LAW OFFICES OF
J. WHITFIELD LARRABEE
TRIAL AND APPELLATE LAWYERS
251 HARVARD STREET, SUITE 9
BROOKLINE, MASSACHUSETTS 02446

TELEPHONE: (617) 566-3670
FACSIMILE: (617) 507-6435
JW.LARRABEE@VERIZON.NET
WWW.LARRABEELAW.COM

March 9, 2017

VIA FAX, EMAIL AND FIRST CLASS MAIL

Alabama State Bar
Disciplinary Commission
P.O. Box 671
Montgomery, AL 36101-0671

In Re: Jefferson B. Sessions, III

Dear Sir or Madam:

Enclosed for filing please find a disciplinary complaint and complaint form concerning professional misconduct by attorney Jefferson B. Sessions, III, a member of the Alabama State Bar.

Thank you for your time and consideration of this matters.

Very truly yours,

J. Whitfield Larrabee

J. Whitfield Larrabee

Enclosures
JWL/hg

THE DISCIPLINARY COMMISSION OF THE ALABAMA STATE BAR

IN THE MATTER OF:	)	
JEFFERSON B. SESSIONS, III	)	COMPLAINT
	)	
	)	

INTRODUCTION

1. This is a complaint against Jefferson B. Sessions, III ("Sessions").

2. Sessions is licensed to practice law in Alabama and is a lawyer subject to the disciplinary authority this jurisdiction. Sessions is presently serving as the Attorney General of the United States.

3. Beginning on or about January 10, 2017, Sessions engaged in unethical and criminal conduct in violation of the Alabama Rules of Professional Conduct.

4. Sessions violated Rule 8.4(b) by committing a criminal act or criminal acts that reflect "adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects."

5. Sessions violated Rule 8.4(c) by engaging "in conduct involving dishonesty, fraud, deceit or misrepresentation."

6. Sessions violated Rule 8.4(d) of the Alabama Rules of Professional Conduct by engaging "in conduct that is prejudicial to the administration of justice."

7. Sessions violated other provisions of the Alabama Rules of Professional Conduct by giving false testimony to a legislative body, by failing to take reasonable and appropriate measures to remedy this misconduct, by affirmatively acting to cover up and conceal his misconduct, and by failing to avoid conflicts of interest in his activities as a lawyer and public official.

FACTS

8. While serving as a United States Senator, Sessions was a surrogate for Donald J. Trump ("Trump") in his election campaign. Sessions led the Trump campaign's National Security Advisory Committee. The campaign was active beginning in 2015 or earlier and concluding with the election on November 8, 2016.

9. Sessions communicated in person with the Russian ambassador to the United States, Sergei Kislyak ("Kislyak"), on at least two occasions during the course of the Trump campaign.

10. On or about July 18, 2016, Sessions communicated and conversed with Kislyak after an event at the Republican National Convention.

11. On July 25, 2016, the FBI announced that it was beginning an investigation of hacking in reference to emails that were stolen from the Democratic National Committee by Russian hackers. These emails were posted to the internet via Wikileaks and resulted in ongoing negative media reports about the Clinton campaign.

12. On September 5, 2016, President Obama met with Russian President Vladimir Putin and warned him stop engaging in hacking and told him that there were going to be serious consequences if he did not.

13. On September 8, 2016, Sessions and two of Sessions' senior aids met with Kislyak in Sessions' Senate office. In the course of this meeting, Sessions communicated and conversed with the Russian ambassador.

14. On October 7, 2016, The Obama administration publicly accused the Russian government of interfering with the United States election process.

15. On November 18, 2016, Trump announced his selection of Sessions to be his nominee for Attorney General of the United States.

16. On January 6, 2017, the United States government released a report expressing the conclusion of the FBI, CIA and NSA that Russia engaged in a campaign of cyberattacks, propaganda, and mis-information in order to aid Trump to win the presidential election. This report gained a great deal of coverage in the news media such that it very likely came to the attention of Sessions.

17. Prior to January 10, 2017, the FBI and US government intelligence agencies concluded that Russian operatives were behind the hacking of the computers of Democratic National Committee and of the email account of John Podesta, chairman of Hillary Clinton's presidential campaign.

18. On January 10, 2017, Sessions gave sworn testimony before the Senate Judiciary Committee in a hearing concerning his confirmation as Attorney General.

19. Sessions responded to questioning by Senator Al Franken ("Franken") at this hearing.

20. Franken asked Sessions, " CNN just published a story alleging that the intelligence community provided documents to the president-elect last week that included information that quote, 'Russian operatives claimed to have compromising personal and financial information about Mr. Trump.' These documents also allegedly say quote, 'There was a continuing exchange of information during the campaign between Trump's surrogates and intermediaries for the Russian government.' Now, again, I'm telling you this as it's coming out, so you know. But if it's true, it's obviously extremely serious and <u>if there is any evidence that anyone affiliated with the Trump campaign communicated with the Russian government in the course of this campaign, what will you do?</u>"(emphasis added).

21. Sessions testified in response, "Senator Franken, I am not aware of any of those activities. I have been called a surrogate at a time or two in that campaign, and I did not have communications with the Russians, and I am unable to comment on it." (emphasis added).

22. Sessions' claim that he did not have communications with the Russians was false and misleading because he in fact had communications with Kslyak, the Russian ambassador, on at least two occasions during the election campaign.

23. Sessions' false testimony concerned events that were recent, controversial and memorable. His false testimony about his communications with the Russians related to events that were within his own personal knowledge and experience.

24. The circumstances under which Sessions falsely testified establish that he knowingly and wilfully deceived the Senate Judiciary Committee, by making a statement that he knew and did not believe to be true, on a vital and material matter under the committee's consideration.

25. 18 United States Code § 1621 provides:

"Whoever—

(1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true;

> is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.

26. Evidence establishes that Sessions is guilty of perjury in violation of 18 U.S.C. § 1621.

27. After giving false, deceitful, dishonest, fraudulent and misleading testimony to the Senate Judiciary Committee, Sessions participated in a cover-up of his criminal, dishonest and unethical conduct.

28. On March 1, 2017, the Washington Post reported that Sessions met with Kislyak twice in 2016 and that he failed to disclose the meetings when asked by Franken.

29. On March 1, 2017, Sessions' spokeswoman, Sarah Isgur Flores ("Flores") responded to the Washington Post report. Referring to Sessions' testimony before the Senate Judiciary Committee, Flores stated: "there was absolutely nothing misleading about his answer." Flores is the Director of Public Affairs at the Department of Justice and is under Sessions supervision.

30. On March 1, 2017, in response to the Washington Post report, Sessions issued a statement through Flores: "I have never met with any Russian officials to discuss issues of the campaign. I have no idea what this allegation is about. It is false."

31. Sessions' denials of the Washington Post report, and his assertion that the report was false, was itself false, misleading and dishonest. The Washington Post never reported that Sessions and Kislyak discussed issues of the campaign. Sessions' statement about the Washington Post report included at least one lie.

32. Because Sessions' testimony denying that he had communications with the Russians was false and misleading, it was dishonest for him to allow Flores to speak on his behalf and

to assert that “there was absolutely nothing misleading about his answer." \

33. On March 6, 2017, submitted a letter to the Senate Judiciary Committee supplementing his testimony on January 10, 2017. Letter from Sessions to Charles E. Grassley, Chairman of the Senate Judiciary Committee, attached hereto as Exhibit “A.”

