, Yates was also concerned that Flynn's statements to the Vice President denying that Flynn and Kislyak discussed sanctions were not true, correct?

A That's what I took from what Yates told me, yeah.

Q So that was what I was referencing when I was asking. I was not asking about anything --

A I'm sorry. One more time. I just -- can you --

Mr. Burck. There's some kind of weird --

Ms. Istel. Static or something?

Mr. Burck. It's not static. It's just some kind of weird -- I don't know if it's where we're sitting, but it's like a --

Mr. McGahn. Everyone on this side's nodding that they can't hear, so that makes me feel better, but worse.

Ms. Istel. Can you hear up there?

Mr. Jordan. [Inaudible]

Ms. Istel. Well, I'll try to speak louder, but you let me know --

Mr. McGahn. I'll try to lean in.

Ms. Istel. Except in accordance with the social distancing rules.

Mr. McGahn. Social distancing? Oh, we're still in the District of Columbia, after all, yes.

BY MS. ISTEEL:

Q Yates also during that meeting said she was concerned that these statements by Flynn, which were potentially not true, put Flynn in a potentially compromised position because the Russians would know he had lied, correct?

A Right. That was the main thrust of her message.

Q Was that concerning to you?

A That was, certainly. Everything she said was a concern. I took it very seriously, sure. You don't want a national security advisor who could be potentially compromised because the Russians would know maybe he said something false. Even if it wasn't a crime, it wasn't false in the context of 1001. I took the Attorney General's point that that's a problem in and of itself.

Q And you testified earlier to Mr. Castor that you went to Mr. Eisenberg because he was an expert in these issues, correct?

A Right.

Q And you mentioned earlier that the Logan Act is rarely prosecuted, correct?

A Right. I think that's -- I think that's accurate.

Q And then reading from the full paragraph, bottom of 32 to the top of 33, it says: The next day, January 27th, 2017, McGahn and Eisenberg discussed the results of Eisenberg's initial research into Flynn's conduct and specifically whether Flynn may have violated the Espionage Act, the Logan Act, or 18 U.S.C. 1001. Based on his preliminary research, Eisenberg informed McGahn that there was a possibility that Flynn had violated 18 U.S.C. 1001 and the Logan Act.

Correct?

A Correct.

Q So even if the Logan Act was rarely prosecuted, there was still a concern that

Flynn's conduct could have violated the Logan Act, correct?

A Theoretical possibility, but not only in addition to whether the prosecution would be brought, even on the merits, it opened a question as to whether an incoming national security advisor can violate the Logan Act when doing what incoming national security advisors do, talking to other governments. And, you know, again, transition's a recognized entity, there's a statute on it. So it's not like Flynn was some guy on the street, you know, selling secrets to the other side.

So that was the second reason why the Logan Act thing just -- that didn't seem like a real accusation on Flynn.

Q What about 18 U.S.C. 1001, did that --

A Well, you know, I wasn't in the interview. I asked the Acting Attorney General how Flynn did for precisely that reason. If I can get a sense of did the Department think there was a 1001 violation. I took from her response in the course of the conversation that they did not have a 1001 violation of Flynn, and her thrust was more the idea, as the report reflects, that the Russians, because Flynn talked on the phone to Kislyak, Kislyak would probably, you know, inform his government of what was said and now the Russians would be watching TV and see that the Vice President just said Flynn said it never happened and they would know it happened.

So it was a national security concern, as I took it, which is probably why she used the high side phone and characterized the whole thing as a national security issue.

Q So you took this seriously, this is a national security issue?

A Very seriously. Yeah.

Q And we went through this earlier, but as reflected on page 31, you informed the President of DOJ's concern and explained the potential liability under 18 U.S.C., section 1001, and the Logan Act, correct?

A Yeah. I went -- as soon as practicable, informed the President. He was traveling and when he returned, I was waiting.

Q During your conversations with the President about this issue, did you advise him whether he should discuss this ongoing investigation with Flynn?

A I don't recall --

Ms. Shapiro. If it's in the report.

Mr. McGahn. I don't recall that specific conversation. Possible. Maybe, maybe not. I don't know.

BY MS. ISTEEL:

Q Also on January 27th, you asked Yates to return to the White House. And I'll direct you to page 33, first full paragraph.

A Okay. Page 33. Got it.

Q It says that you stated that the White House did not want to take action that would interfere with an ongoing FBI investigation of Flynn, correct?

A Yes.

Q So at that point, did you believe that there was an FBI investigation of Flynn?

A Well, I didn't know. That was part of why I asked Sally Yates to come back. I was left -- the more we reflected on what she conveyed in the first meeting, we had more questions than answers. So that was -- that was one of the sort of open questions. But I wanted to make clear to her that if there was an investigation, we didn't want to get in there and interfere. But when she came and explained her situation -- or her view of Flynn, it was not clear what she expected me to do with that or what the President was supposed to do with Flynn at that point.

Q When you say that the White House did not want to take action that would interfere with an ongoing investigation, what actions would have interfered? What

actions were you trying not to take?

A Well, I don't know. I was trying to avoid getting into that hypothetical and ensuring we didn't do anything. And part of it was a way to prompt the Attorney General to maybe give me some ideas of things that we ought not do. Obviously, if I ran downstairs and talked to Mike Flynn and said, hey, the FBI's on you, that's probably not a smart thing to do.

That didn't happen. Don't let anyone read what I just said and think that somehow I'm suggesting anything like that happened. That's an obvious example. But as a lawyer, you start thinking about, if there is something going on, is there a document hold? Your mind floods with these things. And it was a way as counsel to ensure I was trying to protect the White House and let the Attorney General know that we were taking this seriously.

Q You informed the President of the FBI's concerns about Flynn on January 26. As reflected in the report, the next day, the President invited FBI Director Comey to a one-on-one dinner. Were you aware the President had extended this invitation the day after you informed him of the FBI's concerns about his National Security Advisor?

A I don't believe I was aware of the dinner prior to the dinner.

Q As reflected in the report, Volume 33, last paragraph: The President called FBI Director Comey and invited him to dinner that evening. Priebus recalled that before the dinner, he told the President something like, don't talk about Russia, whatever you do, and the President promised he would not talk about Russia at the dinner. McGahn had previously advised the President that he should not communicate directly with the Department of Justice to avoid the perception or reality of political interference in law enforcement.

Correct?

A That's what it says, yeah.

Q So by January 27th, the President was aware that you had advised him that to avoid the perception or reality of political interference in law enforcement, he should not communicate directly with the Department of Justice on this issue, correct?

A I had briefed him on it, but just to clarify, it was not on 27th of January. It was earlier --

Q Previously?

A -- in the administration, and the report tends to -- if you don't -- you could miss that nuance and make it look like somehow the President was told this right before the dinner, but at the end of the day, if the President wants to talk to somebody in the executive branch, it's lawful to do so.

Q But you had advised him not to --

A It's a norm that's been developed over the years to avoid perceptions or an accusation that -- that there's been some kind of interference and there's been, unfortunately, some cases in our history where that's happened and we try to avoid that.

Q You were White House counsel, correct?

A Yes.

Q And you had advised the President, before that day, not to communicate directly with the Department of Justice to avoid the perception or reality of political interference in law enforcement, correct?

A I did not tell him he was not allowed. No, that's incorrect.

Q I'm --

A That's what you said.

Q No. I said --

A That's what I heard you say.

Q We can repeat it for the record.

A He should not communicate. That's different than saying you're not allowed to communicate.

Q That's not what I said. I'm quoting from the report.

A There's a distinction there. Very critical legal distinction between you shouldn't do it and you're not allowed to do it.

Q You had advised him that he should not do that, correct?

A He should not do it, correct.

Q And on January 26th, you told him the FBI was -- had concerns about his National Security Advisor, correct?

A We just went through this -- Sally Yates told me, that's what she told me.

Q And the day after, he invited the FBI Director to a one-on-one dinner, correct?

A Apparently, that's what he did. As I said, I was not at the dinner. I was not, as far as I know, part of the invite.

Q Did you have concerns, at the time, when you learned about the President's one-on-one dinner with Comey as to whether this was appropriate?

A Sure.

Q What were those concerns?

A Well, the way you just laid out the sort of argumentative ticktock and tying it together. That's the obvious concern, is the perception is going to make it look like there was something improper; on the other hand, you know, the President wants to talk to the FBI Director, he can and -- look, a lot of this is context.

The FBI Director, you know, at least normal times would come to the Presidential daily brief. They would talk all the time. I think Director Mueller would come to meet

with President Bush routinely. So the idea of talking to the FBI Director in and of itself is not a problem. But given the circumstances here, of course, as a lawyer, I had concerns that this would appear to be something that could be problematic given the rest of the atmospherics.

Q You said talking to him himself was not a problem. Would it have been a problem if he brought up Flynn during that dinner?

A Sorry?

Q You said talking to him -- you said the President talking to the FBI Director itself was not a problem. Would it have been a problem if the President talked about the ongoing concerns with Flynn during that dinner?

A Would it have been a problem? It wouldn't have been illegal. It's lawful, in the abstract.

Q Would it have been a problem?

A It certainly would cause questions and concerns, and that's part of why we're here today, right? I mean, you see the results of this dinner and the discussion with Comey. So just a mere flipping of two pages of the report answers your question in the affirmative.

Q Glad we agree.

On page 36, last paragraph, it says: The week of February 6th, Flynn had a one-on-one conversation with the President in the Oval Office about the negative media coverage of his contacts with Kislyak. Flynn recalled that the President was upset and asked for information on the conversations. Flynn listed specific dates on which he remembered speaking with Kislyak, but the President corrected one of the dates. The President asked Flynn what he and Kislyak discussed and Flynn responded that he might have talked about sanctions.

Were you aware that Flynn told the President he might have spoken about sanctions with Kislyak on that date?

A No. I don't think I was aware of that. I wasn't in this meeting.

Q If Flynn had told the President that he might have talked about sanctions and he told the FBI that he did not talk about sanctions, would that have been a problem?

A Could be if he intentionally withheld it from the FBI and he remembered it. It's not a problem if he didn't remember when he talked to the FBI but then remembered it later and -- you know, challenge here is there's been so many news reports, and I remember something about Flynn may have in the interview said, well, you guys know. You're taping the calls anyway. So there's a lot of murky ground around this and --

Q Well, by February 9th, as reflected in the report, you recommended to the President that Flynn be terminated, correct?

