Trump's Dilemma:
Explaining the President's War on His Own Executive Branch

Mark A. Pollack
Professor of Political Science and Law
Jean Monnet Chair
Temple University
Department of Political Science
461 Gladfelter Hall
Philadelphia, PA 19122
E-mail: mark.pollack@temple.edu

11 January 2019

"I value loyalty above everything else – more than brains, more than drive and more than energy."
                                                            – Donald J. Trump, 2014[1]

"The president has not a whit of respect for institutions, whether it's the DOJ or the Fed or the FBI. If you are a threat to him, he is going to try to kill you."
                                                            – Anonymous Trump Administration official, 2018[2]

President Donald J. Trump took office in January 2017 as perhaps the most unconventional president in the history of the United States, bringing to office a political agenda dramatically at odds not only with that of the departing Obama administration, but indeed with much of the bipartisan consensus of the postwar era. Candidate Trump had railed on the campaign trail against much of the federal government as an elitist "Deep State" ruling in its own interests at the expense of the American people, and he promised to "drain the swamp" upon his arrival in Washington, DC.

Although it is questionable whether Trump was indeed able to reduce corruption in the federal government,[3] one of the most striking characteristics of the Trump administration was the frequency and vehemence with which the President of the United States sought to undermine the competence – the expertise, operational capacity, credibility, and legitimacy – of his own federal departments and agencies. In some cases, such as the Environmental Protection Agency (EPA) and the Department of State, Trump sought to undermine the "Deep State" civil service through massive cuts in staff and budget, silencing of experts, and a depletion of morale that drove long-time professionals out of government service. In other cases, such as the US intelligence agencies, the Department of Justice (DOJ), and the Federal Bureau of Investigation (FBI), the President engaged in public attacks on the credibility and legitimacy of those intermediaries, including individual leaders and career civil servants, whose words or actions might endanger the President and his policies.

This figurative war of a president against his own government is not entirely unprecedented: previous US presidents have reduced the budgets and staff of agencies whose

---

[1] Quoted in Michael Kruse, "'I Need Loyalty,'" *Politico Magazine*, March/April 2018.

[2] Quoted in Felicia Sonmez, Josh Dawsey, and Anne E. Marimow, "Critics Fear Trump's Attacks Are Doing Lasting Damage to the Justice System," *The Washington Post*, 23 August 2018.

[3] David Leonhardt and Ian Prasad Philbrick, "Trump's Corruption: The Definitive List," *The New York Times*, 28 October 2018.

1

missions were not valued, while others have publicly clashed with law-enforcement officials investigating them for violations of federal law. Nevertheless, the scope and vehemence of Trump's campaign against his own federal government *is* without precedent in American history, and cries out for explanation. In this context, I argue that the application of the Governor's Dilemma (GD) framework allows us to explain why, and how, an American President could devote so much of his energy to undermining his own intermediaries.[4] The GD framework focuses our attention on the extraordinary goal divergence between Trump and the men and women who serve in the various federal departments and agencies; the dramatic cuts to the expertise and operational capacity of bodies like the EPA and State Department; and the presidential branding of US intelligence and law-enforcement agencies as "criminal" or even "Nazi" in character.

The Trump administration remains, at this writing, a moving target, and this study is both tentative and exploratory. We do not yet know the full story of President Trump's private interactions with his many intermediaries in the federal government, nor do we know the ultimate fate of his presidency. Yet, even without knowing the end of the story, it can be instructive to examine the most prominent instances in which Trump has attempted, with partial success, to undermine the competence of his intermediaries. I therefore focus in this chapter on four cases – the Environmental Protection Agency, the Department of State, US intelligence agencies, and the Department of Justice and FBI – in which President Trump moved to undermine the expertise, operational capacity, credibility, and legitimacy of his own federal departments and agencies. These cases fall into two distinct groups.

In the first two cases, namely the EPA and the State Department, Trump was critical of the previous work of these bodies and distrustful of the "Deep State" political appointees and civil servants whom he regarded as opposed to both his policies and his presidency. In the case of the EPA, Trump came to office not only pledging to reduce federal environmental regulation, but with a record of denying the science of climate change, much of which had emanated from EPA scientists. In the case of the State Department, Trump, who had belittled the core institutions of the postwar order, betrayed an ill-disguised contempt for the US diplomatic corps. In both cases, Trump went beyond what previous Republican presidents had done, cutting deeply into the senior

---

[4] For a detailed statement of the Governor's Dilemma framework, see Kenneth W. Abbott, Philipp Genschel, Duncan Snidal and Bernhard Zangl, "Competence-Control Theory: Introducing the Governor's Dilemma," paper presented at the Governor's Dilemma Workshop, European University Institute, Florence, 14-15 May 2018.

ranks of agency leadership, targeting career civil servants as well as political appointees, and failing to replace the dramatic outflow of expertise and capacity with new appointees of his own. The result in each case was a government department or agency that was not simply under new management, but depleted of the competence to carry out its mandate.

In the other two cases, namely the federal intelligence and law-enforcement communities, Trump was faced with departments and agencies with policy goals to which Trump and his supporters were (at least nominally) committed. Yet these same intermediaries represented, in the proper conduct of their mandated duties, a threat to Trump's presidency – in the former case by releasing information demonstrating that his presidential campaign had been covertly supported by Russia, and in the latter cases by pursuing investigations into purported criminal activities undertaken by the President's associates or even the President himself. In these cases, Trump attempted to use his appointment powers to ensure his control over the relevant agencies, by hiring former Republican Senator Dan Coates as Director of National Intelligence (DNI), Republican Congressman Mike Pompeo as Director of the Central Intelligence Agency (CIA), and Republican Senator Jeff Sessions as Attorney General, as well as by firing and replacing FBI Director James Comey. When these agencies continued to release information and pursue investigations that were seen as threatening to the President, however, Trump responded with unprecedented public attacks on those agencies, their leadership, and even rank-and-file officials, in an attempt to undermine their credibility and legitimacy.

