

**Written Questions for Former Acting Attorney General Sally Yates**  
**Submitted by Senator Patrick Leahy**  
**May 15, 2017**

Regarding the President's Muslim ban, Executive Order 13769, that was signed January 27, 2017, you indicated in a response to Senator Cruz that the White House had directed the Office of Legal Counsel not to inform you about the draft executive order.

**Q: When did you first learn of President Trump's Muslim Ban Executive Order?**

**Answer:** I learned of the Executive Order late in the afternoon of January 27, when my principal deputy called to alert me to media reports about it.

**Q: When did you learn that the White House had ordered OLC to keep you in the dark about this order?**

**Answer:** I learned information regarding this topic on January 30.

**Q: Was the White House's instruction to OLC, bypassing you, consistent with Justice Department policies limiting contact between the Department and the White House?**

**Answer:** OLC's authority to provide the President with legal advice is delegated by the Attorney General. I am not aware of another situation where OLC has been advised not to disclose to the Attorney General that it has been asked to review an Executive Order.

**Q: Did you relay your concerns about the order's constitutionality to the White House? What was their response? To whom did you relay those concerns?**

**Answer:** I expressed my concerns during an internal Department of Justice meeting that included Trump appointees on January 30, and later that afternoon, I told the White House Counsel of my concerns and my decision to instruct Department attorneys not to defend the Executive Order.

**Q: Did you have any conversations with the White House about the Executive Order or your refusal to defend it before the President replaced you?**

**Answer:** I had no direct conversations with the White House other than that indicated above before I received notice that I had been fired.

**Q: How were you first informed that President Trump had dismissed you?**

**Answer:** A letter was delivered from the White House to my office on January 30 several hours after I issued the instruction not to defend the Executive Order.

You warned the White House about Michael Flynn's vulnerability to Russian blackmail.<sup>1</sup> But it is not just Flynn who attempted to hide contacts with the Russians. For example, Attorney General Sessions misled this Committee about his contacts with the Russian ambassador. And the President's son-in-law and senior adviser also reportedly failed to disclose contacts on his security clearance forms.<sup>2</sup>

**Q: Do you have, or did you ever have, concerns about Attorney General Sessions, Jared Kushner, or other Trump officials' vulnerability to blackmail?**

**Answer:** These issues arose after my tenure with DOJ concluded.

Two days after you notified the White House that Michael Flynn was vulnerable to Russian blackmail, Flynn participated in an hour-long phone call between President Trump and Russian President Putin.

**Q: What was your reaction to learning about that call? Do you believe Flynn's participation in that call was consistent with our national security?**

**Answer:** I was not aware of such a call at that time. As I testified, I had significant concerns about the national security risks stemming from General Flynn's conduct and his representations to officials within the Administration, and I communicated those concerns to the White House.

Press accounts of your warning to White House Counsel Don McGahn have focused on the fact that Flynn lied to the Vice President and others about his December 29th phone calls to the Russian ambassador.

**Q: Were there any other factors that led you to warn the White House about Flynn?**

**Answer:** As I stated in my testimony, we also expressed concern to the White House regarding General Flynn's underlying conduct, which we viewed as independently problematic. General Flynn's misrepresentations about that conduct led to the additional concerns we conveyed, including the fact that the Vice President was being misled, the American people were being misled, and Russia could potentially use General Flynn's underlying conduct and misrepresentations to blackmail General Flynn during his service as the National Security Adviser.

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<sup>1</sup> [https://www.washingtonpost.com/world/national-security/justice-department-warned-white-house-that-flynn-could-be-vulnerable-to-russian-blackmail-officials-say/2017/02/13/fc5dab88-f228-11e6-8d72-263470bf0401\\_story.html](https://www.washingtonpost.com/world/national-security/justice-department-warned-white-house-that-flynn-could-be-vulnerable-to-russian-blackmail-officials-say/2017/02/13/fc5dab88-f228-11e6-8d72-263470bf0401_story.html)

<sup>2</sup> <https://www.nytimes.com/2017/04/06/us/politics/jared-kushner-russians-security-clearance.html>

Over the course of your 27 years in public service, you presumably became familiar with the Justice Department's rules governing conflicts of interest and recusal.