A Right. Yeah.

Q Why did you make that recommendation?

A The date -- I take your word at the date, but yeah. A certain point, that's correct, yes.

Q So on page 37, last sentence of the first full paragraph, but can you explain why you recommended that Flynn be terminated?

A Well, having talked to Flynn directly, having talked to Priebus, you know, we had a process that reflects this process. Andy McCabe came over at one point. It just -- it just seemed implausible that he could have forgotten the details of this particular discussion.

Q I'll read a specific sentence from the report.

A And so, therefore, he either was lying or playing dumb in a way that would mean the President ought to have some significant trust issues with Flynn going forward.

And that's hard to say. You know, as a general, served our country, but, you know, it's a tough call. But based upon what we knew, it just -- it didn't ring true that he just forgot.

Q I'm going to read a sentence from the report on that page. It says: Based on the evidence of Flynn's contacts with Kislyak, McGahn and Priebus concluded that Flynn could not have forgotten the details of the discussions of sanctions and had instead been lying about what he discussed with Kislyak.

Do you recall that?

A Yeah. Yep. That's another way of saying what I was trying to just say. Same thing.

Q Well, I think the nuance is potentially whether Flynn could have forgotten or whether you believed that, based on the evidence, Flynn had been -- there is no -- it says he could not have forgotten and instead had been lying?

A Yeah. I don't think he could have forgotten. It just didn't ring true.

Q So if Flynn could not have forgotten, then that suggests that when he made those statements to the FBI, he was lying, correct?

A I guess at that point, yeah. Yeah. I guess you could say that. That's -- you know, you're drawing a conclusion.

Q So if your conclusion was that Flynn was lying to the FBI, would it have been a legal issue to terminate Flynn?

A If Flynn had been lying to the FBI, would it have been a legal issue to terminate Flynn? Ultimately, the decision rests with the President to terminate, not -- counsel -- there's not a legal authority for anybody to just go and terminate, but certainly there's a legal issue if you have a national security advisor who's committed a crime, yeah.

Q So in this case, you did have a national security advisor who the FBI was

concerned was in a compromised position with the Russians and you had just concluded, based on the evidence, that he could not have forgotten the details of the discussions of sanctions and had instead been lying about what he discussed with Kislyak, correct?

A Basically, but I was going on what Yates said about the interview. I didn't know what Flynn was actually asked and what he actually responded to. So you try to put a legal gloss on whether he committed a 1001 violation in the interview. There's no way I could really say with certainty that he crossed that line. The line that we looked at is whether he was telling us the truth or not on what he remembered.

Now, if he said this same exact thing to the FBI based upon the same exact questions we asked, then the conclusion you're drawing, I guess, is valid. But I can't sit here and say that because I wasn't in the interview with Flynn, and I came away from the meeting with Yates that they didn't really have a 1001 on Flynn. It wasn't that crisp.

Q Putting aside the 1001, their concern also was that Flynn was in a potentially compromised position with the Russians because he had potentially made false statements. At this point, you had concluded that he had been lying about what he had discussed with Kislyak. So he would be in a compromised position with the Russians, correct?

A Potentially, if the Russians felt they had something over him. If he explained the situation to some sort of resolution, it's possible that he would no longer be compromised, but that's certainly something that Sally Yates thought, and I didn't have any reason to disagree with her read of that.

Q As reflected in the report on page 38: Prior to leaving the White House, Flynn asked to say good-bye to the President. When Priebus brought Flynn to the Oval Office to say good-bye, the President told him, quote, we'll give you a good recommendation. You're a good guy. We'll take care of you.

Were you aware that the President conveyed that to Flynn?

A I wasn't in the meeting, no.

Q As we just discussed, a few months later, on December 1st, 2017, Flynn was charged with violating 18 U.S.C. 1001, correct?

A He was, yes.

Q Mr. Flynn twice pled guilty to Federal charges, including lying to the FBI under that statute, correct?

A If you say so. I think that's right, but I don't have his -- I don't have his plea memorized. So I'll take your word for it.

Q I'm happy to show it to you if helpful.

A It speaks for itself. I mean, I can just read it out loud to you as well as you can read it. That's up to you.

Q Flynn was ultimately never sentenced for that crime because Trump pardoned him on December 8th, 2020, correct?

A If you say so.

Q Were you aware that the President pardoned Michael Flynn?

A I remember reading about it in the paper, yeah.

Q Had you ever discussed that pardon with the President?

A I haven't spoken to the --

Ms. Shapiro. That's a privileged conversation. It's not in the report.

Mr. Burck. It doesn't exist.

Mr. McGahn. It doesn't exist. I haven't spoken to the President since I left the White House. That happened long after I left the White House. So, no, I did not talk to the President about that.

Ms. Istel. I'm told we've reached our hour, so we'll stop here and we'll take a

5-minute break, and then we'll give the minority the next round.

[Recess.]

[4:06 p.m.]

Mr. Castor. Back on the record at 4:06.

BY MR. CASTOR:

Q At the beginning, I asked you whether the Mueller probe was thorough, and I think you were a little hesitant to agree that, in fact, it was thorough.

A It wasn't really hesitancy. It's just it's not for me to characterize. It certainly is thick, and they seemed to do a lot of work on it, but how one defines thoroughness is somewhat subjective. But, in my own view, it appears to be pretty thorough.

Q Yeah. I just want to refer to page 13 of Volume I.

A Volume I?

Q Volume I makes its appearance here today. Where it just goes through, you know, 19 attorneys, and 40 FBI agents, and 2,800 subpoenas, 230 orders for communications, nearly 500 search and seizure warrants. So I just think we can stipulate that quite -- quite robust effort by the special counsel team.

When you were -- a lot of questions today have asked you about your reaction or the tone or the President's reaction. And I'm just curious. What was the demeanor of the special counsel lawyers when you met with them?

A Demeanor of the special counsel --

Q Yeah.

A -- folks? Very professional, very respectful. You know, they were -- they were pros. When Mr. Mueller personally met me -- it was the first time, maybe the second time I was there -- made a point of welcoming me. And, you know, it -- it -- my sense was it was not an amateur operation. They were there to do business, and, you know, there was no joking around. It was all time to be used for what they were there to

ask me about, and I viewed it the same way, so I -- I don't have any reason to think it was anything other than -- at least the folks I dealt with, you know, professional.

Q There is a lot of external data points that, if you're an advocate for the President, if you're one of the President's allies, you might say the fix was in, but you didn't -- did you experience any of that during the four corners of your interview there?

A That, what, I -- that they were advocates for the President, or I was, or what? I mean, I don't know --

Q No. That the fix was in, that -- you know, go back to the comments we made about the Flynn interview --

A Right.

Q -- where --

A Right.

Q -- the whole goal was to get him to lie. It wasn't --

A Right. I think -- look, I think -- I think part of the purpose of -- and, again, I'm kind of reading Rod Rosenstein's mind, but was to get kind of a fresh start and somebody maybe a little more objective to look at this.

But, with the folks I dealt with, I didn't get a sense that the fix was in with respect to what was going on or not going on in the White House.

I can't speak to the Flynn piece particularly. I can't speak to the Manafort piece particularly. I can't speak to what was going on behind the scenes. I went in, you know, no windows, windowless rooms. I was interviewed and left.

And, based upon what I saw, you know, these were -- these were experienced prosecutors doing their job. That doesn't mean there were other people on the team because I -- I didn't -- you know, they seemed to have different teams, and the White House team was a handful of folks, and that was not the same team handling other

aspects of this, including Flynn, as I understood it.

But that's -- you know, guessing who is in the room and who is not in the room is -- is, you know, a power game we can play and to read into who is on what team, and that's -- I -- I think I'm being responsive to your question.

Q Right. By some, you know, objective -- any objective standard, some of the facts surrounding some of the lawyers on the special counsel team certainly would raise questions of political bias.

Were you aware of any of those concerns?

A You know, I read about it in the paper that certainly there was -- I was made aware that -- I think we had an earlier question on the text messages between the agents and that sort of thing. Fortunately, I don't think I came into contact with any of them.

Q Okay.

A But, you know, maybe they were in the room, and I just didn't recognize them. It's not like -- it's not like they all say who they are and, you know, unlike Director Mueller, who is very experienced. Hey, and not everyone introduces themselves, and nor do I expect them to.

So, you know, again, this is like, you know, my narrow slice of dealing with them. I didn't detect that sort of thing, but clearly now we know --

Q Right?

A -- right, that their folks had been moved off of Mueller's team for that sort of thing. And this -- again, this is news reports, not nothing that's really factual that I'm here to talk about, but I take your point.

Q Right. There were nine of the lawyers had contributed money to Democrats, and, you know, that creates a perception problem?

A Certainly can. I mean, I recall somewhere that maybe somebody had been

at Hillary Clinton's campaign headquarters the night of the election, was on the team somewhere. That struck me as odd.

But, again, I don't really know or recall in detail all that. But, again, I take your point that that certainly was in the air.

Q And, subsequent to the conclusion, Mr. Weissmann, you know, Andrew Weissmann, who was one of the top attorneys was scheduled to host a Zoom fundraiser for, you know, former Vice President Biden, and so that's certainly another data point that, looking back on it, gives -- at least allies of the President concern that it was not a fair bunch of people?

A It's the kind of thing I think you -- you know, if the President is aware of something like that, that further explains why he was frustrated.

Q Mr. Zebley, who was Mueller's chief of staff --

A I don't remember Zebley, but --

Q -- you know, at WilmerHale, he represented a Clinton aide during the course of the Clinton investigation, and so -- I know we talked about some of the -- whether the WilmerHale issues were conflicts; they weren't conflicts, and ultimately it was decided that it was not a bar to Mueller's service. But, at least with Mr. Zebley, he wasn't just somebody on the special counsel team. He ended up -- he's a pretty pivotal figure in, you know, Mueller's inner circle.

A Perhaps. Lawyers represent -- I mean, to be fair, though, lawyers represent a lot of clients, and they can do that without causing issues. But sometimes it can.

Q Right.