34. Sessions claimed in the letter that his response to Franken, denying any communications with the Russians during the campaign, “was correct.” Rather than acknowledge the falsity of his prior testimony, Sessions wilfully and deliberately insisted that his prior false testimony was correct. In doing so, Sessions made an additional material false statement to the Senate Judiciary Committee and attempted to conceal and cover up his prior false testimony and perjury.

35. 18 United States Code § 1001 provides in relevant part:

> (a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—
> (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
>
> (2) makes any materially false, fictitious, or fraudulent statement or representation; or
>
> (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or section 1591, then the term of imprisonment imposed under this section shall be not more than 8 years.

36. Evidence establishes that Sessions is guilty of making a false statement to the Senate Judiciary Committee, and of falsifying, concealing and covering up his false statement to the Senate Judiciary Committee in violation of 18 U.S.C. § 1001(a).

37. The FBI and the United States Department of Justice ("DOJ") are currently investigating links between associates of Trump, the Trump campaign and the Russian Government.

38. The individuals associated with the Trump campaign who were in contact with Russian officials include: Trump's former National Security Advisor Michael Flynn, Trump's advisor and son in-law Jared Kushner, Trump's former campaign manager Paul Manafort, Trump's foreign policy advisor Carter Page, Director of National Security for the Trump campaign J.D. Gordan and Sessions. None of these individuals were properly registered as agents of the Russian government under the Foreign Agents Registration Act, 22 U.S.C. § 611, et. seq. Trump and his representatives repeatedly and falsely denied that these contacts with Russian officials occurred.

39. Former National Security Advisor Michael Flynn was an active participant in Trump's campaign. He also falsely denied that he had communicated with Russian officials.

40. Phone records and intercepted calls show that individuals associated with Trump's 2016 presidential campaign had repeated contacts with senior Russian officials in the year before the election. These contacts and other evidence are reasonable grounds for the FBI and the DOJ to suspect and investigate collusion between the Trump campaign and the Russian government to influence the federal election that occurred on November 8, 2016.

41. Collusion with Russia, by individuals associated with a political campaign, in order to solicit or receive assistance in a political campaign connected to the election of the President of the United States, would be a criminal violation of United States Campaign Finance Act, 52 U.S.C. § 30121.

42. Collusion with Russia by individuals associated with a political campaign, who are not registered as foreign agents of Russia, in order to aid Russia in influencing the election of the President of the United States, would be a criminal violation of the Foreign Agents Registration Act.

43. Kislyak and Sessions were likely in contact because of Sessions' position and relationship with Trump and his campaign. Sessions was not part of the Senate Foreign Relations Committee. Except for his participation in the Trump campaign, there were few other reasons for the Russian ambassador to want to communicate with Sessions in the midst of an election. The primary reason Kislyak communicated with Sessions was his role in the Trump campaign, not his role as a Senator.

44. Sessions' contacts with the Russian ambassador during the election campaign and his false and misleading statements denying these contacts are specific facts that give rise to a reasonable suspicion that Sessions was involved in criminal activity related to Russian interference with the 2016 election.

45. As a criminal suspect in ongoing investigations by the FBI and DOJ, Sessions has conflicts of interest where his interest in avoiding criminal prosecution conflicts with his duties as the Attorney General of United States. Sessions announcement on March 2, 2017 that he will recuse himself from any investigation into ties between Russia and the Trump campaign does not eliminate these conflicts of interest. Sessions subordinates in the Justice Department, who are under Sessions supervision and control, will potentially be chilled in pursuing investigations. Sessions' subordinates in the DOJ are necessarily aware that Sessions does not want investigations that result in criminal charges against

him. Investigations of communications by the Trump campaign with Russian officials and of Sessions' false testimony to the Senate Judiciary Committee will be undermined or prevented and will lack integrity so long as Sessions remains the Attorney General.

COUNT 1

VIOLATION OF RULE 8.4(b) BY COMMITTING CRIMINAL ACTS

46. The allegations in the preceding paragraphs are incorporated by reference as if fully set forth.

47. Sessions' perjury, false statements, concealment and cover-up were criminal acts of such moral turpitude that they reflect "adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects" in violation of Rule 8.4(b) of the Alabama Rules of Professional Conduct.

48. In 1999, Sessions said, "In America, the Supreme Court and the American people believe no one is above the law."

49. Although Sessions holds a high office, he is not above complying with the laws of Alabama, including the Alabama Rules of Professional Conduct.

COUNT 2

VIOLATION OF RULE 8.4(c) BY CONDUCT INVOLVING DISHONESTY, FRAUD, DECEIT OR MISREPRESENTATION

50. The allegations in the preceding paragraphs are incorporated by reference as if fully set forth.

51. Sessions engaged in conduct involving dishonesty, fraud, deceit or misrepresentation by lying in his testimony to the Senate Judiciary Committee.

52. Sessions engaged in conduct involving dishonesty, fraud, deceit or misrepresentation by lying in his statement made in response to the article in the Washington Post on March 1, 2017. Sessions March 1, 2017 statement was also dishonest and misleading in that it falsely suggested the Washington Post had reported to he had spoken to Vislyak about the campaign, when it had not. It was dishonest to obfuscate the issue in this manner.

53. Sessions further participated in a cover-up that involved dishonesty, fraud, deceit or misrepresentation by allowing Flores to speak on his behalf and to falsely assert that "there was absolutely nothing misleading about his answer" to the Senate Judiciary Committee. Sessions acted unethically failing to timely correct this false assertion.

54. Session's conduct in these and other instances violated Rule 8.4(c) of the Alabama Rules of Professional Conduct.

55. In a similar case of District of Columbia Bar v. Kleindienst, Richard Kleindienst ("Kleindienst") gave false testimony to the United States Senate in a confirmation hearing concerning his nomination by Richard Nixon to be the Attorney General of the United States. The defendant attorney's license to practice law was suspended for one year in that case. District of Columbia Bar v. Kleindienst, 345 A. 2d 146 (1975), attached hereto as Exhibit "B." The Court determined that Kleindienst violated Disciplinary Rules 1-102(A)(4) prohibiting a lawyer from engaging "in conduct involving dishonesty, fraud, deceit, or misrepresentation." Id. at 146-147, n. 1. DR 1-102(A)(4) is substantially the same or identical to Rule 8.4(c) of the Alabama Rules of Professional Conduct. Kleindienst was also subjected to criminal prosecution by the United States. He pleaded guilty and was given a suspended sentence. United States v. Richard Kleindienst, United

States District Court for the District of Columbia, CR 74-256. (Records Kept In National Archive).

COUNT 3

VIOLATION OF RULE 8.4(d) BY ENGAGING IN CONDUCT THAT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE

56. The allegations in the preceding paragraphs are incorporated by reference as if fully set forth.

57. Sessions' conflicts of interest, his false testimony about his communications with Russian officials, his efforts to cover-up his false testimony, and his continuing service as Attorney General at a time when he is suspected of criminal acts violate the integrity of FBI and DOJ investigations and are prejudicial to the due administration of justice.

58. Sessions violated and continues to violate Rule 8.4(d) of the Alabama Rules of Professional Conduct by engaging "in conduct that is prejudicial to the administration of justice."