The rest of this chapter is organized in four parts. First, I revisit the Governor's Dilemma framework, focusing on how high degrees of goal divergence between a governor and his intermediaries can present the governor with a "control-competence" tradeoff. I specify the ways in which each of the framework's four competences might threaten a governor, as well as the ways in which a governor might undermine each of those competences. I also introduce Trump's Dilemma, substantiating the claim of unprecedented goal divergence between Trump and the various federal departments and agencies. The second and third sections explore the four case studies, chronicling how a distrustful president sought to reduce the competence of intermediaries whom he considered a threat to his policies or his Presidency. A final section concludes by placing the Trump administration's conduct in a broader historical context, noting the similarities between Trump's behavior and those of previous US presidents, as well as the elements that appear to be unique to the presidency of Donald J. Trump.

3

I. The Governor's Dilemma Framework

The President of the United States is a governor with enormous power and authority to conduct US domestic and foreign policy. Yet, *pace* theories of a unitary executive, the US President is a governor who must necessarily govern through intermediaries, in the form of the many departments and agencies that make up the US executive branch. In principal-agent (PA) terms, the president can be theorized as a political principal, and the men and women in the various departments and agencies are his agents, carrying out their assigned roles. Thus, for example, the President is empowered, with the advice and consent of the US Senate, to name the political appointees at the heads of departments and agencies, who in turn direct a much larger number of career civil service professionals. Indeed, the executive branch can and should be seen as a *chain* of delegation, with the President as principal appointing the political leaders of the departments and agencies, who in turn supervise the career civil servants who draft and execute government policies under the indirect control of the President.

This does not mean, of course, that the President perfectly controls either political appointees or civil servants in US government departments and agencies. Each of these bodies, and the men and women who work in them, can be expected to have their own preferences, distinct from those of any incoming President. Presidents can use the imperfect control mechanisms at their command, including most notably the appointment and dismissal of department and agency leaders, as well as other mechanisms like the allocation of budgetary and staff resources, to limit the discretion of their agents. But these control mechanisms can themselves be costly to use. Presidents are limited in their use of control mechanisms by federal statutes (including Congressional control of agency budgets, and the need for Senate confirmation of senior appointments), and by long-standing informal norms of presidential conduct (such as the norm that the President does not interfere with the conduct of federal criminal investigations). Moreover, the President appoints, and can dismiss, only the political appointees at the top of each department or agency; below that political layer lies the career bureaucracy, whose members enjoy legal protections to prevent the politicization of the civil service.

1. The Governor's Dilemma and the Control-Competence Tradeoff

Donald Trump's attacks on the competences of many of his federal government intermediaries are puzzling to principal-agent accounts of government. As Abbott et al. point out

Electronic copy available at: https://ssrn.com/abstract=3327624

in their introduction to this volume, the PA perspective expects principals to respond to goal divergence by increasing control through mechanisms like appointments, monitoring, and sanctioning, but only the Governor's Dilemma framework explicitly anticipates the prospect that a governor will do so by *decreasing the competence* of the intermediary. Such a theoretical account can be articulated for the purposes of this chapter in four steps.

First, within the GD framework, the story of Trump's Dilemma takes place in the upper-left-hand corner of the editors' 2x2 table, in the "delegation" cell, since government departments and agencies are *granted* authority through some combination of Presidential and Congressional action, and since the President can avail himself of a variety of *hierarchical controls* vis-à-vis his intermediaries. There are, to be sure, both constitutional and Congressional constraints on the use of presidential controls, as well as political costs to exercising them in defiance of traditional norms. Nevertheless, both the granting of authority and the availability of hierarchical controls place Trump's relationship to federal departments and agencies in the realm of delegation.

Second, according to the GD framework, all types of governor-intermediary relationships are subject to a competence-control tradeoff. Control, in this view, "is defined as the *governor's* ability to shape and constrain intermediaries' behavior so that they pursue the governor's goals and cannot subvert them." Competence, in turn "is defined as the *intermediary*'s ability to achieve the governor's desired governance outcomes." The novel prediction of the GD framework is that there is an inherent tradeoff between control and competence. As the editors theorize the tradeoff: "Policy-makers, rulers and 'governors' of all kinds face a difficult decision: they must acquire essential governance competencies by working through intermediaries, but risk losing power and influence to the competent intermediaries on which they rely, *perhaps endangering their policy goals or even their rule*" (emphasis added).

Third, having spelled out this core logic, the editors posit four distinct types of competence – expertise, operational capacity, credibility, and legitimacy – and discuss how high levels of each competence may pose a threat to the governor.

1. **Expertise.** Defined as "specific information, knowledge or skills," expertise can be of obvious use to a governor, but it can also be a threat to a governor's goals or authority. Given this threat, a governor has multiple options to stifle expertise, ranging from denying experts information, to "throttling" their ability to offer expertise, selectively overruling

expert decisions, and ultimately threatening to fire them. Indeed, "governors with a strong preference for control may sacrifice expertise altogether," installing "cronies, not professionals, in key positions."

2. **Operational capacity** is defined in the GD framework as "operational resources (people, money, equipment, and organization) for policy implementation and enforcement." The usefulness of an intermediary with operational capacity is self-evident, yet such intermediaries also pose "considerable threat potential," through their ability to withhold operational capacity or use it against the governor. For this reason, a concerned governor might actually wish to deny operational capacity to its intermediary, albeit at the cost of competent policy implementation.