A Appearances in that context, certainly -- I take the point that it does matter.

Q Like, in the future, I mean, if one of your former, you know, White House counsel lawyers was going to go serve on a special counsel detail looking into something

in the Biden administration, I mean, that would give you pause, wouldn't it?

A It would what?

Q Give you pause that --

A It depends on who it is and the circumstances.

Q I mean, Mr. Dillon, for example.

A It's certainly something that -- well, you really wouldn't want Mr. Dillon looking at your stuff anyway. As you know, he's -- he was one of the top oversight lawyers here in the House once upon a time.

But I think it depends on the facts and circumstances. And, if you're asking me if I were the one in charge, it would be something that I would think about before putting people on a team.

Q Right.

A Right? So --

Q In fact, were you aware that Rosenstein testified in June that clearly Mueller -- his words -- you know, should have had a more politically diverse group?

A I -- I don't recall -- I don't remember being aware of that. But, if Rod said that, that's good on Rod to make that observation publicly.

Q Right. Okay.

Mr. Castor. That's all I have for now. If you -- okay. We're all good for now. We're going to hopefully avoid the nominal break as we switch up and just let the --

Mr. Hiller. Are you going? Sorry. We can go off the record for a minute.

[Discussion off the record.]

Ms. Istel. We're going back on the record. It's 4:16 p.m.

Ms. Jackson Lee will ask a couple questions.

Ms. Jackson Lee. Thank you very much.

Mr. McGahn, welcome again.

Mr. McGahn. Thank you.

Ms. Jackson Lee. Thank you for participating in I think the elements of democracy.

Since you left the White House, has the President or any of his associates tried to prevent or discourage you in any way from cooperating with any investigation involving the President?

Mr. McGahn. Setting aside the separation of powers issue as to whether I was to appear, no. Nothing about the substance of my testimony or anything of the sort, no. No one's tried to influence me here today as to what I was going to say.

Ms. Jackson Lee. So let me clarify that.

Separate from constitutional questions, separation of powers? Is that what you're saying?

Mr. McGahn. Yeah. The litigation that ended up in court as to the authority of the subpoena and the like, setting aside that, because that's kind of an obvious issue, no.

Ms. Jackson Lee. And no emissaries, agents, or otherwise may have engaged you to not as well be cooperative in any investigation on behalf of the President?

Mr. McGahn. Nothing of the sort, no.

Ms. Jackson Lee. There have been news reports that the President and/or his associates asked you, since you were subpoenaed to testify, to say that you do not believe the President obstructed justice. Has the President and/or his associates asked you or your attorneys to say that you believe the President did not obstruct justice?

Mr. McGahn. No. No one's ever asked me to say that.

Ms. Jackson Lee. In your -- you've been indicating that it's been 4 years, and so I just want to give you a chance to ruminate or to think of -- and, because my question involved --

Mr. McGahn. It's a good question, because --

Ms. Jackson Lee. -- the President and his associates?

Mr. McGahn. Excuse me. You're predicating your question with since I left the White House.

Ms. Jackson Lee. Yeah.

Mr. McGahn. And so I'm more in the present. I'm taking your question has somebody presently sort of tried to persuade me --

Ms. Jackson Lee. Well --

Mr. McGahn. -- to say something here today, and the answer to that question is no.

Ms. Jackson Lee. The exact question is that there have been news reports that the President and/or his associates asked you, since you were subpoenaed to testify, to say that you do not believe the President obstructed justice --

Mr. McGahn. That's news to me.

Ms. Jackson Lee. -- at the time --

Mr. McGahn. Do you have the news reports? I'm unaware of those. I'd be curious to see that them.

Ms. Jackson Lee. All right. So you have no recollection?

Mr. McGahn. No. Not just no recollection. I mean, it's just -- I don't -- I don't think that happened. So I'm sort of curious to see the news reports. I don't have any knowledge of anything of that -- of that --

Ms. Jackson Lee. So let me read an article -- refer to an article.

Don McGahn rebuffed White House request to say Trump didn't obstruct justice.

And that is in The Wall Street Journal on May 10th, 2019, and it's exhibit 24.

[McGahn Exhibit No. 24

Was marked for identification.]

Ms. Istel. We'll provide you a copy of it.

Mr. Hiller. Color.

Mr. McGahn. Okay. Okay. I have it in front of me.

Ms. Jackson Lee. So I'm going to -- as you're reviewing it, I'm going to read.

Mr. McGahn. Yeah.

Ms. Jackson Lee. Within a day of the release of the Mueller report last month, President Trump sought to have former White House counsel Don McGahn declare he didn't consider the President's 2017 directive that he seek Robert Mueller's dismissal to be obstruction of justice. But Mr. McGahn rebuffed the request according to people familiar with the matter.

Mr. McGahn. Okay. Your original question was since I was issued a subpoena. This is -- this predates the issuance of subpoena. This concerns the day after the Mueller report.

My recollection is -- the answer that I gave stands. I did not talk directly to anybody, President or his agents, about saying he didn't obstruct justice.

In anticipation of the report coming out, I did contemplate whether I had to put out my own statement depending on what the report said. There may have been conversations with my counsel and other lawyers involved that I may or may not have been privy to, but that -- this is, I think, a separate issue than what I thought you were asking about.

Ms. Jackson Lee. Well, let me just move --

Mr. McGahn. So apologies if I didn't quite understand the original question.

Ms. Jackson Lee. And let me be clear.

The articles came out since you have been subpoenaed. I know the issue refers

to -- so it is -- you're going back to 2017, but this article came out since you have been subpoenaed. Do you see the context? So you can -- the article --

Mr. McGahn. Look, the article came out May 10th, 2019.

Ms. Jackson Lee. Uh-huh.

Mr. McGahn. Because the Mueller report came out a -- I don't recall the date of the subpoena.

Ms. Istel. The subpoena is April 22nd, so --

Mr. McGahn. Oh, so this actually does -- this article postdates the subpoena.

Ms. Istel. Correct. I think she's referring to the article --

Mr. McGahn. But what the article talks about is within a day of the release of the Mueller report, which predates the subpoena, right?

Ms. Istel. [Nonverbal response.]

Mr. McGahn. Okay. I got it. Right.

Ms. Jackson Lee. So you can answer in both ways, predating and post.

Mr. McGahn. Okay. Post-subpoena, no. Presubpoena, I recall there were discussions -- my own thoughts and other discussions with counsel, which I really am not going to get into discussions with my own counsel, but as to whether I was going to put out a statement. And, at the end of the day, I did not put out a statement. I remained silent on the report.

Ms. Jackson Lee. I'll yield for a moment.

BY MS. ISTEEL:

Q Was it your understanding that anyone from the President or his associates approached your counsel to ask him whether he would put out a statement about whether or not the President obstructed justice?

A I don't remember the details of that, because --

Q Is it possible?

A -- I didn't have any direct -- it's possible. I didn't have a direct conversation with anyone. You know, I had private counsel. Maybe he may have talked to folks, or there may have been overtures there. I don't know, but I don't recall.

Q So it's possible?

A Possible.

Q Thank you.

A Yeah. But it wasn't directly to me or even --

Q Understood.

A Yeah.

Ms. Jackson Lee. So, if we're doing -- you remember there were discussions, and that would have been presubpoena? Is that what you're saying?

Mr. McGahn. Yes.

Ms. Jackson Lee. Discussions about obstruct of justice?

Mr. McGahn. Yeah.

Ms. Jackson Lee. So the -- any of these discussions, persons say to you it was on behalf of the President or it was a request on behalf of the President?

Mr. McGahn. Again, no one -- the answer is no. No one said that to me directly or anything of the sort. Now, whether they reached out to one of my attorneys and had those kinds of discussions, that could be what this is based on. But it wasn't directly to me where someone from the White House or the President or somebody called and said, "Hey, Don, I need you to do the following." I -- I was not -- I was not part of any of that to the extent any of that existed. So I still say no, no one directly said anything of the sort to me.

Ms. Jackson Lee. All right. But you've said earlier that there were discussions?

Mr. McGahn. My understanding is there were discussions, but they weren't directly with me. They were through counsel.

Ms. Jackson Lee. Okay. Let me thank you very much. I yield.

BY MS. ISTEEL:

Q So, just to follow up and clarify for the record, your understanding was there were potentially discussions with your counsel. You were not privy to those conversations, correct?

A Potentially, they were, because I was contemplating whether I had to put out a statement, depending on what the report said, and my recollection is that part of that is -- is potentially what you're saying, but I wasn't privy to those --

Q Thank you.

A -- so I'm -- I'm -- I can't really give you more detail, because it wasn't my conversations.

Q Understood.

I think we'll turn now to the portion of the report discussing Sessions' recusal from the investigation, which I believe Mr. Castor went over with you earlier, so I will try not to repeat any of the portions he's already asked about.

I'll direct you to page 48. Let me know when you've gotten there. It will help us go quicker.

A All right. Page 48. I'm there. Thank you.

Q When I left off, we had discussed that Flynn was forced to resign on February 13th, 2017. Do you recall later that month the Department of Justice conducting an internal investigation into whether Attorney General Sessions should recuse himself from overseeing the Russia investigation?

A Do I recall an internal investigation at DOJ whether Sessions should recuse

himself? I don't recall --

Q I'll direct you to --

A I don't recall an internal investigation, but we may be -- maybe, if you can point me to something in the report, maybe it will --

Q I'll direct you to the first paragraph of page 41.

It reads: In late February 2017, the Department of Justice --

A Hold on. Page 41?

Q I'm sorry.

Ms. Shapiro. 41.

Ms. Istel. 8. 40 -- sorry. The page 48, first paragraph, there is a number 1 --

Mr. McGahn. Okay.

BY MS. ISTEEL:

Q -- on that page, and I'm reading from the first paragraph under that.

And it says: In late February 2017, the Department of Justice began an internal analysis of whether Sessions should recuse from the Russia investigation based on his role in the 26 Trump campaign -- 2016 Trump campaign.

A Okay. That's what it says.

Q Do you recall that?

A No. I was not aware of, in February 2017, when they -- that they began an internal analysis. That would not be something I'd be aware of.

Q Did you come to learn that the Department of Justice was conducting an internal analysis of whether Sessions should recuse himself?