COUNT 4

VIOLATION OF RULE 3.3 BY FAILING TO COMMUNICATE WITH CANDOR TOWARD A TRIBUNAL

59. The allegations in the preceding paragraphs are incorporated by reference as if fully set forth.

60. Rule 3.3 of the Alabama Rules of Professional Conduct provides:

(a) A lawyer shall not knowingly:

(1) make a false statement of material fact or law to a tribunal;

(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client; or

(3) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

(b) The duties stated in paragraph (a) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(c) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

(d) In an ex parte proceeding other than a grand jury proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse.

61. Sessions violated Rule 3.3 testifying falsely to the Senate Judiciary Committee, and in covering up and concealing his false testimony with false and misleading statements.

COUNT 5

OTHER VIOLATIONS OF THE ALABAMA RULES OF PROFESSIONAL CONDUCT

62. The allegations in the preceding paragraphs are incorporated by reference as if fully set forth.

63. Although Sessions asserted in his statements on March 1, 2017 that "never met with any Russian officials to discuss issues of the campaign," and he denied having any awareness that anyone affiliated with the Trump campaign had any communication with the Russian government in the course of the campaign in his testimony before the Senate Judiciary Committee, there is good reason to questions these claims and to subject them to close scrutiny and further investigation.

64. In his letter to Sessions dated March 2, 2107, Senator Al Franken stated:

> In July 2016, more than four months after endorsing then candidateTrump, you delivered remarks during the Republican National Convention at an event hosted by the Heritage Foundation. Following your speech, you were approached by a small group of ambassadors, including Ambassador Kislyak. The ambassador later pulled you aside and engaged you in private conversation. The notion that this conversation, which took place during your party's nominating convention, would not have touched upon issues related to the campaign strains credulity. (emphasis added).

Letter from Al Franken to Sessions, attached hereto as Exhibit "C."

65. A questionnaire from Vermont Senator Patrick Leahy, a member of the Judiciary Committee, asked Sessions whether he had "been in contact with anyone connected to any part of the Russian government about the 2016 election, either before or after election day." In his January 17, 2017 response, Sessions answered "no."

Questions for the Record, p. 26, with relevant part attached hereto as Exhibit "D."

64. If Sessions was in contact with anyone connected to any part of the Russian government about the 2016 election prior to answering the questionnaire or prior to his testimony before the Senate Judiciary Committee, Session committed other crimes and engaged in other dishonesty in violation of the Alabama Rules of Professional Conduct.

65. Sessions likely violated the letter and spirit of the Alabama Rules of Professional Conduct including, but not limited to, Rules 1.7, 1.8, 3.5, 3.8(2), 3.9, 4.1, 7.1, 8.2(a), 8.3(a) and 8.4 by engaging in crimes, dishonesty and other misconduct referenced in this complaint.

WHEREFORE, the complainant respectfully requests the Disciplinary Commission of the Alabama State Bar to fully investigate the facts and violations described in this complaint and that it duly, expeditiously and properly enforce the Alabama Rules of Professional Conduct.

Respectfully submitted,

J. Whitfield Larrabee
Law Offices of J. Whitfield Larrabee
251 Harvard Street, Suite 9
Brookline, MA 02446
(617) 566-3670

CERTIFICATE OF SERVICE

I, J. Whitfield Larrabee, hereby certify that I served this complaint on the Disciplinary Commission of the Alabama state bar by fax, email and first class mail on March 9, 2017.

J. Whitfield Larrabee

“A”

The Attorney General
Washington, D.C.

March 6, 2017

Hon. Charles E. Grassley
Chairman
Senate Judiciary Committee
226 Dirksen Senate Office Building
Washington, D.C. 20510

Hon. Dianne Feinstein
Ranking Member
Senate Judiciary Committee
152 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Grassley and Ranking Member Feinstein:

I write to supplement my January 10, 2017, testimony before the Committee.

During my confirmation hearing, Senator Franken asked the following question:

> OK. CNN has just published a story and I'm telling you this about a news story that's just been published. I'm not expecting you to know whether or not it's true or not. But CNN just published a story alleging that the intelligence community provided documents to the president-elect last week that included information that quote, "Russian operatives claimed to have compromising personal and financial information about Mr. Trump." These documents also allegedly say quote, "There was a *continuing exchange of information* during the campaign between Trump's surrogates and intermediaries for the Russian government." [Emphasis added]
>
> Now, again, I'm telling you this as it's coming out, so you know. But, if it's true, it's obviously extremely serious and if there is any

> evidence that anyone affiliated with the Trump campaign communicated with the Russian government in the course of this campaign, what will you do?

I responded: "Senator Franken, I'm not aware of any of those activities. I have been called a surrogate at a time or two in that campaign and I didn't have -- did not have communications with the Russians, and I'm unable to comment on it."

My answer was correct. As I noted in my public statement on March 2, 2017, I was surprised by the allegations in the question, which I had not heard before. I answered the question, which asked about a "continuing exchange of information during the campaign between Trump's surrogates and intermediaries for the Russian government," honestly. I did not mention communications I had had with the Russian Ambassador over the years because the question did not ask about them.

As I discussed publicly on March 2, 2017, I spoke briefly to the Russian Ambassador at the Republican National Convention in Cleveland, Ohio, in July 2016. This was at the conclusion of a speech I had made, when I also met and spoke with other ambassadors. In September 2016, I met with the Russian Ambassador at my Senate office in the presence of members of my professional Senate staff. I do not recall any discussions with the Russian Ambassador, or any other representative of the Russian government, regarding the political campaign on these occasions or any other occasion.

The Judiciary Committee received a letter dated March 3, 2017, from Committee Democrats that asks other questions. The letter asks why I did not supplement the record to note any contact with the Russian Ambassador before its disclosure. Having considered my answer responsive, and no one having suggested otherwise, there was no need for a supplemented answer.

I also promptly made a decision on recusal. I said during the course of my confirmation hearing that if a question arose as to whether I should recuse myself from a particular matter, I would consult with the appropriate ethics officials at the Department in order to make a decision. Within a week of becoming Attorney General, I held the first meeting concerning recusal. And, on February 27, 2017, my staff scheduled a meeting for March 2, 2017. On that date, I met with the relevant officials, and later that day announced my recusal from certain matters. This process and schedule were established before I was made aware of any concern about the accuracy of my testimony before the Committee.

The March 3, 2017, letter also asked why I had not recused myself from "Russian contacts with the Trump transition team and administration." I understand the scope of the recusal as described in the Department's press release would include any such matters. This should not be taken as any evidence of the existence of any such investigation or its scope. Suffice it to say that the scope of my recusal is consistent with the applicable regulations, which I have considered and to which I have adhered.

Very truly yours,

Jeff Sessions
Attorney General

JS:ph

“B”

345 A.2d 146 (1975)

DISTRICT OF COLUMBIA BAR, Petitioner,
v.
Richard G. KLEINDIENST, Respondent.
No. S-37-75.

District of Columbia Court of Appeals.
Argued June 12, 1975.
Decided August 11, 1975.

Fred Grabowsky, Washington, D. C., for petitioner.

Herbert J. Miller, Jr., Washington, D. C., for respondent.

Before REILLY, Chief Judge, and KELLY, FICKLING, KERN, GALLAGHER, NEBEKER and HARRIS, Associate Judges.

MEMORANDUM ORDER

PER CURIAM.

The Disciplinary Board of this court concluded, consistent with a report of a Hearing Committee, that respondent violated Disciplinary Rules 1-102(A)(4) and (5)[1] by virtue of misrepresentations and dishonest conduct prejudicial to the administration of justice. The Board found specifically that respondent "was guilty of direct and repeated misrepresentations in answering persistent inquiries about White House involvement in Justice Department litigation against ITT."