3. **Credibility**. As in PA analysis, the GD framework posits that governors may delegate authority to intermediaries to take advantage of their credibility, solving time-inconsistency problems in which the governor would have short-term incentives to adopt policies that undermine long-term objectives. A governor seeking intermediary credibility "should therefore select intermediaries with more extreme policy preferences than its own… and free them to implement these preferences even under adverse political conditions." The problem with credible intermediaries, however, "is that they may act more radically and vigorously than the governor intended or than circumstances warrant…. To regain control, the governor must either replace the true believers or constrain their independence," albeit at the cost of losing the benefits of credibility.

4. **Legitimacy.** In the context of the GD framework, legitimacy refers broadly to public trust, and the implication is that an intermediary may sometimes enjoy greater public trust than the governor. A highly legitimate intermediary, however, could potentially mobilize the public against the governor and its goals. For this reason, we might expect a governor threatened by an intermediary to attempt to undermine its legitimacy.

If the editors are correct that intermediary competence poses an inherent threat to the governor, then we should, to the extent that those threats become manifest, expect governors to undermine any or all of the four types of competence spelled out above.

Fourth and finally, the GD framework suggests that, *ceteris paribus*, governor attempts to undermine intermediary competence should be greatest when goal divergence between the governor and the intermediary is high. In the rest of this chapter, I assess whether these four claims are substantiated by, and help make sense of, Donald Trump's fraught relationship with his intermediaries in the US federal government.

2. Trump's Dilemma: Goal Divergence and Antipathy toward the "Deep State"

Even before taking office in January of 2017, Donald Trump faced a high degree of goal divergence vis-à-vis his future intermediaries. This latter group included both career officials in the civil service, as well as the pool of traditional Republican political appointees, many of whom had expressed their overt repugnance for the candidate in the run-up to the election.

Potential objections to Trump among potential intermediaries were three-fold. First, many current and potential policy-makers on both right and left regarded Trump as personally flawed and unfit for the office. Second, candidate Trump had in many cases campaigned on promises to overturn decades of bipartisan consensus ranging from domestic regulation, which he promised to roll back, to international relations, where he accused his predecessors of incompetently negotiating disastrous agreements and promised to withdraw many of the United States' core international commitments. Third, Trump had run on a populist platform that demonized Washington policymakers as sinister elites who had enriched themselves at the expense of the American people, and his advisor and campaign manager Steve Bannon called explicitly for the "deconstruction of the administrative state."[5]

Despite growing trepidation about Trump's character and policy positions, most career civil servants expressed their concerns primarily in private. Perhaps the most spectacular and consequential public statement of opposition to Trump among potential intermediaries was the famous "Never Trump" letter drafted and released in March 2016 by a distinguished group of Republican foreign-policy experts who catalogued a series of objections to the would-be

---

[5] See Philip Rucker and Robert Costa, "Bannon Vows a Daily Fight for 'Deconstruction of the Administrative State,'" *Washington Post*, 23 February 2017.

presidential candidate and promised to work "to prevent the election of someone so utterly unfitted to the office."[6] This campaign having failed to prevent his nomination or election, Trump assumed the Presidency in 2017 with a deep distrust of both the traditional Republican political establishment and the career civil service whom he regarded as members of the Deep State or "Obama holdovers."

The notion of a Deep State has wide currency within the American far right, as do Bannon's ideas about the administrative state; but whereas the dismantling of the administrative state can be seen as an extension of traditional conservative opposition to big government, the notion of a Deep State goes much further, positing the existence of a cadre of career government officials working secretly to undermine the President.[7] Although the language of the Deep State was initially used in reference to nondemocratic countries, Trump deployed the term explicitly to criticize government agencies,[8] and Trump's allies frequently claimed that the President was being undermined by Deep State elements throughout the government.[9] Given this goal divergence and distrust, the Trump team that arrived in Washington in January 2017 "greeted the federal government not as a machine that could implement its vision, but as a vanquished foe."[10] Trump's tactics varied across agencies and issue-areas, but reporting on the new administration identified several patterns, at three levels.

First, at the top political leadership level of department secretaries and agency heads, Trump appeared to place a premium on loyalty over competence, appointing leaders whose primary qualification was ideological like-mindedness and/or personal loyalty.[11] In a few areas, particularly relating to national security, Trump appointed experienced leaders like James Mattis at the Department of Defense. By and large, however, Trump followed his long-time preference for loyalty over competence in the appointment of figures like Rick Perry (Department of Energy),

---

[6] Open Letter on Donald Trump from GOP National Security Leaders," *War on the Rocks*, 2 March 2016, https://warontherocks.com/2016/03/open-letter-on-donald-trump-from-gop-national-security-leaders/.

[7] See e.g. Alana Abramson, "President Trump's Allies Keep Talking About the 'Deep State.' What's That?" *Time*, 8 March 2018.

[8] Catherine Lucey and Darlene Superville, "Trump Accuses Department of Justice of Being Part of 'Deep State'," *The Chicago Tribune,* 2 January 2018.

[9] Corey R. Lewandowski and David N. Bossie, *Trump's Enemies: How the Deep State Is Undermining the Presidency* (New York: Center Street, 2018).

[10] Evan Osnos, "Trump vs. the 'Deep State,'" *The New Yorker*, 21 May 2018.

[11] Michael Lewis, *The Fifth Risk* (New York: W.W. Norton & Company, 2018).

