

Parsing the White House Response to Comey's Testimony

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The most extraordinary thing to come out of the hearing the Senate Select Committee on Intelligence held Thursday may not be former FBI Director James Comey's testimony, but the [baffling, typo-riddled response](#) to that testimony issued by Donald Trump's personal attorney Marc Kasowitz.

Perhaps the most irresponsible aspect of Kasowitz's press release was the suggestion that Comey might have violated the law by relaying his account of unclassified conversations with Trump to the press, via a friend. As a veritable [chorus of legal scholars](#), including [our own Steve Vladeck](#), have already observed, this is [arrant nonsense](#). Indeed, it is so clearly false that it's hard to see how a minimally competent attorney could have made it in good faith—though it will doubtless make perfectly serviceable chum for the cable news shows.

This only scratches the surface, however. The whole document is so remarkable for both its sloppiness and disingenuousness that it's worth going through paragraph by paragraph.

“Contrary to numerous false press accounts leading up to today's hearing, Mr. Comey has now finally confirmed publicly what he repeatedly told the President privately: The President was not under investigation as part of any probe into Russian interference. He also admitted that there is no evidence that a single vote changed as a result of any Russian interference.”

This is a master class in claiming vindication by denying claims that haven't been made. I don't know what “numerous false press reports” Kasowitz is alluding to here, since he conveniently declines to name any offenders, but I can't recall any reputable news outlets reporting that Trump was personally the named target of a counterintelligence investigation. Nor, despite the president's evident obsession with the topic, is this all that significant for reasons Comey alluded to in his testimony: An investigation into potential coordination between the Trump *campaign* and the Russian government—which, of course, is underway—would naturally implicate the candidate even if the direct links between Russia and the campaign involved staffers lower down the totem pole. It was for precisely this reason, Comey testified, that one of the FBI officials with whom he consulted advised against assuring Trump that “he” was not under investigation. Moreover, Comey's reassurances to Trump on this score appear to have been

primarily about affirming that the FBI was not following up on salacious claims repeated in the press concerning a supposed tape of sexual escapades in Moscow. Similarly, nobody outside the fever swamps has argued that Russian interference involved literally altering vote tallies, though it does appear to have at least [laid the groundwork](#) for such an effort in future elections.

“Mr. Comey’s testimony also makes clear that the President never sought to impede the investigation into attempted Russian interference in the 2016 election, and in fact, according to Mr. Comey, the President told Mr. Comey “it would be good to find out” in that investigation if there were “some ‘satellite’ associates of his who did something wrong.” And he did not exclude anyone from that statement.”

That’s a charitable read of Trump’s reported comment. But the last sentence here hints at an awareness of, and an effort to preempt, a less charitable read: That Trump was signaling his willingness to pin the blame for any misconduct on people at the periphery of the campaign——Carter Page, say——if it became necessary to do so. Kasowitz takes pains to point out that Trump’s remark “did not exclude anyone,” but it is hard to imagine someone as central to the campaign as former National Security Advisor Mike Flynn qualifying as a “satellite.”

“Consistent with that statement, the President never, in form or substance, directed or suggested that Mr. Comey stop investigating anyone, including suggesting that that Mr. Comey “let Flynn go.” As he publicly stated the next day, he did say to Mr. Comey, “General Flynn is a good guy, he has been through a lot” and also “asked how is General Flynn is doing.” Admiral Rogers testified that the President never “directed [him] to do anything . . . illegal, immoral, unethical or inappropriate” and never “pressured [him] to do so.” Director Coates said the same thing. The President likewise never pressured Mr. Comey.”

This is remarkable because, even as most of Trump’s defenders take for granted that Comey’s account is accurate while seeking to excuse Trump’s conduct on the basis of naïveté or inexperience, the White House is doubling down on the claim that the former FBI director simply lied under oath. Consider, then, what we are being asked to believe here. We are supposed to believe that Trump sent everyone but Comey out of the room simply to convey the sentiment that Mike Flynn is a “good guy.” Comey then——in February, with no indication that his job was in peril——immediately fabricated a request that he “let [Flynn] go,” which he committed to writing and shared with other senior FBI officials, in a display of prescient strategic planning worthy of Batman.

Then we come to the selective account of Coates’ and Rogers’ testimony. Both did indeed deny that they had been “directed” or felt “pressured” to wind down the Russia probe. Both also, however, conspicuously refused, repeatedly, to say whether they had been “asked” to do so. As several senators pointed out, their legal basis for this refusal was somewhat fuzzy, as they did not explicitly invoke executive privilege. Nor is it clear why they felt it was off-limits to speak to what they had been “asked” to do, but at liberty to deny an explicit “direction.” A cynic might suspect that the reason is that the answer would have been different.

“The President also never told Mr. Comey, “I need loyalty, I expect loyalty” in form or substance. Of course, the Office of the President is entitled to expect loyalty from those who are

serving in an administration, and, from before this President took office to this day, it is overwhelmingly clear that there have been and continue to be those in government who are actively attempting to undermine this administration with selective and illegal leaks of classified information and privileged communications. Mr. Comey has now admitted that he is one of these leakers.”

Here, again, if we are to believe the White House, we must ascribe to Comey the Batmanesque foresight of falsely memorializing a request in January, when he was being asked to stay on as FBI director, presumably as a hedge against his future dismissal. The White House then attempts to conflate Comey’s recollection of an unclassified private conversation with the illegal leaking of classified information. While such a leak, if that’s the proper term, might well be grounds for termination of a government employee, that ship has sailed. I’ll skip over the next two paragraphs, since others have dealt thoroughly with the absurdity of the claim that Comey’s actions here violated the law or some binding executive privilege.

“Although Mr. Comey testified he only leaked the memos in response to a tweet, the public record reveals that the *New York Times* was quoting from these memos the day before the referenced tweet, which belies Mr. Comey’s excuse for this unauthorized disclosure of privileged information and appears to entirely retaliatory. We will leave it the appropriate authorities to determine whether this leaks should be investigated along with all those others being investigated.”

The first sentence here is presumably a reference to a [May 11 story](#) in the *New York Times* alluding to the dinner at which Trump allegedly demanded Comey’s loyalty. But that story makes no reference to “memos,” which are first described in a [story by the same reporter](#) that ran on May 18, after Trump’s tweet, and concerns a purported conversation that took place before Trump’s inauguration, rendering it mysterious how its contents could in any sense be considered “privileged,” except perhaps by the rules of etiquette. It does seem likely the earlier story was also planted by an associate acting with Comey’s approval, but that’s perfectly consistent with Comey’s account of his subsequent decision to make it known that he had written memoranda memorializing several of their conversations.

The final sentence is consistent with Trump’s lifelong penchant for threatening (and, less often, actually bringing) frivolous litigation as a means of harassing his public critics.

On the whole, this document seems like a good illustration of why so many respectable law firms have [declined to represent Trump](#), and of the sort of work product you get when forced to make do with the leftovers who lack such qualms.

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