147
*147 The Board's quoted finding is correct. The evidence discloses that during Senate confirmation hearings on respondent's nomination as Attorney General of the United States, he expressly asserted that no effort had been made by anyone at the White House directed at influencing the Department of Justice in its conduct of antitrust litigation challenging mergers by International Telephone & Telegraph, Inc. with the Canteen Corporation, the Hartford Corporation, and the Grinnell Corporation. To the contrary, a tape-recorded telephone conversation between respondent and then-President Nixon reveals that respondent was ordered to "stay . . . out of [the case] . . . . Don't file the brief [in the Supreme Court]. . . . [D]rop the . . . thing."

We conclude that respondent did violate Disciplinary Rule 1-102(A)(4), and we deem it unnecessary to resolve the considerably more difficult question of whether his conduct also contravened subsection (5).

We turn then to the question of what disciplinary action to take. The Board adopted the recommendation of the Hearing Committee that a one-year suspension be imposed.[2] While the Board did not recommend more severe disciplinary action, we are free to consider that option, since the nature of the discipline imposed is a judgment independently to be made by this court. Through the conscientious efforts of the Hearing Committee and the Board, the relevant factual and judgmental considerations have been explored and ventilated, and our difficult way has been eased.

We start with a fundamental premise: The purpose of a disciplinary proceeding is to question the continued fitness of a lawyer to practice his profession. In re Randolph, 347 S.W.2d 91, 109 (Mo. 1961); In re Black, 228 Or. 9, 363 P.2d 206, 207 (1961).

Membership in the bar is a privilege burdened with conditions. A fair private and professional character is one of them. Compliance with that condition is essential at the moment of admission; but it is equally essential afterwards. Selling v. Radford, 243 U.S. 46, 37 S.Ct. 377, 61 L.Ed. 585; Matter of Durant, 80 Conn. 140, 147, 67 A. 497, 10 Ann.Cas. 539. Whenever the condition is broken the privilege is lost. To refuse admission him for past offenses. The

examination into character, like the examination into learning, is merely a test of fitness. To to an unworthy applicant is not to punish strike the unworthy lawyer from the roll is not to add to the pains and penalties of crime. The examination into character is renewed; and the test of fitness is no longer satisfied. For these reasons courts have repeatedly said that disbarment is not punishment. . . . [In re Rouss, 221 N.Y. 81, 84, 116 N.E. 782, 783 (1917).]

The distinction between fitness and punishment must be maintained in this delicate judgment. At the hearing on this matter, Bar Counsel scrupulously adhered to that notion so ably stated by Judge Cardozo in the Rouss opinion, supra. At this stage, we, like the Board and the Hearing Committee, do not lose sight of the need to avoid erosion of public confidence in the profession. It is this latter consideration to which the Hearing Committee turned primarily as a basis for its recommendation. It correctly deemphasized the discipline factors often relevant to other kinds of misconduct. Those factors are the protection of the public from generally incompetent or unethical lawyers, and deterrence by example. The Hearing Committee in addition correctly looked to the impact discipline would have on respondent's reputation (otherwise unblemished) and livelihood.

With these concepts in mind, we analyze the rationale of the Hearing Committee
148
*148 (adopted by the Board) in arriving at its recommendation of a one-year suspension the Committee's conclusion assertedly was based on "the interest of the Court, the Bar, and the public." In relating those interests to the misconduct revealed, the Committee expressed its belief that discipline of lesser severity would undercut the seriousness with which it thought the Bar regarded this misconduct.

That misconduct occurred cannot be gainsaid, but exclusion from consideration of lesser levels of discipline must not be based on that factor alone, particularly since the recommendations before us appear to have been underpinned by punitive considerations. As the Hearing Committee noted, the Supreme Court of the State of Arizona considered the same conduct in a disciplinary proceeding and imposed censure by unanimous vote.[3] Whatever may be the force of respondent's argument that considerations of comity and avoidance of repetitive disciplinary proceedings require us to impose the same discipline, a point unnecessary to reach here, two aspects of the Arizona action are important to the question whether a one-year suspension here would be primarily punitive and hence inappropriate. First, Arizona is the original examination and admitting jurisdiction and the one from which respondent's career and reputation stem. Secondly, respondent remains in good standing in Arizona and can practice law there. Additionally, a three-judge committee of the United States District Court for the District of Columbia considered the same conduct by respondent, and concluded that no disciplinary action was warranted. Thus, protracted suspension by us merely would force respondent either to relocate his practice of law or make it purely "federal" in nature.

Accordingly, the view of the Hearing Committee that respondent should have a lapse period for reflection and self-examination lacks real significance, and the recommended suspension loses all but its punitive consequences. This is a case in which, comity to one side, relevant considerations point toward substantial consistency. Indeed, the Hearing Committee, though primarily if not exclusively concerned with erosion of public confidence in the Bar, expressed the judgment that from the viewpoint of the public, censure would not be deemed an inappropriate result.

Censure or a brief suspension cannot be deemed a tolerant attitude toward the misconduct in the case. These actions are a severe rebuke to a man of high professional standards, as the Committee otherwise viewed respondent. What is important is that the discipline imposed not have a punitive impact as its primary effect. That the Hearing Committee dwelt on punishment as a paramount purpose for recommending suspension is clear from its references to "penalties" and "appropriate punishment in disciplinary proceedings". (Report at 23.)

As the Committee itself acknowledges, a judgment in this case, as in any disciplinary matter, must be fair to the respondent and offer protection to the public if such is necessary. As did the Committee, we consider respondent's previous, unblemished and laudable record in private practice and public service.[4] In addition,
149
*149 we find lacking any public purpose to be served in a one-year suspension as a mode of discipline. In this matter a criminal prosecution was brought; it became the appropriate vehicle for punitive determinations.[5] Any further attempt to punish in this proceeding inferentially would carry with it an implied expression of disagreement with the trial court's sentencing judgment, which would not be an appropriate consideration in our exercise of disciplinary judgment. Suspension for one year, thus seen as not serving a proper purpose in this proceeding, will not be imposed.

Recognizing that respondent is a man of high professional stature, with correspondingly high obligations, who was caught up in a "highly charged political atmosphere. . . when pressed by political opponents", to use the Board's words, we deem it appropriate to impose a suspension for a thirty-day period. The suspension shall begin on August 15, 1975, and at the expiration thereof respondent shall be deemed reinstated as a member of the Bar of this court.[6]

KELLY, Associate Judge, with whom FICKLING and GALLAGHER, Associate Judges, join, dissenting:

The court is unanimous in its concurrence with the Disciplinary Board's finding that respondent Kleindienst violated Disciplinary Rule 1-102(A) (4) by virtue of misrepresentations and dishonest conduct. My concurrence would also extend to the Board's finding that, contrary to Disciplinary Rule 1-102(A) (5), respondent engaged in conduct prejudicial to the administration of justice and to its recommendation that respondent be suspended from the practice of law in the District of Columbia for a period of one year.[1]

As our separate opinions make clear, the judge who heard argument in this case[2] recognize and appreciate the conscientious efforts of the Hearing Committee and the Disciplinary Board whose distinguished members were also unanimous in finding that respondent engaged in conduct patently inconsistent with the ethical standards to which members of our Bar are held.[3] In addition, they were virtually unanimous in their recommendation of disciplinary action commensurate with the gravity of respondent's misconduct, only one member being of the view that respondent should be suspended for a period of three years. Yet a majority of the court labors to find punitive underpinnings to the Board's disciplinary recommendation and somehow arrives at the conclusion that in this particular
150
*150 case a suspension of thirty days is appropriate.[4]