**Q: Do Justice Department rules allow for any kind of partial recusal?**

Answer: While I am generally familiar with the rules governing conflicts of interest and recusal, the Department of Justice is the appropriate entity to address the content and application of those rules.

**Q: If a Justice Department official is recused from a matter, in what ways are they nonetheless permitted to involve themselves in that matter?**

Answer: In my experience, the scope of a particular recusal depends on the facts of the specific matter at issue, and as noted above, the Department of Justice is the appropriate entity to address the content and application of the rules governing conflicts of interest and recusal.

**Q: If a Justice Department official is recused from a matter, are they permitted to be involved in personnel decisions for that matter? Are they permitted to assign attorneys to or away from that matter? Are they permitted to fire or hire personnel for whom that matter is a critical part of their job?**

Answer: The answer would likely depend on the specific facts of a given case. The overarching purpose of a recusal is to avoid an actual conflict of interest or the appearance, from the perspective of a reasonable person, that an official cannot perform his or her duties impartially. The Department of Justice is the appropriate entity to provide additional information on the content and application of the applicable rules.

You explained last week that you warned White House Counsel Don McGahn in person about Michael Flynn's vulnerability to blackmail on two occasions, once on January 26th, and again on the 27th. Per your testimony, on at least one of those occasions, McGahn asked you whether taking action against Flynn would jeopardize any investigations, and you stated that it would not, because the FBI had interviewed Flynn on January 24th. In the days since you appeared before this Committee, we have learned that on January 27th, President Trump dined with then-FBI Director Comey, at President Trump's request.<sup>3</sup>

**Q: Given the FBI's role in investigating Michael Flynn, does the timing of that dinner raise any concerns?**

Answer: It is my understanding from public reports that this is among the issues being investigated by the Special Counsel.

**Q: Do you believe it is appropriate for the President to ask for the FBI Director, the Attorney General, or any other law enforcement official's "loyalty" – particularly when members of his administration are potentially the subject of an investigation?**

**Answer:** No. The loyalty of all officials within the Justice Department should be to the laws, Constitution, and people of the United States, not to any particular individual or administration.

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<sup>3</sup> <https://www.nytimes.com/2017/05/11/us/politics/trump-comey-firing.html>

**Questions for the Record from Senator Charles E. Grassley  
for the Honorable Sally Q. Yates  
U.S. Senate Committee on the Judiciary  
Subcommittee on Crime and Terrorism  
Hearing on “Russian Interference in the 2016 United States Election”  
Submitted on May 15, 2017**

**Investigations of Classified Leaks**

Since January 2017, news outlets have reported information leaked to them by senior government officials about the FBI’s investigation into the Russian government’s efforts to interfere with the 2016 presidential election.<sup>1</sup> At the hearing, you stated that you did not know whether any government agencies had referred leaks of classified information to the Department of Justice for criminal investigation. You also stated that you have not been interviewed by the FBI in relation to an investigation into classified leaks.

1. Does it remain accurate that you have not been interviewed by the FBI about leaks of classified information related to investigations into Russia’s interference in the 2016 presidential election?

**Answer:** Yes.

**Unmasking the Identities of U.S. Persons**

You stated that to your knowledge, there has not been any declassification of information relating to President Donald Trump or his associates, yet a lot of apparently classified information has been reported in the press, citing government sources. You also stated that you have never been an anonymous source in a news report relating to President Trump, his associates, or Russia’s attempt to interfere in the 2016 presidential election. Finally, you stated that you have never authorized another government official to be an anonymous source about President Trump or his associates.

The records maintained by the government agency that reportedly recorded the phone calls between Retired Lt. General Michael Flynn and Russian Ambassador Sergey Kislyak should provide an accurate record of who within the government had access to the classified documents in which Flynn’s identity was unmasked.

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<sup>1</sup> E.g., David Ignatius, *Why Did Obama Dawdle on Russia’s Hacking*, Wash. Post (last updated January 13, 2017); Greg Miller et al., *National Security Advisor Flynn Discussed Sanctions with Russian Ambassador, Despite Denials, Officials Say*, Wash. Post (Feb. 9, 2017); Michael S. Schmidt et al., *Intercepted Russian Communications Part of Inquiry into Trump Associates*, N.Y. Times (Jan. 19, 2017); Michael Schmidt et al., *Trump Campaign Aides Had Repeated Contacts with Russian Intelligence*, N.Y. Times (Feb. 14, 2017).