A I became aware that the Department did take a look at the issue, and I don't know when it began and when it ended, but I -- it was Jody Hunt let me know that in direct terms. I think that's later on in the report. But, yeah, I was aware that they were

doing an ethics review.

Q And, just to clarify for the record, in March of 2017 and in late February of 2017, the special counsel had not yet been appointed, correct?

A Correct.

Q Just helping orient the timing, meaning that, at this point, the Department of Justice was conducting an investigation to determine whether Sessions, who was then Attorney General, should recuse himself --

A What -- sorry. The use of the word "investigation," it's an analysis, not an investigation, right? The ethics shop doesn't investigate. They review questions presented, right? Was there a separate investigation into this that I missed?

Q Well, we'll call it an analysis.

A Well, that's what the report calls it, and that's what it is. Okay.

Q The Department of Justice was conducting an analysis to determine whether Sessions, who was then Attorney General, should recuse himself from overseeing the Russia investigation at that time, correct?

A At what time?

Q In late February of 2017 --

A Again, I don't know. I was made aware that they were running the ethics traps much more contemporaneous with Sessions' recusal. I think I learned of the ethics review, I think, the day of. Unless there is something that you have that would refresh my memory, that's my recollection. I don't think I was aware in February that the Department had already begun an internal analysis of whether Sessions had to recuse.

Q Page 48, it reads, on March 1st, 2017, the press reported that, in his January confirmation hearing to become Attorney General, Senator Sessions had not disclosed two meetings he had with Russian Ambassador Kislyak before the presidential election,

leading to congressional calls for Sessions to recuse or for a special counsel to investigate Russia's interference in a presidential election.

Do you recall that?

A Yeah. The press certainly reported that. It was a lot of news on the exchange that Jeff Sessions had with Al Franken, yes.

Q Did you discuss that news report with the President?

A Did I discuss what with the President?

Q The news report that Sessions had not disclosed those two meetings --

A Well, I --

Ms. Shapiro. Is it a conversation reflected in the report?

Ms. Istel. Page 49, first full paragraph.

Mr. McGahn. Right. Which says the next morning. Was your question about on March 1st, or the next morning?

BY MS. ISTEEL:

Q My question was, did you discuss that news report with the President?

A Did I -- so you're asking did I discuss the recusal of Sessions with the President? Yes.

Q Can you describe your conversation with the President about that recusal?

A Well, there were -- it was -- yes. It was a phone call. We talked in the morning, and the President wanted me to contact the Attorney General to tell him not to recuse. He felt that the -- he conveyed to me that he thought Sessions -- it would make Sessions look guilty of omitting details at his confirmation hearing, as the report indicates; that it would leave him with really without an Attorney General; and he also conveyed it would hurt his Presidency; and also derail policy objectives because the Attorney General has a loud voice in that room when policy is being implemented; and of course he talked

about the press coverage.

That was -- that was the gist of the conversation that I recall, and that is, in large part, informed by me reviewing the report here as I sit. I don't have a -- a crisp recollection of the call. But I do remember the call. I remember it was in the morning. I remember I was at my desk. It was on the phone, and it was in the context of the fact that there was a lot of press coverage over what Sessions said in the Senate and whether that was true.

Q Was it your understanding that the President believed that Sessions, as his Attorney General, could protect him from the investigation?

A That wasn't really in that call, as I recall. You're trying to -- I mean, it certainly -- certainly is something that the President had said, and he said it in this call, but the call had many other parts.

Q Well, let's just be clear. Was it in the call, or was it not discussed in the call?

A It was in the call, yeah, but that wasn't the main -- it wasn't --

Q You started by saying it wasn't in the call, so I just wanted to be clear.

A It was not a call where the President said: Oh, you've got to make sure Sessions doesn't recuse because I need him to protect me from an investigation.

That's not what happened in the call, and your question, at least to my ear, suggests that that's --

Q I just asked whether it was your understanding, sir. So was it your understanding that the President believed that Sessions, as his Attorney General, could protect him from the investigation?

A That came up in the call, yes.

Q Reading now from the first full paragraph of the report, on page 49, where it says: McGahn understood --

A Right. Which is what I was just reading from, yes.

Q I'll just keep reading, if that's okay.

A Okay. Sure.

Q McGahn understood the President to be concerned that a recusal would, quote, "leave the President unprotected from an investigation that could help hobble the Presidency," correct?

A Right. That's what it says. That's what I've been saying.

Q Do you recall the President saying that?

A I don't recall sitting here today him saying that that, no.

Q What is your understanding of what he meant when he said the President -- what the President meant when he said it would leave him unprotected from an investigation that could hobble the Presidency?

A Well, I don't have a recollection of him actually saying it, so it's tough for me to sort of project into him what he was thinking. But I think the report speaks for itself, and I think that, without an Attorney General, his fear would be that investigations could occur and not really have a politically accountable person at the top of the Department, and could potentially be weaponized to derail his policy objectives.

Q You mentioned that, on that call, the President urged you to reach out to Sessions about the recusal, correct?

A He urged me to reach out to Sessions about the recusal, yes.

Q Did you reach out to Sessions about --

A Yes, I did.

Q If you'd just let me finish the question before you answer, please.

A Say again?

Q If you can just let me finish the question before you answer, please, so we

make sure that --

A Oh, I thought the question was finished. Sorry.

Q That's okay.

A Okay. Go ahead.

Q Did you reach out to Sessions as the President requested?

A Is the question over? Yes.

Q Can you tell us what happened in that conversation?

A I relayed to Sessions what the President had relayed to me, not really in the President's words. I conveyed to him the points the President had made. I emphasized the fact that recusal needs to be done properly and that Jeff ought not recuse simply to recuse because the issue that was currently confronting him in the press was separate from any sort of recusal issue. He was being accused of not being truthful or getting caught in sort of a weird exchange with Franken.

So that's what I recall about the call with Sessions.

Q Page 49, middle of the first full paragraph, it reads: McGahn reached out to Sessions and reported that the President was not happy about the possibility of recusal.

A Right.

Q Do you recall that?

A I don't recall it sitting here today, but I do recall, you know, having a much better recollection when I talked to Mr. Mueller's team. I don't have any reason to disagree that that's what happened.

Q Do you recall Sessions' response when you told him that?

A I do remember that he did come back and said he's going to follow the rules on recusal.

Q And what was your response when he said that?

A What was my response when he said that?

I don't recall my response other than my own sense was that's -- that's a -- that's the correct answer. Follow the actual recusal rules. Don't just recuse for the sake of recusing, but follow whatever the ethical rules say you're supposed to do. That was what I took from the call, so that's the best I remember.

Q So, by -- sorry. Are you finished?

A I think so.

Q So, by the end of the call, was it your understanding that Sessions was going to follow the rules on recusal regarding --

A That's what he indicated, yes.

Q Did you report your conversation with Sessions to the President?

And I'm referring to page 49.

A Yeah. Per the report, I reported back to the President on the call with Sessions, and there was a discussion with the President there, and the President reiterated that he didn't want Sessions to recuse.

Q Had you explained to the President that Sessions was planning to follow the rules on recusal?

A I don't recall if I did or didn't. Like I -- my assumption is I said there are rules on this, and there is a process, and that sort of thing. But I don't have a specific recollection of that conversation with the President, at least -- you know, there is a series of events that day with, you know, multiple calls and -- with Sessions and others. So I don't have a clear recollection of that call with the President.

Q But it was your understanding that Sessions planned to follow the rules on recusal, correct?

A That's what he told me he was going to do, so that would be my

understanding.

Q And you don't recall whether you conveyed that to the President?

A I don't recall if I did or didn't. I assume I did, but I don't have a recollection sitting here today, 4 years later, if I did. I don't remember the follow-up call with the President after I had just talked to Sessions. I know we spoke. I don't remember details of that call.

Q The President reiterated that he did not want Sessions to recuse, as relayed in the report on page 49.

When he said that, what was your response?

A I don't recall. I don't recall what I said. Again, I don't recall that call in any sort of detail, so I don't really remember going back and forth with the President on that call.

Q As reflected in the report -- and I'm now on page 49, second to last sentence of the first paragraph -- it says: Throughout the day, McGahn continued to try on behalf of the President to avert Sessions' recusal by speaking to Sessions' personal counsel, Sessions' chief of staff, and Senate Majority Leader Mitch McConnell, and by contacting Sessions himself two more times.

Do you recall making those phone calls?

A Vaguely, yeah. I certainly made those calls, yeah.

Q If Sessions had already explained to you that he was planning to follow the rules on recusal, why did you feel these additional calls were necessary?

A Because I was unaware that Sessions had already started the process within the Department, and my recollection is that he wasn't feeling well, had the flu, and I continued to reach out to him to see essentially how he was doing and whether -- what was actually going on.

My concern was that he may overreact and recuse based upon press reports of an exchange with Franken and not actually run the full recusal process, and it really wasn't until I think I was speaking to Jody Hunt that it became clear to me that they already had undertaken a process and this was being handled properly.

It was not clear to me when I spoke to the Attorney General that it was actually being -- the traps were being run in a way that was -- that they ought to have been run, so until I -- until I got clarity on that point, I kept trying to figure out what was going on with whatever the Attorney General may or may not be doing.

Q Did the President ask you specifically to call the majority leader, the chief of staff, and/or Sessions' personal counsel?

A No.

Q After your phone calls, did you have clarity on what was going on in terms of Sessions' process for recusal?

A I did. I did. And, again, I think it was after talking to Jody Hunt, who was able to explain to me what was going on. And then that's when my recollection is I ceased calling because then I knew it was being taken through a real process. And then, later that day, as per the report, he -- Sessions announced that he was going to recuse.

So, once it was clear that they were running the ethics traps and the Department's ethics folks were going to scrub it, my recollection is that's when I stopped calling and trying to figure out what was going on.

Q And, when you say "real process," do you mean the Department's internal analysis?

A I -- I've never worked at the Department, so I don't necessarily know the titles. I call it sort of the ethics folks, so I assume that's what I'm talking about, but I --

Q You seemed very specific on the title, so I just want to make sure that

we're --

A Very specific on what?

Q The word choice. So I just want to make sure that we're referring to the same thing.