Initially, I am unable to follow the logic behind the conclusion of my colleagues that because the Supreme Court of the State of Arizona thought censure was the appropriate sanction to impose[5] and a three-judge committee of the United States District Court for the District of Columbia determined no disciplinary action was warranted,[6] the Hearing Committee's view that respondent would benefit from a period of reflection and self-examination lacks real significance and its recommendation to the Disciplinary Board loses all but its punitive consequences. My position is, simply, that considering the nature of respondent's proven misconduct, the Hearing Committee fairly and reasonably discharged its responsibilities in recommending the appropriate discipline to be imposed and there is no apparent reason of record why this court should not adopt that recommendation.[7]

The Hearing Committee scrupulously approached the issue of the proper disciplinary action merited by respondent's professional misconduct,[8] stating that:

> Over the years, . . . court decisions, while reaffirming the breadth of discretion, have nevertheless focused on a few salient considerations in determining the appropriate punishment in disciplinary proceedings. These are principally: the maintenance of the integrity of the profession in the eyes of the public, the protection of the public from unethical or incompetent lawyers, the deterrence of other lawyers from engaging in unprofessional conduct, and the serious impact that the disciplinary action may have on the reputation and the livelihood of an attorney. [Citations omitted.][9]

The Committee addressed the question of discipline, vel non, in light of its recognized responsibility to the court, to the Bar, and to the public. On the one hand, it expressed the belief that in this case it was especially important to ensure that public confidence in the integrity of the legal profession not be undermined. On the other, it acknowledged its clear obligation to respondent to weigh fairly the circumstances in mitigation of his misconduct, with specific reference to respondent's previously unblemished career at the bar and in public service, the actions of other tribunals which have evaluated respondent's misconduct in disciplinary terms, and the reasons which supposedly motivated respondent to testify as he did before a committee
151
*151 of the United States Senate. Finally, in arriving at its recommendation of a one-year suspension, the Committee expressed its belief that "discipline of any lesser severity would undercut the seriousness with which the bar regards Respondent's misconduct."[10]

The majority focuses on the punitive aspects of the disciplinary recommendation, making an independent finding that no public purpose would be served by a one-year suspension. As the Committee stated, however, quoting from In re Steinberg, 269 P.2d 970, 975 (S.Ct.Wash.1954):

> It is not necessarily the purpose of suspension to imply that an attorney is unworthy of public trust during the period of suspension, and that thereafter he is again fit to follow his profession. Suspension carries with it an unavoidable punitive consequence, but proportionately it is the same unavoidable punitive consequence which results from reprimand or disbarment. It has the salutary effect of giving respondent . . . "a period for reflection and self-examination" which "may be of benefit to him." As we have pointed out before, the purpose of reprimand, suspension, and disbarment is the same. All are necessary parts of the overall process of discipline by which the courts maintain high standards of moral and professional conduct.

In support of its ultimate judgment the majority cites disbarment cases which advance the principle that legally, disciplinary action is not punishment. They rely, principally, upon words of Mr. Justice (then-Judge) Cardozo excerpted from the case of In re Rouss, 211 N.Y. 81, 84, 116 N.E. 782, 783 (1917).[11] There the question was whether disbarment is a penalty or forfeiture within the meaning of a penal statute providing, inter alia that no person shall be excused from testifying in a conspiracy trial upon the ground that the testimony may tend to convict him of a crime or subject him to a penalty or forfeiture, but that having testified, such person shall not be subject to any penalty or forfeiture on any matter concerning which he did testify. Rouss claimed that because of this statute he was immune from discipline on charges of professional misconduct since he had testified in the trial of five police inspectors for conspiracy to obstruct justice through the suppression of the testimony of a witness. Rouss himself had participated in the arrangement to keep the witness without the state to avoid service of process and the testimony he gave at trial was in substance a confession of his own guilt. It is in this context that Justice Cardozo wrote, in rejecting this argument, that disbarment is not punishment. Indeed, he noted, Lord Mansfield had said as much in Ex parte Brounshall, Cowp. 829.

> One is punished for a criminal act, as respondent has been by the former Chief Judge of the United States District Court for the District of Columbia who imposed sentence after entry of a plea of guilty to a violation of 2 U.S.C. § 192. Disbarment or disciplinary proceedings are not criminal proceedings, however, "notwithstanding they may have very serious and damaging consequences."[12] As Justice Cardozo noted, the statute in Rouss was a grant of amnesty, giving to Rouss the same protection as a pardon. "But a pardon, as we have seen, though it blots out penalties and forfeitures, does not render the courts impotent to protect their honor by disbarment." In re Rouss, supra at 784. Thus it would not be legally correct to say that respondent was being punished, as the majority uses the term, even if the Board had recommended
> 152
> *152 his disbarment. It is likewise incorrect to say that the discipline of a one-year suspension is primarily punitive or that the Hearing Committee "dwelt on punishment as a paramount purpose for recommending suspension . . . ."

In my judgment it is a thin reed upon which the majority relies in rejecting the recommendations of the Disciplinary Board of the District of Columbia Bar to which we have so recently, after much deliberation, entrusted the responsibility to discipline its own members. I find no justification in the record for such action and must, for the reasons given, disassociate myself from it.[13] I express the hope that the disposition in this proceeding will not be taken as an indication that the Bar is attempting to impose higher standards on its membership than the judiciary is willing to accept, for this one case would not justify any such conclusion.

I respectfully dissent.

ORDER

PER CURIAM.

On consideration of petitioner's petition for rehearing, it is

Ordered that petitioner's aforesaid petition is denied.

FICKLING and GALLAGHER, JJ., would grant petitioner's petition.

Separate Statement of Associate Judge GALLAGHER (joined by Associate Judge Fickling):

I voted to grant a rehearing in this case for one reason. In its main thrust, the Petition for Rehearing does not seek to reopen the Kleindienst proceeding on the merits of the disciplinary action, nor do I. The Petition accepts the finality of the action taken there by a divided court, and so do I.

153
*153 But the Disciplinary Board — a creature and instrumentality of this court — is now asking this court for guidance as to procedure and legal standards to be applied in future disciplinary proceedings. And, frankly, I do not understand why this court has turned down this genuine request of its own Disciplinary Board.[1] If this court will not give the Board the guidance it seeks, there is no other place to get it. I will make a few observations, nevertheless, with the thought that the effort may not be entirely valueless.

I think the Board is essentially sound in the concepts it offers to this court on the relationship between the Disciplinary Board and its Hearing Committees (see p. 2-3 of the Disciplinary Board's Petition for Rehearing in this proceeding). While I would not suggest that all the trappings of administrative law be applied to disciplinary proceedings it seems to me that the relationship between a Hearing Committee and the Disciplinary Board is rather similar to the relationship between a hearing examiner and an administrative agency. I think, too, that in general terms the relationship between the Disciplinary Board and this court has a similarity to the relationship between an administrative agency and the appellate court.[2]

This court of course has final responsibility. But if the Board acts with fundamental fairness and reason, I think we should adopt its recommendations. We should "split hairs" with the Board neither in the matter of imposing a sanction nor in its severity. If it should at some time go beyond the bounds of essential fairness or reason, or displays a substantial lack of uniformity, it would be time for this court to step in. After all, one of the main reasons for the establishment of a Unified Bar in this jurisdiction, as well as others, was to enable the Bar to discipline itself — the expectation being that it would then impose and seek to enforce reasonably high standards on its membership. I believe this hope is generally being fulfilled.