8

Ben Carson (Housing and Urban Development), and Ryan Zinke (Department of the Interior), among others. In the words of political scientist Andrew Rudalevige, "President Trump has, from the start of the administration, had difficulty in finding staffers who are both responsive and competent – and wound up stressing responsiveness."[12]

Second, Trump was famously slow to fill many senior administration positions; indeed, nearly two years into the administration, Trump had filled only 378 of 704 positions subject to Senate confirmation, with 198 nominees awaiting confirmation and 129 positions awaiting a nomination from the administration.[13] From a PA perspective, these delays are puzzling, since a President might normally wish to put his own team into place, yet Trump suggested publicly that his failure to nominate candidates to many positions was deliberate. "A lot of those jobs, I don't want to appoint, because they're unnecessary to have," Trump told interviewers on Fox & Friends. "You know, we have so many people in government, even me. I look at some of the jobs and it's people over people over people. I say, 'What do all these people do?' You don't need all those jobs."[14]

Third, and consistent with his Deep State rhetoric, Trump adopted an adversarial stance vis-à-vis the career civil service. In early 2017, the administration famously dispatched what it called "beachhead teams" to establish immediate control in the departments and agencies, pending the delayed nomination of agency leadership. Many of these teams were composed of Trump campaign officials with little or no experience in their respective areas.[15] Furthermore, Trump moved, over the first two years of his presidency, to adopt civil service reforms that would make it easier for the administration to fire career civil servants.[16]

In short, the Trump administration came to office in January 2017 deeply suspicious of the departments and agencies of the federal government, and prepared to undermine their expertise, operational capacity, credibility and legitimacy. The precise nature of the goal divergence between

---

[12] Quoted in Jennifer Rubin, "Here's the Case: Trump Has the Worst Candidate Ever," *The Washington Post*, 14 March 2018.

[13] "Tracking How Many Key Positions Trump Has Filled So Far," *The Washington Post*, 19 November 2018.

[14] Cody Derespina, "Trump: No Plans to Fill 'Unnecessary' Appointed Positions," *Fox News*, 28 February 2017.

[15] Lewis 2018: 41.

[16] Noam Schreiber, "Trump Moves to Ease the Firing of Federal Workers," *The New York Times*, 25 May 2018.

the administration and its intermediaries varied by issue-area, as did Trump's tactics for undermining different competencies as instruments of control.

II. Gutting the Bureaucracy: Reducing Expertise and Operational Capacity at the EPA and the State Department

The first two cases examined here, the EPA and the State Department, represent instances in which Trump sought to undermine the expertise and operational capacity of his intermediaries. Although the EPA represents an instance of domestic regulation and the State Department the centerpiece of international diplomacy, both cases follow a similar pattern in which a new administration, deeply distrusting the "Obama holdovers" in each body, dismissed or demoted existing officials, failed to hire replacements, and dramatically cut staff and resources.

1. The Environmental Protection Agency

Judging from Trump's comments as a candidate, as well as the behavior of past Republican presidents, the rollback of environmental regulation by Trump's EPA is unsurprising. Previous Republican presidents dating back to Ronald Reagan have run for office on a platform of deregulation, promising to reduce the burden of environmental regulations on business, and carried out those promises in office.[17] Reagan appointed a long-time critic of environmental regulation, Anne Gorsuch, as his EPA Administrator, and presided over substantial cuts to its personnel and budget.[18] Later, the Administration of George W. Bush pioneered the practice of having political staff tinker with the wording of scientific research reports, so as to undermine the scientific case for government regulation.[19] Trump borrowed from these playbooks, but went further in his efforts to reduce the competences required to produce and enforce environmental regulations.

As a candidate, Trump had inveighed against environmental regulations, which he claimed were strangling American business and killing the coal industry.[20] Trump also went further than any previous president in denying the science underlying environmental regulation, referring

---

[17] Christopher Sellers, "How Republicans Came to Embrace Anti-environmentalism," *Vox*, 6 July 2018.

[18] Leif Fredrickson et al., "History of US Presidential Assaults on Modern Environmental Health Protection," *American Journal of Public Health*, 108, no. S2 (April, 2018), pp. S95-S103.

[19] Chris Mooney, *The Republican War on Science* (New York: Basic Books, 2005).

[20] Katie Fehrenbacher, "How Donald Trump's Energy Policies Are All About Removing Regulations," *Fortune*, 26 February 2016.

repeatedly to climate change as a "HOAX" and "bullshit… based on faulty science and manipulated data."[21]

Soon after his election, Trump appointed as EPA Administrator Scott Pruitt, a self-described "leading advocate against the EPA's activist agenda,"[22] who had sued the Agency 14 times as Attorney General of the State of Oklahoma. The appointment of Pruitt, who shared Trump's views, made sense in PA terms, and Pruitt pursued Trump's deregulatory agenda with gusto, withdrawing dozens of EPA regulations, delaying the introduction of new rules, and presiding over a dramatic reduction in enforcement.[23] On the other hand, Pruitt proved to be one of the most scandal-prone appointments in an administration riddled with scandal, prompting a remarkable 14 ethics investigations of his conduct in office.[24] This mounting toll of corruption reached a crescendo in July 2018, when Trump finally accepted the resignation of his embattled EPA Administrator, who was replaced by his deputy Andrew Wheeler.[25]

For our purposes in this chapter, the most striking feature of Trump's EPA is Pruitt's faithfully executed strategy of undermining the operational capacity and especially the scientific expertise of the Agency. Trump as a candidate had promised to reduce the EPA to "little tidbits,"[26] and his administration moved quickly in office to act on this promise, proposing a 31% cut to the EPA budget in the administration's 2018 budget proposal to Congress, including dramatic cuts of 3,200 officials, or about 20% of the agency's workforce,[27] with a particular focus on the EPA's scientists.[28] Congress failed to approve these cuts, keeping the EPA budget essentially unchanged

---

[21] Quoted in "Trump's Views on Science Are Shockingly Ignorant," *Scientific American*, 1 November 2016.