- Please describe the process for an intelligence consumer to submit an unmasking request and for the collecting agency to make a determination on such a request.

**Answer:** I have never submitted a request to learn the name of a U.S. person whose identity was not disclosed in an intelligence report.

In general, my understanding is that an intelligence consumer, when reviewing redacted foreign intelligence, may determine that the redacted identity of a U.S. person is necessary to fully understand the intelligence. Such a consumer would then submit a request to learn a specific identity to the agency that collected the information, and the collecting agency would process and record the request.

Intelligence reports sometimes were presented to me and other senior Department of Justice leaders with the names of U.S. persons already included (i.e., unredacted). In those circumstances, an intelligence analyst or consumer had presumably assessed that the name of an identified U.S. person was necessary to understand the import of the foreign intelligence.

- Please describe any limits on disclosing or sharing information that may accompany a document containing unmasked identities of U.S. persons.

**Answer:** Intelligence is generally disseminated within the Department of Justice and among components of the intelligence community to individuals with appropriate security clearances on a need-to-know basis. Classified information of any kind may not be disclosed to the public, regardless of whether or not it contains the identity of a U.S. person.

- After testifying in response to my questions that you had never been an anonymous source for news reports about President Trump, his associates, or Russia's attempt to interfere in the 2016 presidential election, you later testified that you *had* spoken to reporters "on background" about "a particular issue to educate them."

- How do you reconcile your testimony denying having served as an anonymous source and your admission to having spoken to reporters on background?

**Answer:** My testimony on this point referred to the practice of the Department of Justice in general, and was not related to the specific subject matter of the hearing. At times throughout my career, the Department of Justice would occasionally arrange for Department of Justice officials, including me, to educate reporters as to background information about issues being covered by the media. Such meetings were typically arranged by representatives of the Department's Office of Public Affairs. As I testified, I have not served as an anonymous source for any report related to President Trump, his associates, or Russia's interference in the 2016 election.

- Did you speak to reporters on background about matters related to President Trump, his associates, Russia's attempt to interfere in the 2016 presidential election, or the FBI's investigation of Secretary of State Hillary Clinton's use of a private email server?

Answer: No.

- You stated that you have reviewed classified documents in which President Trump, his associates, or members of Congress had been unmasked. Please provide further information, including the following:
  - a. The titles of all such documents, document numbers, or other document- identifying information;
  - b. The intelligence consumer who requested the unmasking, if not you;
  - c. The identity or identities of the individual or individuals who were unmasked;
  - d. The date(s) on which you reviewed these documents;
  - e. The collecting agency that approved the unmasking request; and
  - f. Any other government officials who reviewed the documents.

Answer: As a former official, I no longer have access to classified information or information in the possession of the Department of Justice, so I cannot provide these details. I respectfully direct you to the Department of Justice for inquiries related to this information.

- You stated that you may have shared or discussed information about classified documents containing unmasked references to President Trump, his associates, or members of Congress. Please explain with whom you shared or discussed this information, and what information you shared or discussed.

Answer: If any such conversations occurred, they would have been in furtherance of my responsibilities as Deputy Attorney General and only with those who had the appropriate security clearance and need to know.

To the extent that any of these questions call for classified information, please contact Committee staff to make arrangements to receive the written answers in a secure manner and to schedule a follow-up briefing after you submit your answers.

**Hearing before the Senate Committee on the Judiciary,  
Subcommittee on Crime and Terrorism  
“Russian Interference in the 2016 United States Election”  
Questions for the Record Submitted by Senator Al Franken**

**Questions for Sally Yates:**

**Question 1.** It has been reported that Russian Ambassador Sergey Kislyak and General Flynn were in contact during the presidential campaign. After the election, the Russian ambassador was invited to Trump Tower to meet with General Flynn and Jared Kushner, the president’s son-in-law. The Trump administration said that the purpose of the meeting was to “establish a line of communication” between the new administration and the Russian government. According to reports, Flynn called Kislyak on the phone on December 19, Flynn texted Kislyak on December 25, and Flynn and Kislyak again spoke by phone on December 28, allegedly to discuss an upcoming call between President Trump and Putin. The next day—December 29—President Obama announced that he would sanction Russia for interfering in the election. And on that same day, Flynn and Kislyak spoke several times.