Lastly, the Petition for Rehearing asserts the Disciplinary Board is apprehensive about the future impact of the majority's statement in this proceeding that

> What is important is that the discipline imposed not have a punitive impact as its primary effect.

The Board is concerned that every respondent may be able to show that the primary effect of any censure or suspension is its impact on his or her ability to practice law; and that they will characterize this effect as punitive. The Board asks that the majority's language be modified so this concept will not "[take] hold".

Of course suspension or disbarment of a lawyer has a punitive effect. It could hardly be viewed otherwise. But to say this is not to imply that a reasonable sanction is not aimed at generally accepted goals in considering appropriate punishment in disciplinary proceedings, these being outlined by the Hearing Committee in this proceeding:

> [T]he maintenance of the integrity of the profession in the eyes of the public; the protection of the public from unethical or incompetent lawyers; the deterrence of other lawyers from engaging in unprofessional conduct; and the serious impact that the disciplinary action may have on the reputation and the livelihood of an attorney.

154
*154 While the purpose of the proceeding is not to punish,[3] the imposition of a suspension or disbarment necessarily has the effect of punishment on the disciplined attorney.

Any extended discussion on this point would in all probability result in an academic exercise in semantics. It seems to me enough to say that if the Disciplinary Board, and its Hearing Committees, fairly and judiciously recommend a discipline where one is indicated I think they will find this course to have future approval. I believe the Disciplinary

Board is mainly on the right track and I hope it stays there. There is no cause to be deterred.

[1] Disciplinary Rules 1-102(A)(4) and (5) provide:

A lawyer shall not:

* * * * *

(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

(5) Engage in conduct that is prejudicial to the administration of justice.

[2] One Board member recommended that we suspend respondent for three years.

[3] Our dissenting colleague discusses at some length the minority views of a member of the Board of Governors of the State Bar of Arizona. The author of those views stated that he "would . . . have suspended Respondent for a short period . . . ."

[4] It is noted that even in the matter of the ITT litigation respondent did not "drop" the case as he was ordered to do by the then-President. He was instrumental in seeking an extension of time to file a jurisdictional statement in the Supreme Court. Thus, the case was kept alive through the respondent's efforts, and it was subsequently settled in the best interest of the public.

The Committee characterized respondent's efforts in terms that he "acted upon the presidential directive by urging the Solicitor General to seek an extension of time . . . ." The Board, however, correctly observed that respondent "refused to carry out the [President's] order."

[5] With agreement of the Watergate Special Prosecutor, respondent, by a plea of guilty, was convicted of a violation of 2 U.S.C. § 192, a misdemeanor. A sentence of one month's imprisonment and a $100 fine was suspended, and respondent was placed on unsupervised probation for one month.

[6] See In the Matter of John A. Shorter, Jr., D.C.C.A. No. S-31-75, Order dated July 7, 1975.

[1] The Board found that respondent made direct and repeated misrepresentations in answering persistent inquiries respecting a matter being litigated by the Department of Justice. For purposes of this opinion it is not necessary to cite to the record these instances of misrepresentation and since the majority does not explain why it doubts respondent's conduct was prejudicial to the administration of justice, or why it need not resolve the question, I do not pursue it.

[2] Judge Yeagley recused himself from participation in this matter.

[3] D.C.App.R. XI, Sec. 2, states in pertinent part:

The license to practice law in the District of Columbia is a continuing proclamation by the court that the holder is fit to be entrusted with professional and judicial matters, and to aid in the administration of justice as an attorney and as an officer of the court. It is the duty of every recipient of that privilege to conduct himself at all times, both professionally and personally, in conformity with the standards imposed upon members of the Bar as conditions for the privilege to practice law.

[4] D.C.App.R. XI, Sec. 4(3) (e), provides that the Board shall have the power and duty:

To review the findings and recommendations of hearing committees and to prepare and forward its own findings and recommendations, together with the record of the proceedings before the hearing committee, to this court which shall review such findings and recommendations on the basis of the record and shall enter an appropriate order determining the proceeding.

[5] The Board of Governors of the State Bar of Arizona voted eight to six (one member not voting) for censure. Three of the six in the minority indicated that they thought the punishment recommended was insufficient to fit the offense. The President of the Bar tended to agree, but voted for censure because otherwise it would have been impossible to reach a decision. In the Matter of a Member of the State Bar of Arizona, Richard G. Kleindienst, No. SB-60 (Sup.Ct.Ariz.1975).

[6] In the Matter of Richard G. Kleindienst, Misc.No. 74-63 (D.D.C.1974).

[7] I agree, of course, that this court may make an independent judgment on the nature of the discipline to be imposed. E. g., Levine v. Comm. on Admissions and Grievances, 117 U.S.App.D.C. 218, 219, 328 F.2d 519, 520 (1964).

[8] D.C.App.R. XI, Sec. 3, provides that mis-conduct shall be grounds for:

(1) Disbarment; or

(2) Suspension for a period not exceeding five years; or

(3) Public censure by the court; or

(4) Private reprimand by The Disciplinary Board or an inquiry committee; or

(5) Informal admonition by Bar Counsel.

[9] Hearing Committee Number Three, Report to Disciplinary Board, Bar Docket No. 3-74B, at 23.

[10] Id. at 25.

[11] In re Randolph, 347 S.W.2d 91 (Mo.1961) (solicitation of personal injury cases through and splitting fees with laymen), and In re Black, 228 Or. 9, 363 P.2d 206 (1961) (solicitation of business and retention of runners), merely repeat this principle.

[12] Garfield v. United States ex rel. Stevens, 32 App.D.C. 109, 140 (1908). See also Booth v. Fletcher, 69 App.D.C. 351, 355 n. 7, 101 F.2d 676, 680 n. 7 (1939); In re Black, supra.

[13] In a similar case a suspension of three years has recently been imposed. State ex rel. Nebraska State Bar Ass'n v. Cook (Sup. Ct.Neb., 232 N.W.2d 120, 1975). There, in mitigation, the respondent had urged that "(1) He made an early and complete disclosure and thereafter fully cooperated with responsible authorities. (Attested by letter from the prosecutor.) (2) He is a relatively young man who occupied a sensitive position in a governmental agency, and was subject to the direction of persons senior to him in age and experience and closely identified with the highest civil authority in the nation. (3) His conduct was an isolated transgression involving essentially a single course of conduct in an otherwise unblemished career. (His record of previously high ethical standards as well as his present high legal competence is attested by witnesses and numerous letters from persons of good repute.) (4) He was motivated simply by desire not to injure Maurice Stans. (5) The office of the United States District Attorney, with whom the respondent cooperated, believed his cooperation with that office was complete and forthright. (Attested by letters from the United States District Attorney.) (6) Only two persons could testify as to what occurred in the conversations between Cook and Stans and, if Stans persisted in his version (as he did), Cook could have probably succeeded, had he so wished, in concealing the evidence from the government, but he did not seek to do so. (Attested by letter from the United States District Attorney.) Accordingly, he might have been better off if he had not admitted his involvement, which he nonetheless did to his personal detriment. (7) Cook cooperated without seeking or having been promised immunity on the charge of perjury. (Attested by letter from the United States District Attorney.) (8) He voluntarily resigned as Chairman of SEC. (9) The publicity and humiliation attended upon Cook's disclosures and resignation are, in themselves, substantial punishment. (10) His continuation in the practice of law does not, under the circumstances, constitute a risk to clients, the public, or the administration of justice. (11) The untruths, whatever they may have been, hurt no individual and did not result, and were not intended to result, in the obstruction of

justice. (12) Certain other lawyers involved in recent national scandals have been lightly dealt with. (13) He did not seek to plea bargain with either the District Attorney or the Watergate Special Prosecutor's force, and decisions by those offices not to prosecute Cook either for perjury or conspiracy to obstruct justice were based respectively on policy consideration to encourage recantation and on the merits. (Attested by letters from those offices.)" Id. at 22-24.