[22] "About the Attorney General," Oklahoma Office of the Attorney General Scott Pruitt, n.d., archived at https://web.archive.org/web/20170108114336/https://www.ok.gov/oag/Media/About_the_AG/.

[23] Popovich, Livia Albeck-Ripka, and Kendra Pierre-Louis, "76 Environmental Rules on the Way Out Under Trump," *The New York Times*, 6 July 2018.

[24] Lisa Friedman, "The Investigations That Led to Scott Pruitt's Resignation," *The New York Times*, updated 5 July 2018.

[25] Coral Davenport, Lisa Friedman, and Maggie Haberman, "E.P.A. Chief Scott Pruitt Resigns Under a Cloud of Ethics Scandals," *The New York Times,* 5 July 2018.

[26] Quoted in Louis Jacobson, "Budget Proposal Would Cut EPA by 31% in One Year," *Politifact,* 29 March 2017.

[27] Brady Dennis, "Trump Budget Seeks 23 Percent Cut at EPA, Eliminating Dozens of Programs," *The Washington Post*, February 12, 2018.

[28] Coral Davenport, "Trump Budget Would Cut E.P.A. Science Programs and Slash Cleanups," *The New York Times*, 19 May 2017.

at about \$8 billion per year.[29] Yet the Trump administration continued its effort to reduce agency staff through attrition, including offering early retirement packages.[30] By late 2018, nearly 1,600 workers had left the agency, producing a net reduction of more than 8 percent in the agency workforce, and plunging morale among those who remained.[31]

This understaffing of scientific positions at the EPA was a microcosm of broader developments across the federal government, as the Trump administration in its first six months failed to nominate candidates for 39 of the top 46 science posts.[32] Charges of interference in the work of EPA scientists, moreover, went beyond concerns about numbers of staff. According to media reports, Pruitt seldom consulted with the agency's scientific staff when making policy decisions, relying on a small coterie of political appointees with previous experience as industry officials and lobbyists.[33]

Pruitt also unveiled two proposed rules that would fundamentally change the role of science in the EPA regulatory process. In the first, EPA scientists would be prohibited (except with permission of the Administrator) from incorporating into its scientific analyses any studies for which data were not publicly available; presented in the name of transparency, this reform could force EPA scientists to exclude information from studies that rely on confidential patient information.[34] A second rule would ban any recipient of an EPA scientific grant from serving on the federal advisory committees established to oversee the agency's research. This rule was presented as a means of avoiding conflicts of interest, yet industry experts with financial stakes in the outcome were not excluded from serving on such committees.[35]

In sum, the Trump Administration in its first two years sought to effect a program of deregulation at the EPA, administered by a team of like-minded political appointees, accompanied

---

[29] Marina Koren, "Congress Ignores Trump's Priorities for Science Funding," *The Atlantic*, 23 March 2018.

[30] Lisa Friedman, Marina Affo and Derek Kravitz, "E.P.A. Officials, Disheartened by Agency's Direction, Are Leaving in Droves," *The New York Times,* 22 December 2017.

[31] Brady Dennis, Juliet Eilperin, and Andrew Ba Tran, "With a Shrinking EPA, Trump Delivers on His Promise to Cut Government," *Washington Post*, 8 September 2018.

[32] Alan Burdick, "Donald Trump's Know-Nothing Science Budget," *The New Yorker*, 2 March 2018.

[33] Lindsey Dillon et al., "The Environmental Protection Agency in the Early Trump Administration: Prelude to Regulatory Capture," *American Journal of Public Health*, Supplement 2, 2018, Vol 108, No. S2, pp. S89-S94.

[34] Warren Cornall, "New Rule Could Force EPA to Ignore Major Human Health Studies," *Science*, 25 April 2018.

[35] Wendy Wagner, Elizabeth Fisher, and Pasky Pascual, "Whose Science? A New Era in Regulatory 'Science Wars,'" *Science*, 9 November 2018, p. 638-39.

by a deliberate campaign to reduce both scientific expertise and operational capacity at the agency, in ways that surpassed comparable efforts by previous Republican presidents.

2. The State Department

As with the EPA, the Trump administration's combative approach to the State Department should have come as no surprise to any observer of the 2016 presidential campaign. As a candidate, Trump was openly contemptuous of the "globalist" diplomatic corps and the "disastrous deals" – ranging from the Iran-nuclear deal to the Paris climate change agreement to the NATO alliance and the panoply of US trade agreements – they had negotiated. Candidate Trump promised an "America first" foreign policy, a willingness to walk away from American commitments, and an apparent indifference to human rights, democracy, and other values pursued by US diplomats since the end of World War II.

Not surprisingly, much of the US foreign policy establishment regarded Trump's rise with horror. The most consequential public statement of such opposition was the aforementioned "Never Trump" letter, in which Republican foreign-policy experts catalogued a litany of objections to the Republican candidate, including his advocacy of torture and trade wars, his anti-Muslim rhetoric, his hostility toward US allies and embrace of foreign dictators, his dishonesty, and his vision of America's role in the world, described as "wildly inconsistent and unmoored in principle."[36] Later, after Trump had secured the Republican nomination, a second such public letter appeared, repeating many of these core criticisms.[37] When Trump again defied the odds and won the presidency, these "Never Trump" elites would find themselves blacklisted from the administration.[38]

Trump therefore looked outside the traditional diplomatic community for his foreign policy team, including the retired general Michael Flynn, who served briefly as Trump's first National Security Advisor, as well as Carter Page and George Papadopoulos, who would later become swept

---

[36] "Open Letter on Donald Trump from GOP National Security Leaders," *War on the Rocks*, 2 March 2016, https://warontherocks.com/2016/03/open-letter-on-donald-trump-from-gop-national-security-leaders/.