- Can you confirm whether General Flynn was in contact with Ambassador Kislyak or other Russian officials or operatives during the campaign? If so, please provide a list of individuals Flynn communicated with and the dates on which the conversations occurred.

**Answer:** I cannot answer this question because it would tend to reveal classified information. As I noted during my hearing testimony, no inference in any direction should be drawn from my inability to answer.

- Are the communications between Flynn and Kislyak on December 19, December 25, December 28, and December 29 the only known communications between Flynn and Russian officials or operatives after the election? If not, please provide a list of individuals Flynn communicated with and the dates on which the conversations occurred.

**Answer:** I cannot answer this question because it would tend to reveal classified information. As I noted during my hearing testimony, no inference in any direction should be drawn from my inability to answer.

- Can you tell us anything about what Flynn and the Russian ambassador reportedly talked about during the campaign? Can you tell us anything about what Flynn and Kislyak discussed following the election?

**Answer:** I cannot answer this question because it would tend to reveal classified information.



Is it true that Flynn and Kislyak spoke several times on December 29—the same day that President Obama announced sanctions on Russia for interfering in the election?

**Answer:** I cannot answer this question because it would tend to reveal classified information.

**Question 2.** It was reported that Obama administration officials learned about General Flynn’s communications with Kislyak on January 2. Our intelligence agencies picked up Flynn’s calls and texts because they were monitoring Kislyak, just as we routinely monitor the communications of other foreign agents. Over the course of the next few weeks, it was publicly reported that Flynn and Kislyak had been in touch. Vice President-elect Pence and Reince Priebus went on TV and said that Flynn and the ambassador had not discussed the sanctions. But that turned out to be false. It was reported that Ms. Yates grew concerned that Flynn had misled the Vice President-elect, and that Mr. Clapper and former CIA director John Brennan shared those concerns. Ms. Yates eventually decided to brief the White House counsel, Don McGahn. And reportedly she and another senior national security official told Mr. McGahn that Flynn had not been honest about his communication and that he was vulnerable to blackmail.

- Ms. Yates, who accompanied you to brief Don McGahn about your concerns that General Flynn had lied about discussing sanctions with the Russian ambassador and was vulnerable to blackmail?

**Answer:** Without confirming or denying the factual predicate of the question, I can state that when I met with Mr. McGahn on January 26 and 27, I was accompanied by the then Acting Assistant Attorney General for the National Security Division.

- Was Flynn vulnerable to blackmail simply because he had lied to the Vice President and senior White House officials about whether he discussed sanctions, or did the content of his communications with Kislyak otherwise render him vulnerable to blackmail?

**Answer:** I cannot confirm or deny the factual predicate of the question without tending to reveal classified information. As I stated in my hearing testimony, we believed that General Flynn was vulnerable to blackmail both because of his underlying conduct and because the Russians were aware that he had misled the Vice President, who had in turn misled the American people, and the Russians likely had proof of these facts.

**Question 3.** On January 26, Ms. Yates informed the White House that General Flynn had essentially lied about his communications with the Russian ambassador and that he could be compromised as a result, potentially even vulnerable to blackmail. And yet, the White House kept General Flynn on the job for another 18 days after Ms. Yates' warning. It seems to me that if the White House learned that the president's national security adviser lied about his conversation with a Russian operative and that he could be blackmailed because of it, that the White House should have fired him for it immediately. But that's not what the White House did.

- Why do you think the White House did not fire General Flynn immediately after your warning?

**Answer:** Because I am no longer employed by the Department of Justice, I have access only to publicly reported information about actions taken by the White House after January 30. I can't speculate as to why the White House delayed in taking action or why it took action when it did.