A I don't think I was being particularly specific or using terms for anything that -- I know the DOJ has a process, and they have ethics people, and DOJ alums know that stuff cold. I'm not a DOJ alum. I --

Q But, by this point, you were aware that the Department of Justice was conducting its own internal process. I believe you just called it a real process, correct?

A At this point, right, yes.

Q Okay. Thank you.

A Right. As opposed to the, you know, February 17 -- it was -- at this point is when I learned that they were, you know, doing an internal analysis of whether he should recuse.

Q And, to be clear, at this point, that's March 1st, correct, or March 2nd?

A It would be March 2nd, yes.

Q Okay.

A March 2nd.

Q Now, as you just mentioned, that same afternoon, on March 2nd, Sessions announced his decision to recuse, correct?

A He did, that afternoon. It was on TV, yep.

Q And he stated, when he announced his recusal -- and I'm quoting from the report on page 49, last paragraph -- that he announced his decision to recuse from any existing or future investigations of any matters related in any way to the campaigns for President of the United States, correct?

A Yes. That's what it says.

Q When he announced his recusal, he explained that he believed this was based on clear and decisive law, correct?

A I don't remember what he said, but if that's what he said, I'll take your word for it.

Q As reflected in the report, he also, when announcing his decision, explained that his decision to recuse was, quote, "not a close call given the applicable language in the Code of Federal Regulations, which he considered to be clear and decisive."

Does that refresh your recollection?

A No, it doesn't, no. I don't -- I don't remember what he said in his press conference. I remember he announced recusal, and from there, it speaks for itself. I'm sure it can be re-watched.

Q Well, you had just spent the entire day calling him and his counsel and --

A Right.

Q -- his chief of staff and the majority leader.

A Right.

Q So was it your understanding at this point that, when Sessions recused, he did so based on his understanding that the Code of Federal Regulations was clear and decisive?

A Yeah, I understood that. He thought he was -- he thought it was clear, yes.

Q Thank you.

A Yeah.

Q Reading now from page 50, top paragraph, it says: Sessions got the impression based on calls he received from White House officials, that the President was very upset with him and did not think he had done his duty as Attorney General.

Do you recall the President being very upset with Sessions after his recusal?

A Yes.

Q What do you recall the President saying about that?

Ms. Shapiro. As reflected in the report.

Mr. McGahn. Okay. It's reflected in the report. Okay.

Well, the thing that comes to mind is, when Rosenstein announced the appointment of a special counsel, there was an exchange in the Oval that's reflected in the report between the President and Sessions. And the President certainly expressed his displeasure with Sessions in that -- in that meeting.

I'm trying to think about, contemporaneous here, Sessions was not, as I don't believe was at the White House that day that he recused, although we ended up seeing him the next -- I guess it was the next day because we traveled for -- on official business.

BY MS. ISTEEL:

Q So we'll get to that in a second.

A Okay.

Q But, shortly after Sessions' recusal -- I'm now reading from page 50 -- it says: The White House Counsel's Office, your office, directed that Sessions should not be contacted about the matter. Internal White House Counsel Office notes from March 2nd, 2017, the date Sessions recused, state, quote, "no contact with Sessions," end quote, and, quote: No comms, slash, serious concerns about obstruction, period, end quote.

Do you recall that note issued by your office?

A I recall directing that the staff ought not contact Sessions directly or otherwise think of this as a communications issue. This was informed by how the press shop handled the removal of Director Comey. And, in an abundance of caution, my counsel was to not repeat that and to not think that they could take matters in their own

hands.

So that -- the report is accurate from -- based -- you know, as far as it goes.

Q Well, the report says, "serious concerns about obstruction," which sounds like more than a press issue.

A Well, yeah. It certainly was more than a press issue. As I say, it's not just a comms issue. The last thing you need is other White House staff calling over to DOJ to try to talk to Sessions or try to figure out what was -- calling other contacts or that kind of thing. That could lead to allegations of all sorts of things.

I don't recall -- these are not my notes, so I don't -- I don't really have a recollection of all that was said, but the report speaks for itself, and --

Q Well, let me direct you to the report, which has your recollection about those notes, and footnote 290 --

A Right.

Q -- it says: McGahn said he believed the note "no comms/serious concerns about obstruction" may have referred to concerns McGahn had about the press team saying crazy things and trying to spin Sessions' recusal in a way that would raise concerns about obstruction.

A Right.

Q Does that refresh your recollection?

A It's consistent with what I just said. The press shop gets out in front of it and starts saying different things or making contacts, and that's going to raise concerns about people claiming there might be obstruction, sure.

Q What would be the claim of obstruction?

A What's that?

Q What would be the claim of obstruction?

A You tell me. I mean, you're -- you're just --

Q It's your --

A -- like anyone else that could speculate as to what the claim could be, but --

Q Well, I'm not the witness here today, Mr. McGahn, so I'm going to ask you what you meant by that when you told it to the special counsel.

A Well, the -- if -- if the AG has recused and people continue to contact the AG on their own to figure out what happened or that sort of thing, that leads to a series of contacts that could raise additional questions, and the obvious conclusion people would try to draw from that was that was somehow trying to influence an ongoing investigation of the sort or somehow obstruct something. So that's the concern.

And, with many other things, it was done in a way to prevent problems that I don't think -- I don't think the press shop reached out. I don't think they caused things that ended up being problematic in this instance. And so that's why -- I think that's what we were trying to get to there, is preventing problems. Not that we identified a problem that had happened. It was trying to prevent future problems and accusations of obstruction because that's the obvious argument that people always make if you -- in this kind of situation, I would think.

Q When you say you were trying to prevent problems, the problem you meant is if someone did directly contact the Department of Justice about that investigation? That was the problem you were trying to prevent?

A That could be one of them, yeah.

Q Thank you.

A Yeah.

Q As reflected in the report, the next day, on March 3rd -- and I'm at page 50, last paragraph.

A Okay.

Q You were called into the Oval Office.

A Yeah.

Q Other advisers were there, including Priebus and Bannon.

A Uh-huh.

Q Do you recall that meeting?

A Yes, I do. Yes.

Q Can you describe what happened during that meeting?

A Well, the report lays it out, at least in part. I recall going down to the Oval Office in the morning. I was told the President wanted to see folks, and he came downstairs and came in the side door. And he came in, and the first line out of his mouth was: I don't have a lawyer.

Q And the sentence after that reads: The President expressed anger at McGahn about the recusal and brought up Roy Cohn, stating that he wished Cohn was his attorney.

Do you recall that?

A Yes, I do. He brought up Roy Cohn and essentially wished he still had Roy Cohn: Where is my Roy Cohn?

Q What did you take him --

A I took that to mean I was not his Roy Cohn.

Q What was your understanding of why the President was angry at you?

A My understanding was -- and the report lays this out -- that I think he expected me to persuade the Attorney General into not recusing, and clearly that had not happened. The Attorney General had recused. So I think he assumed that somehow it was something I could have prevented, and I think that's where his frustration and anger

was coming from.

Q At that point, the Attorney General had said on live TV that he was basing his decision to recuse on clear and decisive law. Did the President want you to ask Sessions to go against that law?

A I don't recall the President ever wanting anyone to go against the law, no.

Q Well, at that time, did you explain to him that the Attorney General's decision to recuse was based on clear and decisive law as he interpreted the Code of Federal Regulations?

A No. I wouldn't have done that because I wasn't privy to the analysis the ethics folks put together. Sessions certainly sort of said it publicly, but it's not like I could vouch for that and say: Oh, here is a clear call. I've done my own analysis of it.

That was left to the Department. So, no, I didn't say that to the President.

Q Did you explain to the President why you understood Sessions to have recused?

A I did. I mean, I did explain that the ethics officials review this sort of thing, and their decision was he had to recuse under the ethics rules, but I couldn't go much beyond that.

Q Well, did he want you -- so you had explained to the President that the Attorney General had recused based on ethics rules, correct?

A Say again? I was trying to finish my answer, but go ahead with your question now, please.

Q Oh, please. You want to finish your answer?

A No. You lost my train of thought. Sorry. So if you could repeat the question.

Q At that point, had you explained to the President that the Attorney General had recused based on ethics rules?

A Right. Yes.

Q And what did you understand him to want you to do, then, to get Sessions to recuse? To go against the ethics rules?

A Well, at that point, no. I didn't -- I didn't take from that that he wanted me to do anything affirmative. He certainly had a lot to say.

The report lays this out, where he starts talking about Robert Kennedy and Eric Holder, and they protected their Presidents, and pushback on the idea of communicating about investigations, and he was under the impression Presidents did that. But I don't recall anything from that meeting where he directed me to then go and -- at least in that meeting, to go and try to get Sessions to unrecuse.

It was a lot of venting and a lot of animated discussion, we'll call it. More -- not -- discussion is probably not the right word. More statements being made. But I don't recall him trying to say: You've got to go get Sessions to unrecuse.

Q Direct you to the top of page 51, please. It says: The President wanted McGahn to talk to Sessions about the recusal.

A Top of what page?

Q Page 51.

A Top of page 71. Okay.

Mr. Burck. 51. 51.

Mr. McGahn. 51. Okay. Sorry.

BY MS. ISTEEL:

Q It goes on to say that Bannon --

A Well, he 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 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.

Q And, when you --

A So it really wasn't an issue.

Q I'm sorry. I didn't mean to cut you off.

A It wasn't an open issue at that point.

Q You told the President that Sessions had recused based on ethics, and then he responded as you just mentioned, bringing up other Attorney Generals who protected the Presidents, including as Priebus recalled in footnote 297 on page 51, that the President said he had been told his entire life he needed to have a great lawyer, a quote, "bulldog," and added that Holder had been willing to take a contempt of Congress charge for President Obama.

Do you recall the President mentioning that, or something to that effect?

A That Holder was willing to take contempt? I don't remember the President mentioning that. I remember Holder was held in contempt, but I don't remember him actually having that fine a point on Attorney General Holder's career.

Q But what was your understanding of why the President continued to bring up other Attorney Generals protecting their Presidents after you had explained to the President that Sessions had recused based on ethics decisions?