[37] "A Letter From G.O.P. National Security Officials Opposing Donald Trump," *The New York Times*, 8 August 2016, https://www.nytimes.com/interactive/2016/08/08/us/politics/national-security-letter-trump.html?module=inline.

[38] Dan De Luce and Robbie Gramer, "Two Years Later, No Amnesty for the GOP's Never Trump Camp," *Foreign Policy*, 8 June 2018.

up in the Russia probe.[39] Upon winning the Presidency, Trump looked to another outsider, Exxon CEO Rex Tillerson, as his first Secretary of State. Despite Tillerson's lack of State Department experience, much of the diplomatic community responded to the nomination with guarded optimism, given his extensive international and managerial experience. In the end, however, Tillerson – the middle link in a chain of delegation running from Trump to the diplomatic corps – would end up disappointing both.

From Trump's perspective, Tillerson was revealed to take a more "establishment" approach to foreign policy than the President, who publicly disagreed with his Secretary of State over the nuclear agreement with Iran, the diplomatic dispute between Saudi Arabia and Qatar, and relations with North Korea. Perhaps the most striking difference of views emerged in July 2017 at a meeting of the President and his senior foreign policy advisors, where Tillerson defended the multilateral institutional architecture that Trump disdained, culminating in Tillerson's famous declaration that Trump was a "fucking moron."[40]

Given these policy and personal differences, both Tillerson and State were reportedly sidelined in many of the foreign policy debates during the President's first year in office.[41] Yet, if Tillerson clashed repeatedly with Trump on matters of policy, he largely went along with the White House when it came to cutting, or "reforming," the institution and personnel of the State Department. Tillerson instituted a management review of the department, which was still ongoing when he was fired 14 months later,[42] and in the interim he implemented a series of personnel decisions which reduced both expertise and operational capacity at State.

The firings of senior officials began during the transition, before Tillerson took up his post in February 2017. The new administration terminated all of the incumbent, politically appointed ambassadors effective immediately, even before their successors had been nominated.[43] Career Foreign Service officers could not be fired summarily, but many were removed from senior positions and reassigned to lower-ranking positions, or not reassigned at all, leading to an exodus

---

[39] Matthew Rosenberg, Sharon LaFraniere and Matt Apuzzo, "Ongoing Trump Migraine: His Initial Foreign Policy Team," *The New York Times*, 31 October 2017.

[40] Bob Woodward, *Fear: Trump in the White House* (New York, Simon & Schuster), p. 225.

[41] Ronan Farrow, *War on Peace: The End of Diplomacy and the Decline of American Influence* (New York: W.W. Norton & Company, 2018), pp. 257-68.

[42] Farrow 2018, pp. 269-78.

[43] Farrow 2018, pp. ix-xx.

of many of the Department's most experienced and senior officials.[44] By the end of 2017, many senior officials were gone, including 60 percent of its highest ranking Career Ambassadors and more than 40 percent of Career Ministers.[45]

Despite these losses, the administration was slow in nominating and confirming new candidates to senior positions. Tillerson blamed the delays on the White House, which blocked many of Tillerson's nominees, including Elliott Abrams as his deputy, because of their criticisms of Trump.[46] Tillerson, however, was also criticized for being slow to nominate candidates, and for a Department-wide hiring freeze, as well as for cancelling fellowship and internship programs that had served as recruitment devices for entry-level officials.[47]

Among remaining State Department officials, morale plummeted, amidst reports that Tillerson relied on a small coterie of politically appointed officials on the State Department's seventh floor, largely isolated from the rest of the building. Contemporary accounts of Tillerson's tenure depicted an "adrift and listless" State Department[48] in which experienced, senior officials found themselves reassigned to routine tasks such as reviewing backlogged Freedom of Information (FOIA) requests, leading to accusations that Tillerson was engaging in illegal retribution against career officials who had worked on Obama-era policies.[49]

Perhaps Tillerson's most controversial action as Secretary of State was his staunch defense of the Administration's 2018 budget request, which called for a 28 percent or $10.1 billion cut in funding for the State Department and the Agency for International Development, including an eight percent cut in the Department workforce.[50] Congress did not welcome the proposal, which

---

[44] Gardiner Harris, "Diplomats Sound the Alarm as They Are Pushed Out in Droves," *The New York Times*, 24 November 24, 2017.

[45] Barbara Stephenson, "Time To Ask Why," *Foreign Service Journal*, 17 December 2017.

[46] Josh Dawsey, Eliana Johnson, and Alex Isenstadt, "Tillerson Blows Up at Top White House Aide," *Politico*, 28 June 2018.

[47] Jesse Chase-Lubitz, "Yet Another State Department Hiring Program Is Suspended," *Foreign Policy*, 21 August 2017.

[48] Julia Ioffe, "The State of Trump's State Department," *The Atlantic*, 1 March 2017; Farrow 2018, pp. ix-xx; Max Bergmann, "Present at the Destruction: How Rex Tillerson Is Wrecking the State Department," *Politico*, 29 June 2017; Dexter Filkins, "Rex Tillerson at the Breaking Point," *The New Yorker*, 16 October 2017.

[49] Nahal Toosi, "Tillerson's 'FOIA Surge' Extended in Another Blow to Morale," *Politico*, 18 January 2018.

[50] Office of Management and Budget, *America First: A Budget Blueprint to Make America Great Again*, pp. 33-34.