**Question 4.** Ms. Yates first informed the White House of her concerns about General Flynn on January 26. And yet, General Flynn remained on the job—with access to highly sensitive information—for another 18 days. Recently, it was reported that senior members of the transition team actually warned General Flynn about his contacts with the Russian ambassador. According to the report, some on Trump's team questioned the ambassador's motives and they cautioned General Flynn that Kislyak was under surveillance. These officials—Marshall Billingslea, Samantha Ravich, and Christopher Ford—were reportedly so concerned about Kislyak that they asked the Obama administration for the classified CIA profile on the ambassador—but it's not clear that Flynn ever bothered to read it. This suggests that at least some members of Trump's team may have shared Ms. Yates' concerns about General Flynn.

- Were you or other members of the Obama administration aware of the Trump transition team's concerns?

**Answer:** I was not aware of any such concerns.

It was reported that during November, members of then-President-elect Trump's national security "landing team" met with aides and staff members from relevant departments. At that meeting, Flynn reportedly mentioned that he was receiving a large number of meeting requests from diplomats, but that he had already scheduled a conversation with Kislyak, surprising the above-mentioned officials.

- According to reports, Flynn and Jared Kushner met with Kislyak in December at Trump Tower. Was this December meeting the same conversation that Flynn mentioned during the November meeting of then-President-elect Trump's national security "landing team?"

**Answer:** It would be inappropriate for me to speculate in response to this question on the basis of media reports.

**Question 5.** After General Flynn was fired, President Trump continued to praise him. On February 15, two days after General Flynn was fired, President Trump said, “General Flynn is a wonderful man. I think he has been treated very, very unfairly by the media, as I call it, the fake media in many cases. And I think it is really a sad thing that he was treated so badly.” On February 16, President Trump said, “Mike Flynn is a fine person,” he said. “What he did wasn’t wrong, what he did in terms of the information he saw. What was wrong was the way that other people, including [the media] were given that information, because that was classified information...that’s the problem.” And then on March 31, in response to reports that General Flynn would be willing to testify before Congress in exchange for immunity from prosecution, the president tweeted, “Mike Flynn should ask for immunity in that this is a witch hunt (excuse for big election loss), by media & Dems, of historic proportion!”

- Why do you believe President Trump continued to praise and defend General Flynn, even after he was fired?

**Answer:** I can’t speak to the President’s thought process.

- Do you believe that the president already knew about Flynn’s conversations at the time that Flynn lied to Vice President Pence?

**Answer:** I can’t speak to the President’s knowledge of this matter.

- Do you believe that President Trump knows whether General Flynn discussed sanctions with Kislyak?

**Answer:** I can’t speak to the President’s knowledge of General Flynn’s actions.

- Do you believe that President Trump ordered General Flynn to discuss sanctions with Kislyak?

**Answer:** I can’t speak to the interaction between the President and General Flynn.

**Question 6.** Do you have reason to believe that President Trump had knowledge of what General Flynn discussed with Kislyak, even while General Flynn was misrepresenting the content of those conversations to Vice President Pence?

**Answer:** I can’t speak to the President’s knowledge of General Flynn’s actions.

**Question 7.** Do you have reason to believe that associates of President Trump or the Trump organization, or former members of the Trump campaign or transition team, had knowledge of what General Flynn discussed with Kislyak?

**Answer:** I can’t speak to what the President or his associates knew.

**Question 8.** It was reported that President Obama personally warned then President-elect Trump against hiring General Flynn during their private meeting in the Oval Office on November 10, two days after the election.

- Do you know why President Obama felt compelled to warn the President-elect against hiring General Flynn as his national security adviser?

**Answer:** I have only read press accounts stating that this meeting occurred.

**Question 9.** On January 26, Ms. Yates and another national security official informed the White House that General Flynn had essentially lied about his communications with the Russian ambassador and that he could be compromised as a result. And yet, the White House did not suspend General Flynn's security clearance. In fact, the White House kept General Flynn on the job for 18 days after Ms. Yates warned them about General Flynn. During those 18 days, General Flynn enjoyed continued access to our nation's most highly classified secrets. On January 28, two days after Ms. Yates notified the White House, General Flynn joined President Trump in the Oval Office during an hour-long phone call with Vladimir Putin. On February 2, Flynn announced new sanctions on Iran's ballistic missile program. On February 11, Flynn joined President Trump and Japanese Prime Minister Abe at Mar-a-Lago where they discussed how to respond to a North Korean missile test. All of this happened after Ms. Yates warned the White House that General Flynn was compromised.