A I can't really speak for him as to why. My guess is that he didn't believe that AGs and the Presidents didn't really talk about investigations and the like, and I think that's why he indicated -- brought up Bobby Kennedy and Eric Holder. I mean, Bobby Kennedy was the brother of the President, and what I took from the President was he can't believe that the President in that era didn't talk directly to the AG about all sorts of

things under the sun.

That era, they probably did.

And then that, given the relationship between President Obama and Eric Holder, that they didn't have conversations about who to investigate. The President seemed convinced that that had happened in the past, and he couldn't understand why I was saying that's not how this actually happens. Something to that -- I'm not quoting myself, but I'm giving you my sort of sense of why he was asking and questioning how people had done this in the past.

Q At that point, your office had issued the "no comms/serious concerns about obstruction" note referencing no communication with Sessions, correct?

A Say again. Sorry.

Q At that point -- and we just had gone over this -- your office had issued the no communications, slash, serious concern about obstruction note.

A Right. We -- we advised --

Q Right.

A -- that the staff shouldn't be trying to contact the Department or otherwise get involved, yes.

Q And, when the President asked you to reach out to Sessions, you advised him that Sessions had based his decision on ethics rules, correct?

A Right.

Q Did you also explain to him that he should not have communications with Sessions about his recusal?

A Did I say that to the President? I don't recall -- I don't recall that, no.

Q When you -- your office issued White House notes about serious concerns of obstruction. Would those go to the President or the White House senior staff?

A I think you're assuming we issued something in -- on -- some sort of White House note or something on paper. I'm not sure that we did. Generally, no. That is for the staff, not for the President. He has his own constitutional authorities and things that he can do that are not the sort of things that are subject to guidance to staff.

Q I'd like to turn now to the handling -- the President's handling of Director Comey, which Mr. Castor also talked about briefly in his questions. And, again, I'll try not to go through anything that the President already went through -- that Mr. Castor already went through.

On March -- and I'm on page 54. Let me know when you're ready.

A Okay. I'm on page 54.

Q On March 21st, 2017, after Director Comey's testimony -- I'm just orienting you for timing purposes, and then I'll read from the second paragraph.

A Uh-huh.

Q At the President's urging, McGahn contacted Boente, who was at the time in the Department of Justice --

A Uh-huh.

Q -- several times on March 21st, 2017, to seek Boente's assistance in having Comey at the Department of Justice correct the misperception that the President was under investigation.

Do you recall the President asking you about that?

A Yes. Now, whether it was March 21st, I don't remember the date, but, yes, I remember -- I remember this.

Q What was your understanding of what the President wanted you to say to Boente?

A My understanding of what? Sorry.

Q Of what the President wanted you to say to Boente.

A Oh, he wanted -- he wanted to see if the Department of Justice or Comey could make public that he was not under investigation. News reports had sort of hinted that he was. He was trying to see if they could announce he was not, which is essentially what the report says, which, again, I think is accurate.

Q Did you feel comfortable reaching out to Mr. Boente about this issue?

A Did I what?

Q Did you feel comfortable reaching out to Mr. Boente about this issue?

A No.

Q Why not?

A I thought it was a proper request. I thought that the President at that point was not under investigation. I thought Director Comey's testimony clouded that issue, and I thought it was -- it was appropriate for the President to come to me as counsel to the President, to then contact the Acting AG -- that's the usual protocol -- and have a discussion over what could be done. I wasn't concerned at all about contacting Dana Boente here.

Q Do you recall your conversation with Mr. Boente about this?

A I remember parts. I mean, Dana and I talked often on different things, so, again, I don't -- it's not like a once-in-a-blue-moon conversation with Dana.

I do remember parts -- the report reflects a good chunk of it, and I think the report is accurate as to what it accounts.

Q I'm reading now from the second paragraph on page 54, where it says: Boente did not specifically recall the conversation, although he did remember one conversation with McGahn around this time where McGahn asked if there was a way to speed up or end the Russia investigation as quickly as possible.

Do you recall that?

A I do. I -- you know, that's Dana's recollection, and I -- I probably raised it -- raised the issue of the timing and how this was going to go because that would be an obvious question the President would probably ask me eventually. So, as part of trying to stay ahead of the curve, I'm -- I probably asked him about that, but I don't have a specific recollection of that part of the conversation. Seems Dana doesn't remember much of the conversation either.

Q Do you recall at any point the President asking you to convey to the Department of Justice if there was a way to speed up or end the Russia investigation as quickly as possible?

A Not really in those words, but he did talk about how it was a cloud over his Presidency, made him -- hard to govern, and the like. This is in the report. And, thus, the longer it goes on, the more it hurts his ability to be President.

It was not -- I don't recall the President ever doing it in a way that was improper or was pushing to speed it up for the sake of speeding it up or ending it just for the sake of ending it. The context was more status and the like and just how the process can play out. And the theme was this idea of a cloud over the Presidency, and the sooner the cloud would be removed, it would be easier for him to be President.

Q Do you recall Mr. Boente's response?

A I do. I do recall. Dana indicated there is really no way to shorten an investigation, and to try to, it could cause more problems than it would solve, something to that effect. It also would erode confidence in its results. So it -- you know, like with most calls with Dana, I was -- I was asking questions and very interested to get his views and his candid perspective on things, and that was -- that was one part of the conversation where he gave me his candid advice that, you know, trying to move this

along would erode confidence in any conclusions it reached.

Q Did you agree with that?

A I took him at his word. I valued his judgment, so yeah.

Q Reading now from the bottom of 54 to the top of 55, where it says: The President also sought to speak with Boente directly, but McGahn told the President that Boente did not want to talk to the President about the request to intervene with Comey.

Do you recall that?

A I don't have a specific recollection. My assumption is the President at some point probably said: Can I talk to Dana directly?

And my response was: No, Dana didn't really want to talk to the President about it. And my judgment was, you know, again, caused more -- cause more issues to spring, and -- but I don't remember specifically any sort of specific standalone conversation about that, but it probably came up in a larger series of conversations.

Q But you do recall that, at some point, the President wanted to speak to Boente, and your response was --

A Sitting here today, I don't recall that. I'm assuming that happened because it's in the report, and my guess is I probably knew that, once upon a time when my memory was more -- was fresher and more contemporaneous with events, that is in the report. I don't have any reason to disagree that that happened. I'm assuming it happened.

Q And you told the President no, correct?

A I -- right. I told him that that -- he shouldn't call Dana, yeah.

Q I'm reading now from page 57. It says: On the morning of March 30th, 2017, the President reached out to Comey directly about the Russia investigation.

Were you aware of the President's contact to Comey at the time?

A Not at the time, no. No.

Q I'm now on page 58, and it says: On the morning of April 11th, the President called Comey again.

Were you aware of that conversation at the time?

A Not at the time, no.

Q Now on the bottom, second paragraph of 59, where it says: Later that day, the President told senior advisers, including McGahn and Priebus, that he had reached out to Comey twice in recent weeks.

Does that refresh your recollection?

A Refresh my recollection as to what the previous question was, whether I was aware at the time of the call with Comey that -- I was not aware at the time, so my recollection is clear on that point.

Q That -- but, later that day, you became aware, correct?

A Right. Yes. I -- maybe it was that day. Maybe not. I -- again, dates, but I recall that I -- I did become aware in the way the report reflects.

[5:06 p.m.]

BY MS. ISTELE:

Q What was your reaction when the President told you about his direct outreaches to Comey?

A I think I listened to what else he had to say. I don't think I had an outward reaction, I don't think. I mean, I may have expressed some body-language concern, but I don't really recall. I was, at that point, curious to have the President tell us what he was talking to Jim Comey about.

Q I'll direct you to the second paragraph on page 59. It says, "The President acknowledged that McGahn would not approve of the outreach to Comey because McGahn had previously cautioned the President that he should not talk to Comey directly to prevent any perception that the White House was interfering with investigations."

Does that refresh your recollection?

A It doesn't refresh my recollection as to my reaction, no. It doesn't.

Q When the President told you that, did you not approve of his outreach because you had previously cautioned him not to talk to Comey directly?

A Well, at that point, whether I approved of it or not was moot because it had happened. It certainly wasn't something I would've recommended in the first instance, but, once it happened, it happened. So approval was not really on the table.

Q I'm going to move to page 65 and 66 of the report.

Mr. Hiller. Let's go off the record for just one moment.

[Discussion off the record.]

Mr. Hiller. We'll go back on the record.

Ms. Istel. The time is 5:08, and we're going to continue.

BY MS. ISTEEL:

Q When we left off, I directed you to pages 65 and 66 of the report, May 8th, which is a few days after the event we were just discussing.

The President met with senior advisors in the Oval Office, including you, Mr. McGahn. And, during that meeting, the President conveyed that he had decided to terminate the FBI Director Comey, and that decision was, quote, "not up for a discussion."

Do you recall that?

A I recall the meeting, yes. It was on the morning of the 8th.

Q And was it your understanding during that meeting that the President had made up his mind about terminating Comey?

A Well, he -- yes, it seems like he had, but then later in the meeting it seems like maybe he hadn't. So, at the risk of having it both ways, one could say he made up his mind then, but, you know, it seemed like maybe he hadn't quite gotten there. That's my recollection of my impression that I took from the meeting.

Q I'll direct you to footnote 417.

A Say again?

Q I'll direct you to footnote 417. It has testimony from people at the meeting.

First, Stephen Miller. It says, "Observing that the President started the meeting by saying, 'I'm going to read you a letter, don't talk me out of this, I've made my decision'" -- it goes on to cite other recollections of the meeting, including that the President announced in an irreversible way that he was firing Comey, and the President did not leave whether or not to fire Comey up for a discussion.

A Uh-huh. I see that.

Q So was it your understanding that the President was firm in his decision to remove Comey?

A Again, at the beginning of the meeting, the answer is, yes, he'd made a decision. By the end of the meeting, my sense was maybe he wasn't 100 percent there. So --

Q He began the meeting firm in his decision to remove the FBI Director, correct?

A Yes. The way the footnote described it, that certainly was the beginning of the meeting. Yes.

Q And, in fact, the President began the meeting by reading a draft termination letter he had written, correct?

A Right.

Q Now, what was your reaction when the President said this?

A What was my reaction? Well, it was a meeting that had already started. So we walked in -- we were called down, and we walked in, so there was already a discussion going on. And that's when we were informed that the President, as the footnote reflects, you know, that he's made his decision.