Senator Lindsay Graham called "dead on arrival," [51] and rejected the administration's proposed cuts for 2018.[52] Undaunted, the administration proposed a FY 2019 draft budget that included a 29 percent cut in State Department funding – the largest percentage cut of any government department.[53]

The Trump Administration's attacks on the expertise and operational capacity of the diplomatic corps were not entirely unprecedented. As Ronan Farrow points out in his book, *War on Peace*, there has been a long-term shift in US foreign policy-making, accelerated since September 11th, 2001, in favor of the Department of Defense and the militarization of foreign policy, as well as the increasing centralization of policy-making in the White House, both at the expense of the State Department.[54] Nevertheless, the magnitude of the proposed budget and staff cuts, the hiring freeze, the failure to nominate candidates to senior State Department positions, and the apparent politicization of the civil service all distinguish Trump's and Tillerson's tenure, which former Secretary of State Colin Powell referred to as "ripping the guts out of the organization."[55]

Tillerson himself was fired by Presidential tweet in March 2018 and succeeded by Mike Pompeo, who had demonstrated both loyalty to Trump and hawkish positions that put him in sync with Trump's policy preferences.[56] Taking office in May, Pompeo promised the beleaguered staff that he would restore the Department's "swagger," and subsequently moved to end Tillerson's hiring freeze and accelerate the nomination of Department officials and ambassadors.[57] Pompeo's reforms remained a work in progress, and their outcome uncertain. Critics pointed out that many senior positions remained vacant months after Pompeo had taken office,[58] and others suggested

---

[51] Quoted in Bryant Harris, Robbie Gramer, and Emily Tamkin, "The End of Foreign Aid as We Know It," *Foreign Policy*, 24 April 2017.

[52] Gardiner Harris, "Will Cuts Hurt Diplomacy? Tillerson Tries to Ease Senate's Worries," *The New York Times*, 13 June 2017.

[53] Office of Management and Budget, *President's Budget*, https://www.whitehouse.gov/omb/budget/. .

[54] Ronan Farrow, *War on Peace: The End of Diplomacy and the Decline of American Influence* (New York: W.W. Norton & Company, 2018), pp. xx-xxxi.

[55] Quoted in Farrow 2018, p. 278.

[56] Zach Beauchamp, "Rex Tillerson Has Been Fired. Experts Say He Did Damage That Could Last 'a Generation,'" *Vox*, 13 March 2018.

[57] Quoted in Jenna Lifhits, "Under Pompeo, the State Department Is Getting Its Groove Back," *The Weekly Standard*, 31 August 2018.

[58] Charles S. Clark, "State Department Still Has a Lot of Vacancies: Pompeo's Mixed Success," *Government Executive*, 1 August 2018.

that Pompeo's new political appointees, several coming directly the office of White House advisor Stephen Miller, were politicizing the Department,[59] with the office of the Inspector General announcing that it had opened an investigation into claims of illegal retaliation against career officials.[60] It therefore remains unclear at this writing whether the reduction of State Department's expertise and operational capacity has been halted under Pompeo.

III.   Discrediting the Bureaucracy: Attacking the Credibility and Legitimacy of the Intelligence Community and the Department of Justice

The first two case studies in this chapter depict a president systematically undermining the expertise and operational capacity of two intermediaries, the EPA and the State Department, whose members he distrusted. And yet, one could argue that the control-competence tradeoff did not really "bite" in these areas, because Trump's deregulatory domestic policy and his unilateral foreign policy placed low values on both environmental protection and international diplomacy.

By contrast, the two remaining case studies, namely the intelligence and law-enforcement communities, represent areas that were (at least nominally) high priorities for an administration that placed domestic law and order and international security at the heart of its platform. And yet, as the GD framework suggests, competent intermediaries in this area could – in the normal and proper conduct of their duties – uncover, publicize, and possibly act upon information that could be detrimental not only to Trump's policies, but to Trump himself. In the case of the intelligence agencies, the DNI, the CIA, and other agencies might reveal information about the extent of Russian interference in the 2016 Presidential elections. In the case of the DOJ and the FBI, federal officials were in a position to investigate and possibly prosecute illegal activities undertaken by Trump's campaign and perhaps by Trump himself. In these cases, Trump faced a *genuine* tradeoff, since competence in these areas was valued by Trump and his constituents, yet competent intermediaries posed existential threats to Trump's presidency. Faced with this trade-off, and limited in his ability to cut their budget or staff, Trump focused instead on publicly attacking the credibility and legitimacy of these agencies, their leaders, and their rank-and-file civil servants.

---

[59] Colum Lynch and Robbie Gramer, "Trump Appointee Compiles Loyalty List of U.S. Employees at U.N., State," *Foreign Affairs*, 13 June 2018.

[60] Colum Lynch and Robbie Gramer, "Federal Watchdogs Target Bullying, Retaliation at State Department," *Foreign Policy*, 7 September 2018.

1. The Intelligence Community

Trump ran for president as a national security Republican, and his Republican allies were supporters of a vigorous US intelligence community, which comprised 16 government agencies – including the CIA, the National Security Agency (NSA), and the counter-intelligence wing of the Federal Bureau of Investigation (FBI) – under the direction of the Director of National Intelligence.

Although the budgetary and staffing details of these agencies is classified, the DNI does release a top-line annual budget for the intelligence agencies. Consistent with his campaign promises and with the tradition of Republican presidents, the Trump Administration in its first two years requested, and Congress authorized, an increase in the National Intelligence Program from $53 billion in 2016 to $59.4 billion in 2018.[61] Trump, moreover, drew on experienced professionals for the leadership of the intelligence agencies, tapping the widely respected Coats as DNI, and appointing House Intelligence Committee member Mike Pompeo and later career intelligence officer Gina Haspel as his first and second leaders of the CIA.