There are policies in place to deal with situations like this. Executive Order 12968 outlines the rules for security clearances. It says that when there is a credible allegation that raises concern about someone's fitness to access classified information, that person's clearance should be suspended, pending an investigation. The Executive Order also states that clearance holders must always demonstrate "trustworthiness, honesty, reliability, discretion, and sound judgement, as well as freedom from allegiances and potential for coercion."

- Thinking back to what you knew about General Flynn at the time you notified the White House on January 26, could he have demonstrated "freedom from allegiances and potential for coercion?"

**Answer:** As I testified, one of my reasons for seeking a meeting with the White House Counsel was our concern about General Flynn's vulnerability to blackmail by Russia.

- Why didn't the White House suspend General Flynn's clearance as soon as you notified them that something was not right?

**Answer:** I can't speak to the decision-making by the White House.

- Do you know how many Presidential Daily Briefs or other classified meetings General Flynn was allowed to attend after you warned the White House about him?

**Answer:** No.

**Question 10.** General Flynn served in the Obama administration—his last post under President Obama was as the director of the Defense Intelligence Agency. He was reportedly forced out of that job in 2014 for his “chaotic” and “toxic” management style. But aside from General Flynn’s suspicious contacts with the Russian ambassador, the reason we’re all talking about his security clearance is that he failed to disclose tens of thousands of dollars he received from entities linked to Russia and other foreign governments. When Flynn renewed his clearance in January 2016, he left those payments off the forms. My understanding is that when the FBI does a background investigation as a part of the security clearance process, the Bureau does not sift through applicants’ financial transactions. The FBI does a credit check and interviews applicants’ personal contacts, but the FBI relies on self-reporting for much of the financial information. According to a former FBI counterterrorism specialist, when it comes to presidential appointments, the FBI reports facts up the chain to the White House, but the vetting decisions are ultimately left to White House staff.

- Why didn’t the FBI screeners catch General Flynn’s omission?

Answer: I cannot answer this question because I was not involved in that screening process.

**"Russian Interference in the 2016 United States Election"**

**Sally Q. Yates**

**Questions for the Record**

**Submitted May 15, 2017**

**QUESTIONS FROM SENATOR FEINSTEIN**

**Handling of the Russia Investigation**

1. You served as the Deputy Attorney General starting in May 2015 and were asked by President Trump to remain as the Acting Attorney General at the start of his administration and until his nominee, Attorney General Sessions, could be confirmed.

- a. **When did you first learn of cyberattacks on the computer systems of both political parties?**

**Answer:** Department of Justice records, including records of the FBI, should reflect when the intelligence community first learned of this activity and when Department of Justice officials were notified.

- b. **What was the Justice Department's involvement at that point in time? What was your role?**

**Answer:** The National Security Division of the Department of Justice had day-to-day responsibility for working with the FBI on this matter. As Deputy Attorney General, I interacted with the National Security Division and FBI on various aspects of the investigation.

- c. **As the Deputy Attorney General, were you getting updates on the investigations – if so, did you think the FBI responded with sufficient urgency to reports of foreign cyberattacks? What resources were devoted to this response?**

**Answer:** The Department of Justice took these issues very seriously. The National Security Division was the primary point of contact on this issue, and they ensured that they had the appropriate resources devoted to this matter. As I previously stated, I was updated by the National Security Division and the FBI.

- d. **When were you first aware of concerns that there might be connections to the Trump campaign?**

**Answer:** An answer to this question would require me to review classified documents maintained by the Department of Justice.

- e. **Before you left the Department, did you brief whoever would be taking over your role on the investigation? If so, who was that?**

**Answer:** Due to the abrupt nature of my termination, I did not have the ability to brief my successor on any matters.

**Lt. General Flynn:**

2. On January 26, 2017, you went to the White House to tell White House Counsel Don McGahn your concerns about Lt. General Flynn. Testifying at the hearing about your first discussion with Mr. McGahn, you said “the first thing we did was to explain to Mr. McGahn that the underlying conduct that General Flynn had engaged in was problematic in and of itself.”

- a. **Without revealing classified or law enforcement sensitive information, what more can you tell us about the underlying conduct (separate from the determination that Lt. General Flynn had lied to the Vice President and others) that the Justice Department found problematic?**

**Answer:** As I stated at the hearing, General Flynn’s underlying conduct implicated a criminal statute, but I cannot identify that statute without risking the disclosure of classified information.