I don't remember I had a specific reaction. I think I came in and sat down. And, with the number of people in the room, I don't think I said much of anything initially. I think I wanted to hear and get a sense of what had already been said and what was going on in the room. So I don't remember a specific reaction.

Q Let me direct you to page 66, end of the first paragraph. I'll just read from the report.

"In an effort to slow down the decision-making process, McGahn told the President that DOJ leadership was currently discussing Comey's status and suggested that White House Counsel's Office attorneys should talk with Sessions and Rod Rosenstein, who had recently been confirmed as Deputy Attorney General. McGahn said that

previously scheduled meetings with Sessions and Rosenstein that day would be an opportunity to find out what they thought about firing Comey."

Correct?

A Right. Yes.

Q As reflected in the report, that same day at noon, you met with Sessions and Rosenstein, correct?

A Right. It was around lunchtime. Yep.

Q During that meeting, did you inform Sessions and Rosenstein about the President's decision to fire Comey?

A I did.

Q As reflected in the report, later that same day at around 5:00 p.m., the President met with you, Sessions, Rosenstein, and other White House officials to discuss Comey's termination. Do you recall that meeting?

A Yes, I do.

Q As reflected in the report, during the meeting, the President said that Comey should be removed and asked Sessions and Rosenstein for their views, correct?

A Correct.

Q According to the report, during that meeting, the President agreed that Rosenstein should provide a recommendation in writing that Comey be removed. Do you recall that?

A Yes. It was discussed. Yes.

Q According to the report, the President, quote, "told Rosenstein to include in his recommendation the fact that Comey had refused to confirm that the President was not personally under investigation."

Do you recall that?

A Yeah, the President did want that in the -- he wanted to make clear that Comey had told him he was not under investigation.

Q Later that day, did the President terminate Comey? Or the next day, on May 9th?

A What? Say again?

Q Sorry. Can you hear me?

A Not really, no. When I'm looking at the report and I'm not seeing you, then I have to look up and then -- and I'll try to do better. Go ahead.

Q I have all day.

A I know you do.

Q As reflected in the report on page 70, the same day the President terminated Comey -- so I'm just asking if you recall that on May 9th the President terminated Comey.

A Oh, yes. Yes. I remember that. Sure.

Q "Later that evening" -- and I'm now on the top of page 70 --

A Uh-huh.

Q -- "the President told his communications team he was unhappy with the press coverage of Comey's termination and ordered them to go out and defend him. That night, the White House press office called the Department of Justice and said the White House wanted to put out a statement saying that it was Rosenstein's idea to fire Comey."

Do you recall that?

A Well, I wasn't involved in the supposed direction to the press shop from the President, so I don't recall that. But I certainly recall the news coverage and the fact that there was a desire to get people out to talk to the press, as evidenced by the number of people that tried to go on TV and that. But I was not part of that discussion, so I don't really -- I can't say I recall, you know, any sort of detail on that issue.

Q Was it Rosenstein's idea to fire Comey? Is that accurate?

A Was it his idea? He recommended Comey be removed. That's true. The President --

Q Is it true that it was his idea?

A Before talking to Rosenstein, the President had said he had decided to fire Comey. So -- you know, Rod also recommended it. So I don't know what else I could say on that point.

Q Well, you said more to the special counsel, so let me direct you to page 73. It says, "The White House Counsel's Office agreed that it was factually wrong to say that the Department of Justice had initiated Comey's termination, and McGahn asked attorneys in the White House Counsel's Office to work with the press office to correct the narrative."

Does that refresh your recollection?

A Well, not really. That's not inconsistent with what I just said. The President said he had made a decision. Rosenstein, subsequent to that, came in and also made a recommendation that Comey has to be removed.

I don't see the need to refresh the recollection on that or this being inconsistent with that. Am I missing something?

Q Well, I asked if it was accurate that it was Rosenstein's idea to fire Comey.

A Well, that's a different issue, what the press shop was saying. And they were pushing out that this was all Rosenstein's idea, and that was not the case. So that's what this part of the report, I think, speaks to.

Q My initial question -- and we can go back through, if helpful, but -- was, is it accurate to say that it was Rosenstein's idea to fire Comey?

A Say again? It was what?

Q Was it accurate to say that it was Rosenstein's idea to fire Comey?

A Not initially, no, it wasn't. It was the President's idea initially, I suppose.

Q Going back to page 70, second paragraph: "Rosenstein told other DOJ officials that he would not participate in putting out a false story. The President then called Rosenstein directly and said he was watching FOX News, that the coverage had been great, and that he wanted Rosenstein to do a press conference. Rosenstein responded that this was not a good idea because, if the press asked him, he would tell the truth that Comey's firing was not his idea."

Do you recall that?

A Well, no, I don't. I was not on the phone call. I was not privy to it, so I don't recall that.

Q Did there come a time where Rosenstein and/or Sessions reached out to you about their concern that the White House was putting out a false narrative about Comey's firing?

A Yes. Is that recounted in the report?

Q It is.

A Can you maybe point to it?

Q The bottom of 72 to top of 73, I'll read aloud: "Also on May 10th, 2017, Sessions and Rosenstein each spoke to him again and expressed concern that the White House was creating a narrative that Rosenstein had initiated the decision to fire Comey."

A Yes. I have the right date. I did speak to the Attorney General and the Deputy Attorney General. And that accurately conveys what happened. There was a discussion concerning how the press shop was presenting what had happened.

Q What was your understanding --

A And we all agreed that what was being pushed out by the press shop was

factually wrong.

Q And did you speak with the press shop to correct that narrative?

A I did at a certain point. I know others on my team did. And I -- so, yes, I did.

Q Did you have concerns with the President including in his termination letter reference to Comey refusing to acknowledge that the President was not personally under investigation?

A I missed the first part. What was it? I caught the second part. What was the first part of the question?

Q Did you have concerns about the President's draft termination letter?

A Yes. Yes.

Q What were those concerns?

A My concern was, it was very long. It had a lot in there that didn't seem particularly relevant or germane to the issue. I didn't like the tone. I thought it could be accomplished with more direct prose.

And the draft, as I recall, really emphasized the fact the President had talked directly to the FBI Director, and it included references to the I guess what we'll call for purposes of shorthand "the Russia investigation."

So I was not a fan of the letter as drafted.

Q Why was it concerning that it included references to the Russia investigation?

A Well, it seemed to me that, if you are going to remove the FBI Director, there's no reason to lard that up with what are really sideshow issues.

The President, however, really wanted the public to know that Comey had assured him he was not under investigation. And, ultimately, that ended up in the final paper that went out.

So, you know, there's nothing illegal about that per se, but why invite additional questions over things that aren't really at the hub, at the nub, at the focus of why you're removing the FBI Director.

Q I'd direct you to page 68, middle of the paragraph. It says, "Notes taken by Donaldson on May 9th reflect the view of the White House Counsel's Office" -- your office --

A Uh-huh.

Q -- "that the President's original termination letter should 'not see the light of day' and that it would be better to offer 'no other rationales' for firing than what was in Rosenstein and Sessions' memoranda."

It then footnotes number 442 to Ms. Donaldson's notes and says, "Donaldson also wrote, 'Is this the beginning of the end?' because she was worried that the decision to terminate Comey and the manner in which it was carried out would be the end of the Presidency."

Do you recall that?

A I don't recall reading her notes. Those are her subjective impressions, I assume.

I do recall, though, and in the body of the report, which is accurate that I felt the letter shouldn't see the light of day, it'd be best to start over and have this be more of a department recommendation, and the press shop ought not offer other rationales, because history has taught us that, when you go out to try to explain and reexplain and explain some more and explain some more, that doesn't end well. So the message there was, you essentially have one shot to get this right, so go out and try to get it right, and don't have an evolving narrative of other rationales.

Unfortunately, that didn't happen.

Q Was it your understanding that the President believed that, in removing Comey, the pressure of the Russia investigation would be relieved?

A You know, I don't think he -- what's interesting about that is -- and the report reflects this -- is that we did make sure the President was aware that merely by removing the FBI Director, that doesn't end anything. So the President was very aware that removing Comey would not change the investigation one iota.

And I took his remarks as more -- and I can't get into his head on it and why he would say this, that it would relieve the pressure. Hopefully, he was talking more in political terms and more perception issues, issues of that sort. But, you know, the President was aware that removing the FBI Director wasn't going to change the investigation. So why he's saying what he's saying there I can't really explain.

Q Well, let's just read what you're referencing for the record.

So the President fired Comey on May 9th. The next day, as reflected in the report on page 71, President Trump met with Russian Foreign Minister Sergey Lavrov and Russian Ambassador Sergey Kislyak in the Oval Office.

During that meeting, he reportedly said, quote, "I just fired the head of the FBI. He was crazy, a real nutjob. I faced great pressure because of Russia. That's taken off. I'm not under investigation."

So it's fair to say that he could have believed that removing Comey would have relieved him from pressure of the Russia investigation, correct?

A Perhaps, other than the fact we told him it wouldn't change the investigation. So what he's saying to other countries in this context, I'm not sure you can tie them together as tightly as you want to tie them together. But what I know is, he was told that this was not going to change things. Whether he believed that or not, I can't speak to that.

Q Well, let's look at the next day. I'm on page 73 now. On May 11, the day after the President terminated Comey, he participated in an interview with Lester Holt. During that interview, he stated that he understood his decision to terminate Comey, quote, "might even lengthen out the investigation," end quote.

Were you aware he said that?

A Sorry. Where were you reading?

Mr. Burck. Second full paragraph.

Mr. McGahn. Second full paragraph. Okay.

Yeah, he said might even lengthen out the investigation. Right.

BY MS. ISTEEL:

Q So he understood that his decision to terminate Comey did affect the investigation, correct?

A That's what he said on --

Q Thank you.

A -- I guess, national TV, yeah, which is consistent with what we had briefed him on before he executed on removing the Director.

Q You previously testified today that, on June 17th, the President called you, and you understood him to direct you to remove the special counsel, and you were not prepared to carry out that directive.

Are you aware of anyone in the White House who was prepared to carry out the President's directive to have the special counsel removed?

A The directive to what, do what, again?