[1] The request naturally came in the procedural context of the case which brought to the surface the problems related to us.

[2] The findings and recommendations of the Board's Hearing Committee, as well as the hearing record, are there to be examined by this court, as in administrative law, but it is the Board's finding and recommendation that we are essentially reviewing. There may be times when the Hearing Committees' findings and recommendation would have particular significance for this court. Compare, e. g., Universal Camera Corp. v. National Labor Relations Board, 340 U.S. 474, 71 S.Ct. 456, 95 L.Ed. 456 (1951).

[3] Ex Parte Wall, 107 U.S. 265, 2 S.Ct. 569, 27 L.Ed. 552 (1882).

“C”

AL FRANKEN
MINNESOTA

SUITE
SH-309
202-224-5641

United States Senate

WASHINGTON, DC 20510-2309

March 2, 2017

The Honorable Jeff Sessions
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Sessions:

Reports indicate that you communicated with Russian Ambassador Sergey Kislyak while serving as a prominent member of President Trump's campaign team—conversations you failed to disclose during your confirmation hearing before the Senate Judiciary Committee.[1] During that hearing, I asked you, "if there is any evidence that anyone affiliated with the Trump campaign communicated with the Russian government in the course of this campaign, what will you do?" You answered, "Senator Franken, I'm not aware of any of those activities. I have been called a surrogate at a time or two in that campaign and I did not have communications with the Russians." We now know that statement not to be true, and if it is determined that you lied under oath to the Committee and the American people, it is your responsibility to resign.

The American people deserve a full and fair accounting of the facts. I therefore request that you respond by the end of Friday, March 3, 2017, to the following two questions:

1. In the seven weeks following your confirmation hearing, why did you fail to clarify that you had indeed communicated on more than one occasion with the Russian Ambassador during the 2016 presidential campaign until the *Washington Post* exposed those interactions?

2. Describe in detail any and all communications between yourself and Russian officials and their associates during the presidential campaign of 2016, including but not limited to in-person conversations, phone calls, meetings, and electronic communications. Also include any such communications between members of your staff, including your Senate staff and any staff that assisted you during the campaign, and Russian officials and their associates.

The *Washington Post* has reported that you twice met with Russia's ambassador to the United States during the presidential campaign, meetings that were confirmed by Department of Justice

[1] Adam Entous, Ellen Nakashima, & Greg Miller, *Sessions met with Russian envoy twice last year, encounters he later did not disclose*, WASH. POST, Mar. 1, 2017, *available at* https://www.washingtonpost.com/world/national-security/sessions-spoke-twice-with-russian-ambassador-during-trumps-presidential-campaign-justice-officials-say/2017/03/01/77205eda-feac-11e6-99b4-9e613afeb09f_story.html.

officials.[2] In response, you issued a statement explaining that you "never met with any Russian officials to discuss issues of the campaign," a claim made implausible by the circumstances in which each meeting took place. In July 2016, more than four months after endorsing then-candidate Trump, you delivered remarks during the Republican National Convention at an event hosted by the Heritage Foundation. Following your speech, you were approached by a small group of ambassadors, including Ambassador Kislyak. The ambassador later pulled you aside and engaged you in private conversation. The notion that this conversation, which took place during your party's nominating convention, would not have touched upon issues related to the campaign strains credulity.

On September 8, 2016, you met privately with Russian Ambassador Sergey Kislyak in your Senate office—a discussion your spokesperson characterized as a meeting taken in your capacity as a member of the Senate Armed Services Committee. However, despite ongoing public debate about Russia's involvement in the hacking of American political organizations, an issue of national importance and a topic widely discussed at the time of your meeting, a Justice Department official is quoted as saying "[t]here's just not strong recollection of what was said" during that exchange. However, a Justice Department spokesperson also claimed that the meeting was in no way related to the 2016 presidential election. The fact that these statements are at odds with one another only raises suspicion about the content of your conversations. Moreover, even if your private meeting with Ambassador Kislyak was conducted in your capacity as a member of the Armed Services Committee, I find it hard to believe that you would not have discussed Russia's efforts to interfere in the election.

Russian interference in the most fundamental feature of our democracy is a matter of national security, and the American people deserve to know the truth about what transpired and the extent to which associates of the Trump campaign and Trump organization were involved. In order to get a full and fair accounting of the facts, the public must have confidence that the FBI's investigation into these matters is not just thorough, but impartial. However, the questions raised by your previously undisclosed communications with the Russian ambassador cast doubt upon the impartiality of those investigations. Furthermore, the *Wall Street Journal* has reported that investigators have examined contacts between you and Russian officials as "part of a wide-ranging U.S. counterintelligence investigation into possible communications between members of Mr. Trump's campaign team and Russian operatives."[3] Setting aside any political allegiances that might cloud your supervision of the probe, the public simply cannot have faith that a potential subject of the investigation would be capable of impartially overseeing the inquiry.

In light of these revelations, I call upon you to recuse yourself from any and all investigations related to Russian interference in our elections, including investigations into contacts between the Russian government and associates of President Trump. In order to assure the American people that this matter will be resolved with integrity and impartiality, the Department of Justice

---

[2] Department of Justice officials have also confirmed that on September 13, 2016, you spoke with Russian Ambassador Kislyak by phone from your Senate office. *See* Howard Koplowitz, *Jeff Sessions denies impropriety over Russian ambassador controversy*, ALABAMA MEDIA, Mar. 1, 2017, *available at* http://www.al.com/news/index.ssf/2017/03/jeff_sessions_denies_improprie.html.

[3] Carol E. Lee, Christopher S. Stewart, Rob Barry, & Shane Harris, *Investigators Probed Jeff Sessions' Contacts With Russian Officials*, WALL ST. J., Mar. 2, 2017, *available at* https://www.wsj.com/articles/investigators-probed-jeff-sessions-contacts-with-russian-officials-1488424871.

should appoint a special prosecutor to oversee the investigation. However, in recognition of the fact that the attorney general is responsible for appointing a special prosecutor, you must also recuse yourself from that responsibility. If it is determined that you lied to the Committee and the American people under oath during your confirmation hearing, it is incumbent upon you to resign from your position as attorney general.

Sincerely,

Al Franken
United States Senator

“D”

Nomination of Jeff Sessions to be Attorney General of the United States
Questions for the Record
Submitted January 17, 2017

QUESTIONS FROM SENATOR LEAHY

1. At your hearing, I asked you several questions about your opposition to these two bills. With respect to VAWA, you stated "a number of people opposed some of the provisions in that bill." You mentioned specifically the tribal victims provision.

a. Did you also oppose the new protections for LGBT Americans?