- b. **Did the Justice Department conclude that the underlying conduct (separate from the determination that Lt. General Flynn had lied to the vice president and others) compromised Lt. General Flynn with the Russians? If so, did you convey that to Mr. McGahn? What was his response to the Department’s concern about the underlying conduct?**

**Answer:** As I stated at the hearing, our concern that General Flynn was compromised stemmed both from his underlying conduct and from the fact that he had lied to the Vice President and others, who in turn misled the American people. We advised Mr. McGahn of these facts, and the fact that Russia likely had proof of General Flynn’s underlying conduct and the falsity of his representations to the Vice President and others.

Mr. McGahn’s response to our concerns about the underlying conduct was to ask in the second meeting about the applicability of certain criminal statutes and whether it was realistic that the Department of Justice would prosecute the case. He also asked whether action by the White House would interfere with an FBI investigation into the conduct and whether he could review the underlying evidence of the conduct.

- c. **Did Mr. McGahn express any concern about Lt. General Flynn’s continued access to classified information? Did the White House ask the Justice Department for its advice with regard to Lt. General Flynn’s continued access to classified information?**

Answer: Mr. McGahn did not specifically express concern about General Flynn’s continued access to classified information.

3. Executive Order 12968 provides that employees who hold a security clearance may be subject to investigation at any time to determine if they continue to meet the requirements for access to classified information. In particular, Section 3.1(6) states: “eligibility for access to classified information shall be granted only to employees . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information.” That section also makes clear that “Eligibility shall be granted only where facts and circumstances indicate access to classified information is clearly consistent with the national security interests of the United States, *and any doubt shall be resolved in favor of the national security.*”

- a. **As of January 26 – when you had conveyed the Department’s concerns and pending any additional investigation that the White House deemed necessary-- was there any legal reason why the White House would have to wait before restricting Lt. General Flynn’s access to classified information?**

Answer: I am not aware of any such legal reason. As I testified, we conveyed to Mr. McGahn that we had brought the information to the White House specifically so that the White House could take action. We also stated explicitly that action by the White House would not interfere with the FBI’s investigation.

- b. **Did the White House have the authority to restrict Lt. General Flynn’s access to information as of January 26, 2017, when you had conveyed the Department’s concern that Lt. General Flynn was compromised by the Russians?**

Answer: I believe the White House did possess such authority.



4. Lt. General Flynn remained on as National Security Advisor for nearly three weeks (until February 13, 2017) after your first discussion with Mr. McGahn. During that time, Lt. General Flynn staffed the President during talks with Russian President Vladimir Putin. (Reuters, Trump talk to Putin, other world leaders about security threats, January 28, 2017). Lt. General Flynn was also present during meetings with Japanese President Shinzo Abe at the President's Florida resort where, among other things, he helped staff the President's response to North Korea's February 11, 2017 launch of an intermediate-range ballistic missile. (CNN, At Mar-a-Lago, Trump tackles crisis diplomacy at close range, February 13, 2017)

**a. What steps would you have taken, in light of the information that you had learned as of January 26, 2017, if Lt. General Flynn were a Justice Department employee?**

**Answer:** If General Flynn had been a Department of Justice employee, I would have immediately suspended his involvement in sensitive matters and initiated termination procedures.

**b. Would you have granted Lt. General Flynn continued access to classified information pending any additional investigation? (If not, why not? If so, why would you have permitted this given the Department's view that Lt. General Flynn had been compromised?)**

**Answer:** If General Flynn had been a Department of Justice employee, I would not have granted him continued access to classified information because I believed that he was vulnerable to blackmail by a foreign adversary.

**c. Would you have granted Lt. General Flynn access to meetings with other world leaders? (If not, why not? If so, why would you have permitted this given the Department's view that Lt. General Flynn had been compromised?)**

**Answer:** If General Flynn had been a Department of Justice employee, I would not have permitted him to continue participating in sensitive meetings because I believed that he was vulnerable to blackmail by a foreign adversary.

