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National Security

Trump administration sought to block Sally Yates from testifying to Congress on Russia

Trump administration tried to block Sally Yates's congressional testimony

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The Trump administration sought to stop former acting attorney general Sally Yates from testifying before the House Intelligence Committee about links between the Trump campaign and Russian officials. (Video: Jenny Starrs/Photo: Jabin Botsford/The Washington Post)

By Devlin Barrett and Adam Entous March 28 at 7:28 PM

The Trump administration sought to block former acting attorney general Sally Yates from testifying in the House investigation of possible links between Russian officials and Donald Trump’s campaign, according to letters provided to The Washington Post. The effort to keep Yates from testifying has further angered Democrats, who have accused Republicans of trying to damage the inquiry.

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According to the letters, the Justice Department notified Yates earlier this month that the administration considers her possible testimony — including on the ouster of former national security adviser Michael Flynn for his contacts with the Russian ambassador — to be off-limits in a congressional hearing because the topics are covered by attorney-client privilege or the presidential communication privilege.

[\[Read the letters on Sally Yates testifying before Congress\]](#)

The issue of Yates’s testimony adds to the political controversy surrounding the House Intelligence Committee’s investigation of Russian meddling in last year’s election and any possible coordination between Trump associates and Moscow.

David O’Neil, an attorney for Yates, met at the Justice Department to discuss the issue with government officials on Thursday. At the meeting, O’Neil presented a letter in which he said the Justice Department had “advised” him that Yates’s official communications on issues of interest to the House panel are “client confidences” that cannot be disclosed without written consent. O’Neil challenged that interpretation as “overbroad” in the letter.

Spicer says Post report on Yates is ‘false’ </> ↩

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White House press secretary Sean Spicer on March 28 disputed a Washington Post report about efforts by the Trump administration to prevent former acting attorney general Sally Yates from testifying before Congress. (Reuters)

The following day, in a letter to O’Neil, the Justice Department responded with another objection: that Yates’s communications with the White House are probably covered by “presidential communications privilege,” and referred him to the White House.



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A Justice Department spokeswoman declined to comment.

O'Neil then wrote to White House Counsel Donald McGahn, saying that he believed any privilege had been waived as a result of past White House statements and that Yates planned to testify unless he heard back from McGahn.

But that same day, the hearing, which also would have included former CIA director John Brennan and former director of national intelligence James R. Clapper Jr., was canceled by the House Intelligence Committee's chairman, Rep. Devin Nunes (R-Calif.), and any White House decision on Yates's testimony became moot.

In his Tuesday briefing, press secretary Sean Spicer said that the White House did not weigh in on whether Yates could testify. "To suggest in any way, shape or form that we stood in the way of that is 100 percent false," he said.

Nunes has said he canceled the hearing to first hear from FBI Director James B. Comey in a classified setting. That session was also canceled.

Democrats charge that Nunes has aligned himself too closely with the White House to conduct an independent probe.



Then-Deputy Attorney General Sally Yates at the Justice Department on May 15, 2015. (Evelyn Hockstein/For The Washington Post)

"You see the unraveling of this committee happening overnight for no good reason," said Rep. Jackie Speier (D-Calif.), a committee

member. "We have a responsibility to do this investigation."

O'Neil's meeting at the Justice Department and the exchange of letters came to light as the House GOP leadership continued to stand by Nunes. House Speaker Paul D. Ryan (R-Wis.) rejected demands that Nunes recuse himself. Nunes said Tuesday that he had no plans to step aside.

Yates was the deputy attorney general in the final years of the Obama administration and served as the acting attorney general in the first days of the Trump administration.

[Trump fired Yates in January](#) after she ordered Justice Department lawyers not to defend his first immigration order temporarily banning entry to the United States for citizens of seven Muslim-majority countries and refugees from around the world.

As acting attorney general, Yates played a key part in the investigation surrounding Flynn, who was ousted after revelations that he had discussed sanctions with the Russian ambassador to the United States.

Yates and Brennan had made clear to government officials by Thursday that their testimony to the committee would probably contradict some statements that White House officials had made, according to a person familiar with the matter who spoke on the condition of anonymity.

O'Neil and Ken Wainstein, a lawyer for Brennan, declined to comment.

During his press briefing Tuesday, Spicer said of Yates: "I hope she testifies. I look forward to it."

Spicer said the White House did not seek to have the House hearing canceled.

Rep. Adam B. Schiff (Calif.), the ranking Democrat on the Intelligence Committee, said the panel was aware that Yates "sought permission to testify from the White House.

Whether the White House's desire to avoid a public claim of executive privilege to keep her from providing the full truth on what happened contributed to the decision to cancel today's hearing, we do not know. But we would urge that the open hearing be rescheduled without delay and that Ms. Yates be permitted to testify freely and openly."

[\[Chairman and partisan: The dual roles of Devin Nunes raise questions about House investigation\]](#)

In January, Yates warned McGahn that statements White House officials, including Vice President Pence, had made

about Flynn's contact with the ambassador were incorrect and could therefore expose the national security adviser to future blackmail by the Russians.

In his March 23 letter — addressed to acting assistant attorney general Samuel Ramer — O'Neil noted that Yates was willing to testify and that she would avoid discussing classified information and details that could compromise investigations. The correspondence was later shared with the House Intelligence Committee.

O'Neil went on to memorialize the government's position:

"The Department of Justice has advised that it believes there are further constraints on the testimony Ms. Yates may provide at the [House Intelligence Committee] hearing. Generally, we understand that the department takes the position that all information Ms. Yates received or actions she took in her capacity as Deputy Attorney General and acting Attorney General are client confidences that she may not disclose absent written consent of the department," he wrote.

O'Neil continued: "We believe that the department's position in this regard is overbroad, incorrect, and inconsistent with the department's historical approach to the congressional testimony of current and former officials.

"In particular, we believe that Ms. Yates should not be obligated to refuse to provide nonclassified facts about the department's notification to the White House of concerns about the conduct of a senior official. Requiring Ms. Yates to refuse to provide such information is particularly untenable given that multiple senior administration officials have publicly described the same events."

The following day, Scott Schools, a senior Justice Department lawyer, replied to O'Neil, writing that Yates's conversations with the White House "are likely covered by the presidential communications privilege and possibly the deliberative process privilege. The president owns those privileges. Therefore, to the extent Ms. Yates needs consent to disclose the details of those communications to [the

intelligence panel], she needs to consult with the White House. She need not obtain separate consent from the department.”

That letter, in essence, marked Justice Department officials backing away from their earlier strictures, saying that although they thought executive privilege probably applied to Yates’s discussions, that was a conversation she would have to have with lawyers at the White House.

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In response, O’Neil sent a letter Friday to McGahn, the White House counsel, saying that any claim of privilege “has been waived as a result of the multiple public comments of current senior White House officials describing the January 2017 communications. Nevertheless, I am advising the White House of Ms. Yates’ intention to provide information.”

He closed the letter by saying that if he did not hear back from the White House by 10 a.m. Monday, he would assume that it “does not exert executive privilege over these matters with respect to the hearings or other settings.”

The cancellation of the hearing made O’Neil’s deadline moot, although Spicer said the lack of a response to the lawyer’s letter showed the administration had no problem with Yates testifying.

*Karoun Demirjian contributed to this report.*

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