RESPONSE: My principal concerns about the 2013 VAWA reauthorization centered on the tribal jurisdiction provision. The 2013 Act also includes a provision that prohibits recipients of federal grants (such as women's domestic-violence shelters) from discriminating on the basis of, among other things, sex, gender identity, and sexual orientation. This provision includes an exception that a grantee may carry out sex segregation or sex-specific programming if it can show that such programming is "necessary to the essential operation of a program," and if it provides comparable services to individuals who cannot be provided with sex-segregated or sex-specific programming. My and other Senators' concerns about this provision centered on the fact that, on its face, its broad prohibition would appear to preclude operation of a women-only (or women and children-only) domestic violence shelter, and the Act's exception to this prohibition appears narrow and is unclear. Although a woman who has been the victim of violence at the hands of a husband or boyfriend may be better served by services that are provided outside the presence of men, it is unclear whether a women's domestic-violence shelter would be able to meet the Act's requirement that it show that providing women-only services is "necessary to the essential operation" of the shelter. I believe that, in some circumstances, it is appropriate for VAWA grant recipients to provide services that are limited to women. To the extent that VAWA 2013's new anti-discrimination provision is construed to, for example, prevent or make it difficult for a women's domestic violence shelter to provide services that it believes should be limited only to women, I continue to have serious reservations about that provision. In the past, I have received strong objections from a respected women and children's shelter on this very issue.

I asked if you would defend the law's constitutionality, and you did not provide a full answer. You said only that you would "if it is reasonably defensible."

b. Do you believe the 2013 Leahy-Crapo VAWA Reauthorization, including its LGBT and tribal victims' provisions, is "reasonably defensible"?

RESPONSE: If I am confirmed as Attorney General, I will enforce all federal laws, including the 2013 reauthorization of VAWA. I understand that a pilot program has been initiated that seeks to conform tribes' exercise of criminal jurisdiction over non-Indians to the requirements of the Sixth Amendment. I will carefully study this program before reaching any final legal conclusions about the VAWA tribal jurisdiction provision.

RESPONSE: I have not reviewed the report, but I have no reason not to accept the intelligence community's conclusion(s) as contained in the report.

b. Do you accept the conclusion of the intelligence community that Russia provided to Wikileaks the information that it stole?

RESPONSE: I have not reviewed the report, but I have no reason not to accept the intelligence community's conclusion(s) as contained in the report.

c. Do you accept the conclusion of the intelligence community that Russia engaged in these activities in order to interfere with the election in Donald Trump's favor?

RESPONSE: I have not reviewed the report, but I have no reason not to accept the intelligence community's conclusion(s) as contained in the report.

d. Do you consider this to be illegal behavior, and a threat to our democratic process?

RESPONSE: I have not reviewed the matter in any detail; therefore, I am not in a position to opine on it.

e. Several of the President-Elect's nominees or senior advisers have Russian ties. Have you been in contact with anyone connected to any part of the Russian government about the 2016 election, either before or after election day?

RESPONSE: No.

f. Attorney General Lynch has confirmed that career officials are investigating Russian interference in the 2016 elections. If confirmed, will you commit to allowing this investigation to move forward? What will you do if the White House directs you to end the investigation?

RESPONSE: I am unaware of any investigations beyond what is contained in public reporting. As such, I am unable to comment on the status of any such investigations except to say that I believe all investigations by the Department of Justice must be initiated and conducted in a fair, professional, and impartial manner, without regard to politics or outside influence. The Department must follow the facts wherever they lead, and make decisions regarding any potential charges based upon the facts and the law, and consistent with established procedures of the Department. That is what I always did as a United States Attorney, and it is what I will insist upon if I am confirmed as Attorney General.

23. I am greatly concerned about racial disparities within our criminal justice system. In 2010, you agreed to reduce the dramatic disparity between sentences for crack and powder cocaine offenses, but you refused to eliminate the disparity altogether or to allow the changes in the Fair Sentencing Act to be retroactive.

COMPLAINT AGAINST A LAWYER

Return your completed form to:

Alabama State Bar
Disciplinary Commission
P. O. Box 671
Montgomery, AL 36101-0671

NAME AND ADDRESS OF COMPLAINANT

Larrabee, J. Whitfield
Last Name, First Name

251 Harvard Street, Suite 9
Address

jw.larrabee@verizon.net
E-mail Address

Brookline, MA 02445
City, State, ZIP Code

617-566-3670
Telephone Number(s)

Name & Relationship of Person Who Can Always Contact You

Telephone Number(s)

NAME AND ADDRESS OF ATTORNEY AGAINST WHOM YOUR COMPLAINT IS MADE

Sessions, III, Jefferson B.
Last Name, First Name

US Department of Justice
Name of Law Firm Where Attorney is Employed

950 Pennsylvania Avenue, NW
Address

Washington, DC 20530-0001
City, State, ZIP Code

202-514-2000
Telephone Number(s)

On what date did the alleged ethics violation occur? Beginning on January 10, 2017 and possibly earlier, to the present.

What was your fee arrangement with the attorney?

COMPLAINT INSTRUCTIONS:

1. If you have a complaint against more than one attorney, use a SEPARATE complaint form for each attorney, with the details and relevant exhibits attached to each separate complaint. If you are filing more than one complaint, do not combine your complaint details or your exhibits into one document, or make a specific comment about a complaint filed against another attorney, or it will be returned to you. We will not accept complaints against law firms.
2. Send your complaint with an original notarized signature. We will not accept a copy of your signature.
3. State specifically, on each individual complaint, what the attorney did or failed to do which you believe constitutes unethical conduct, and when it occurred.
4. Attach **COPIES** of any receipts, contracts, or other documents which are important to the complaint, to the back of each individual complaint. Keep your own original documents.
5. Please, do not bind your complaint. Type or write your complaint legibly in ink so it can be copied.
6. You may add more pages to this form if necessary.
7. If you believe that drugs, alcohol or mental disability affected the lawyer's representation, please state what facts support your belief.
8. This matter is confidential at this stage of the proceedings, until the Disciplinary Commission or Board has acted.

9. The Alabama Bar Association does not represent you in this matter but acts to investigate complaints on behalf of the Supreme Court of Alabama.

If there is a court case related to your complaint, please provide the case name and file number, and the lawyer representing you?

DETAILS OF YOUR COMPLAINT

Explain your complaint in your own words. Include the following: all important dates, times, places, and court file numbers. Please be advised we cannot return documents submitted to this office. You should retain a copy of all materials you submit. Do not send cassette tapes unless requested by the Bar to do so. The Alabama State Bar cannot be held responsible for lost, misdirected or damaged documents.

The basis for this complaint is set forth in the written complaint submitted herewith and incorporated by reference as if fully set forth. The facts in the complaint submitted with the form are true and correct to the best of my knowledge and belief.

The attorney you are filing the complaint against will receive a copy of your complaint, and may be asked to respond to your allegations.

I hereby certify that the information I am providing is true and accurate to the best of my knowledge and that I will voluntarily appear and testify to the facts in the complaint if called upon by the Alabama State Bar.

J. Wirt Lanalee
Name (signature)

Date: 3/9/2017

Sworn to and subscribed before me this 9 **day of** March, 2017.

[SEAL]

ERICK J. LAHME
MY COMMISSION EXPIRES DECEMBER 30, 2022
NOTARY PUBLIC
COMMONWEALTH OF MASSACHUSETTS

NOTARY PUBLIC

MY COMMISSION EXPIRES: 12/30/2022