**Senator Mazie K. Hirono**

*Questions for the Record following hearing on May 8, 2017 entitled:  
“Russian Interference in the 2016 United States Election”*

**The Honorable Sally O. Yates**

1) President Trump fired FBI Director James Comey on May 9, supposedly based on a memo about Director Comey’s leadership that was prepared by Deputy Attorney General Rod Rosenstein and agreed to by Attorney General Jeff Sessions. However, it was soon reported that he had made the decision earlier but was waiting for the memo in order to justify the firing. The President also stated that he had repeatedly asked Director Comey if he was being investigated, and it was reported that he pressed Director Comey to pledge personal loyalty to him.

- a. When you served as Acting Attorney General, did President Trump ever ask you for an assurance of personal loyalty? Did you give, or would you have given, such an assurance? Did he ever ask you, or are you aware of him ever asking anyone else, for an assurance that he was not under investigation? Did you give, or would you have given, such an assurance? Would either of these assurances have been consistent with Department of Justice protocol?

**Answer:** No, I did not have any conversations with President Trump during my tenure as Acting Attorney General or Deputy Attorney General.

I believe it would be inappropriate for the President to seek such an assurance of loyalty. The loyalty of all employees of the Department of Justice should be to the laws, Constitution, and people of the United States, not to any particular individual or administration.

- b. Did the President ever ask for your opinion or for information on Director Comey’s performance, leadership, or reputation within the FBI, particularly in relation to his handling of the Clinton email investigation, or give any other indication that he was considering whether to fire him that early in his presidency?

**Answer:** No. As indicated above, I did not have any conversations with President Trump during my tenure as Acting Attorney General or Deputy Attorney General.

- c. During your tenure, was the investigation into the Trump campaign's connections to Russia given sufficient resources? Did the FBI request any additional resources? Was there any indication that the resource level would be subject to political pressure?

**Answer:** I was never advised of any concerns about sufficient resources for this investigation.

- d. Do you have confidence in the DOJ's ability to oversee the investigation into the Trump campaign's connections to Russia, and for that investigation to be conducted independent of political influence? Do you continue to have confidence in Deputy Attorney General Rosenstein?

**Answer:** I have complete confidence in the men and women of the Department of Justice. As I have previously stated, my confidence in Attorney General Rosenstein is borne of my experience with him when I served as a United States Attorney and Deputy Attorney General, and I believe that his appointment of Special Counsel Mueller is a positive step toward ensuring that the essential independence of the Department is maintained.

- e. Could you explain what it means for a Justice Department official to recuse his or herself from an investigation? Did Attorney General Sessions meet this requirement when he involved himself in the decision to fire Director Comey, who was overseeing the investigation from which he promised to recuse himself?

**Answer:** A Department of Justice official may decline to participate, or may be barred from participating, in certain matters in which they have a financial or personal interest, or in circumstances that would cause a reasonable person to become concerned that the official could not perform their duties with impartiality. The scope of a recused individual's duties, including whether it extends to hiring or firing decisions, is partially dependent on the specific circumstances of a case. While I am generally familiar with the rules governing conflicts of interest and recusal, the Department of Justice is the appropriate entity to address the content and application of those rules.

As a former Department of Justice official, I do not have access to all of the facts or deliberations relating to this particular matter, so I am not in a position to assess Attorney General Sessions' recusal and the appropriate scope of his duties.

- f. Could you walk us through the process the DOJ or FBI would take to secure and preserve any records or evidence relating to an ongoing investigation when someone involved is fired?

**Answer:** The Department of Justice and FBI are the appropriate entities to explain their respective recordkeeping practices. In my experience, the Department and the FBI maintained detailed record retention procedures and took care to ensure that documents and evidence relating to ongoing matters were preserved.

- g. Do you believe that the firing of Director Comey was an attempt to impede the investigation into his campaign's connections to Russia? Whether you do or not, do you believe that the DOJ should appoint a special counsel to investigate?

**Answer:** I cannot speak to the President's motivations concerning his decision to fire Director Comey, though I do believe that the timing and circumstances surrounding that decision raise very serious questions. On May 17, 2017, Deputy Attorney General Rosenstein appointed Robert S. Mueller III to serve as Special Counsel to oversee the previously-confirmed FBI investigation of Russian government efforts to influence the 2016 presidential election and related matters.