Q Have the special counsel removed.

A I don't know of anyone that was -- in the White House that was going to do that, but I --

Q Were you --

A -- don't know everything.

Q Oh, sorry. Are you finished?

A I don't -- I just -- I don't know. I'm not aware of that.

Q Were you aware at the time that, 2 days after you refused to carry out the President's directive to have the special counsel removed, on June 19th, the President met with Corey Lewandowski in the Oval Office and asked him to deliver a message to Attorney General Sessions limiting the special counsel's investigation?

A I'm aware of that now, because it's in the report and there was news coverage on that point. I do not believe I was aware of that at the time and have no recollection of that.

Q Were you aware at the time that he met with Mr. Lewandowski again a month later, on July 19th, 2017, to follow up on his request to Mr. Lewandowski to deliver the message to Sessions?

A No, I don't believe I was aware of that.

Q After that second meeting with Lewandowski to deliver the message to Sessions, 3 days later, on July 22nd, as reflected in the report on page 95, the President told Priebus he had to get Sessions to resign immediately.

Were you aware that the President asked Priebus to get Sessions to resign around this time?

A I became aware because I believe the chief of staff contacted me and informed me of that.

Q Do you recall Priebus calling you to ask you for advice about the President's request to force Sessions to resign immediately?

A He did call seeking advice, yes.

Q As reflected in the report on page 95, Priebus told you that he believed the President's desire to replace Sessions was driven by the President's hatred of Sessions' recusal from the Russia investigation.

Do you recall that?

A I don't remember every detail, but I have no reason to disagree with the report, which is, again, based upon much more contemporaneous memories. But that certainly, I think, captures what was going on there. Yeah.

Q Last paragraph, page 95, it says, "Priebus believed that the President's request was a problem, so he called McGahn and asked for advice, explaining he did not want to pull the trigger on something that was 'all wrong.'"

Do you recall that?

A Vaguely. Priebus certainly thought it was a problem. He certainly called me when he thought things were problems, which was a positive development, and wanted to get my sense of what he should do, because he didn't want to carry out what he perceived as a direction to deal with Sessions.

Q Did you think that request was a problem?

A Sure. Yeah.

Q Why?

A Lawfully, the President -- let me separate that. As a lawyer, no. It's lawful for the President to remove the Attorney General. So it would've been lawful.

It would've been a problem in other ways, however, that could've led to other legal issues because of the issue we've talked about at length here today, which is the perception that the President was removing Sessions for some purpose other than his core constitutional authority to do so, meaning somehow trying to influence the investigation or somehow replace him with somebody else or the sort.

So I agree with Reince's instincts that this was not a smart thing or a wise thing to do and that he ought not do it.

Q Well, you specifically said just now it could have led to other legal issues, correct?

A I just said that, yes.

Q So there could potentially have been legal implications for removing the Attorney General.

A Sure. Just because the initial act is legal doesn't mean it couldn't cause other issues that raise legal problems. Happens all the time.

Q "McGahn told" -- I'm reading now from 95. "McGahn told Priebus not to follow the President's order and said they should consult their personal counsel, with whom they had attorney-client privilege."

Is that correct?

A That is correct.

Q And why did you feel it was important to consult your personal counsel?

A It's always good to have a lawyer you can talk to under privilege, to ask whatever questions you want to ask and get candid advice, somebody who's not part of the day-to-day fray. So it always made sense to me to not be too proud to say, let's check with somebody who's not in the mix. That's not exactly the words I used with Reince, but that's why I thought it was wise to talk to personal counsel.

And the other obvious reason is, given the fact that at this point it was well-established there was an investigation. I think at this point Mr. Mueller was stood up and on the job. It was not the sort of thing one would want to make decisions in this area on your own; you probably want to consult counsel. Which is what we did.

Q One potential reason would be to assess the other legal issues it could

potentially lead to, correct?

A Say again?

Q One potential reason to consult with your personal attorneys was to discuss the other legal issues the action could potentially lead to, correct?

A That's right. Sure. Yeah.

Q What did you plan to do if the President forced you or Priebus to remove Sessions?

A Well, we had to be ready for the possibility that we might want to -- we might have to resign.

Q Why was that worth resigning over?

A Why was that worth what?

Q Worth resigning over.

A I'm sorry. One more time?

Q Why would you resign rather than carry out the President's instruction to force Sessions to recuse?

A Well, this wasn't forcing Sessions to recuse. This was -- am I reading the right part? This is --

Q Sorry. To --

A -- trying to fire Sessions, right?

Q Yes.

A For similar reasons that I articulated in other contexts, which is the perception that this was being done in some relation to the investigation. And I thought that firing Sessions in this instance would lead to all sorts of other problems.

And I didn't really think it was something that the chief of staff ought to do. The President is the President. The Attorney General answers to the President. And it's not

the sort of thing a chief of staff necessarily has to get involved in.

If the President wants to ask for Sessions' resignation, he can do so. If he wants to fire Sessions, he can do so. But, you know, there could be consequences there. And that's why I think I was advising Reince not to do that.

Q On October 27th, 2017, a grand jury indicted Trump's former campaign manager, Paul Manafort, and former deputy campaign manager, Richard Gates, on multiple felony charges. Do you recall that?

A Not the date, but I recall, yeah, they were indicted. It made the news.

Q I'll direct you now to page 123 of the report, the first full paragraph.

A Which page? 123?

Q Sorry?

A What page?

Q 123.

A 123.

Q First full paragraph.

A Okay.

Q It says, "In January of 2018, Manafort told Gates that he had talked to the President's personal counsel and they were going to take care of us. Manafort told Gates it was stupid to plead, saying that he had been in touch with the President's personal counsel, and repeating that they should 'sit tight' and 'we'll be taken care of.'"

Were you aware of the President's counsel making those statements to Manafort or Gates?

A No.

Q Did you or anyone in your office, to your knowledge, ever have conversations with Manafort or Gates about their criminal cases?

A No.

Q Do you recall the President's reaction to those charges?

A Whose reaction?

Ms. Shapiro. This is kind of outside the scope, because he wasn't involved in this event.

Ms. Istel. Well, if you keep going, on page 123 -- and I'll read from the report -- it says, "As the proceedings against Manafort progressed in court, the President told Porter that he never liked Manafort and that Manafort did not know what he was doing on the campaign. The President discussed with aides whether and in what way Manafort might be cooperating with the special counsel's investigation and whether Manafort knew any information that would be harmful to the President."

And it cites to McGahn's 302s as a footnote. So it is within the scope.

Mr. McGahn. Where is this? Where's the footnote?

Mr. Burck. This is 123, page 123, footnote 852.

BY MS. ISTEEL:

Q I'll give you a minute to read.

A Okay. What was the question?

Q Do you recall the President discussing with you whether and in what way Manafort might be cooperating and whether he knew any information that would be harmful to the President?

A I don't really remember that. If you look at the footnote, it's not just me. It also cites to Porter's 302. That could be more of a discussion he had with Porter. I don't know that.

I may have recalled something at one time, which explains the citation to a 302, I guess, that was regarding me, but -- my testimony, rather. But I don't have a specific

recollection of discussing Manafort at this time. I'm not saying it didn't happen. I just don't -- I just don't remember this kind of discussion.

Q Do you recall any time in which the President asked you about Manafort and whether he might have any information harmful to the President?

A I don't remember him asking me that, no, and probing whether I knew anything that Manafort may say or anything of that sort.

Q What do you recall him asking about Manafort?

A Well --

Ms. Shapiro. As reflected in the report.

Mr. McGahn. Yeah, I don't think there's anything in the report that speaks to that, so -- if there is, you can point it out to me. Maybe I can see what I can say.

BY MS. ISTEEL:

Q Had you advised the President in your conversations with him not to comment publicly about ongoing criminal investigations?

A That sounds like something I probably would've advised. Is that in the report somewhere?

Q At various points after that -- and I'm now at the top of 123, or the bottom of 123 and the top of 124 --

A Okay.

Q -- the President made public statements criticizing the prosecution and suggesting Manafort was being treated unfairly. He made multiple comments about Manafort's prosecution.

Had you, at the time, discussed with the President whether it was appropriate to comment on Manafort's ongoing investigation?

Ms. Shapiro. And that's a conversation not reflected in the report. Are you

referring to the earlier statement?

Mr. McGahn. Yeah, I'm not following where I am in this section of the report. I don't see a reference to me. What am I missing?

BY MS. ISTEEL:

Q I'm referring to the earlier statement and if that refreshes your recollection as to whether you now remember that the President had asked you about Manafort.

A No. It still -- it doesn't refresh my recollection, no, if that's what you're asking.

Q Manafort pled guilty and was ultimately sentenced to 7.5 years in prison, but Trump pardoned him on December 23rd, 2020.

Did you ever advise the President on whether it was appropriate to pardon a witness who might have information harmful to him?

Mr. Burck. I think you can answer that --

Ms. Shapiro. -- a yes or no.

Mr. Burck. -- if it's a no. Right.

Mr. McGahn. Did I ever advise the President -- wait, because I don't hear your question. Is your question specific to Manafort or pardons generally? I'm not sure I understand the scope of the question.

BY MS. ISTEEL:

Q We had just gone through the part of the report citing to your 302 where the President asked aides if Manafort had information harmful to the President.

I'm asking you if you ever advised the President on whether it was appropriate to pardon a witness who might have information harmful to him.

A I don't recall ever having that discussion with the President, no.

Q What ultimately led to your resignation on October 17th, 2018?

A What ultimately led to what?

Q Your resignation on October 17th, 2018.

A It was time to leave.

Q Why?

A I had been on the job almost 2 years, and I think it was time to move on, and I decided I wanted to leave the White House. And I had contemplated that for a while, and I was sticking around to finish up the Brett Kavanaugh nomination that had recently completed. And once that was over, it was time to go home.

Mr. Hiller. Let's go off the record for a moment.

[Discussion off the record.]

Mr. Hiller. Let's go back on the record, please.

Thank you very much, Mr. McGahn. This concludes your transcribed interview with the House Judiciary Committee. Thank you.

Mr. McGahn. Thank you.

Mr. Hiller. We can go off.

[Whereupon, at 5:40 p.m., the interview was concluded.]