Trump nevertheless enjoyed a fraught relationship with the US intelligence community, as President-Elect and later as President. Both before and after his inauguration, the intelligence community repeatedly issued reports, largely about Russian meddling in the 2016 elections, that threated Trump's legitimacy or his policy priorities. Given the political and policy costs of cutting these agencies' expertise and operational capacity, Trump in each instance sought to undermine the other two elements of their competence, their credibility and legitimacy.

Trump's tensions with the intelligence community began during the 2016 campaign, when, in early October, the Department of Homeland Security and the Office of the Director of National Intelligence released a joint statement announcing its confident conclusion that Russia was behind the hacking of Democratic e-mail servers.[62] Democratic candidate Hillary Clinton cited that report in the final presidential debate several days later, to which candidate Trump responded that "our country has no idea" who had carried out the attacks. When challenged by Clinton whether he

---

[61] Michael E. DeVine, "Intelligence Community Spending: Trends and Issues," *Congressional Research Service*, 18 June 2018.

[62] "Joint Statement from the Department Of Homeland Security and Office of the Director of National Intelligence on Election Security," 7 October 2016, https://www.dhs.gov/news/2016/10/07/joint-statement-department-homeland-security-and-office-director-national.

doubted the report of 17 US intelligence agencies, Trump responded, "Yeah, I doubt it. I doubt it."[63]

Tensions between Trump and the intelligence community flared again in the final weeks of the Obama administration, as the intelligence agencies clarified their conclusions that Russia had interfered in the 2016 elections. When reports surfaced in December 2016 that the CIA had concluded that Russia interfered in the election with the aim of helping to elect Trump, the President-elect responded derisively, "These are the same people that said Saddam Hussein had weapons of mass destruction."[64] In early January, the CIA, FBI, and NSA released an unclassified version of their joint report, *Assessing Russian Activities and Intentions in the Recent US Elections*, which concluded that:

> **We assess Russian President Vladimir Putin ordered an influence campaign in 2016 aimed at the US presidential election. Russia's goals were to undermine public faith in the US democratic process, denigrate Secretary Clinton, and harm her electability and potential presidency. We further assess Putin and the Russian Government developed a clear preference for President-elect Trump.** We have high confidence in these judgments.[65]

Faced with these claims, and their implicit challenge to his electoral legitimacy, the President-elect went on the attack. Trump referred to the investigation of Russian interference as a "political witch hunt,"[66] and he used his first news conference to accuse the intelligence agencies of leaking the so-called Steele dossier alleging that Russia had compromising information on the President-elect.[67] Most provocatively, Trump repeated this accusation in a tweet on January 11th, comparing the intelligence agencies to Nazis:
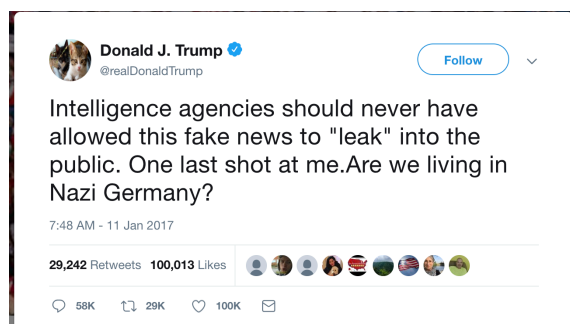
---

[63] Quoted in Aaron Blake, "The Final Trump-Clinton Debate Transcript, Annotated," *The Washington Post*, 19 October 2016.

[64] Quoted in David Nakamura and Greg Miller, "Trump, CIA on Collision Course over Russia's Role in U.S. Election," *The Washington Post*, 10 December 2016.

[65] *Intelligence Community Assessment: Assessing Russian Activities and Intentions in Recent US Elections*, ICA2017-01D, 6 January 2017, https://www.dni.gov/files/documents/ICA_2017_01.pdf, page ii. Boldface in original.

[66] Quoted in Michael D. Shear and David E. Sanger, "Putin Led a Complex Cyberattack Scheme to Aid Trump, Report Finds," *The New York Times*, 6 January 2017.

[67] "Donald Trump's News Conference: Full Transcript and Video," *The New York Times*, 11 January 2017.

Electronic copy available at: https://ssrn.com/abstract=3327624

Donald J. Trump @realDonaldTrump

Follow

Intelligence agencies should never have allowed this fake news to "leak" into the public. One last shot at me.Are we living in Nazi Germany?

7:48 AM - 11 Jan 2017

29,242 Retweets 100,013 Likes

58K   29K   100K

Trump's comments, however, prompted a substantial, bipartisan backlash.[68] In the language of the Governor's Dilemma, the intelligence agencies, despite their imperfect record, enjoyed both credibility and legitimacy among much of the American public, which the controversial President-Elect arguably lacked. Faced with this reality, Trump sought to mend fences with the intelligence community. Trump famously made it a point to visit CIA headquarters on his first full day in office, telling the several hundred assembled officers that the media had fabricated his supposed feud with the intelligence community, and that, "I love you, I respect you. There's nobody I respect more."[69]

Trump's visit failed to calm the controversy over his relations with the Agency, not least because the President also took the opportunity to praise his own performance in the elections, speculate on how CIA officers had voted, and exaggerate the size of his inauguration crowd.[70] Trump would continue to lash out periodically at the intelligence agencies, accusing the NSA and FBI of illegally leaking classified information to the press "like candy,"[71] as well as the unsubstantiated claim that Obama administration had tapped his phone during the campaign. Once

---

[68] See e.g. Michael J. Morell, "Trump's Dangerous Anti-C.I.A. Crusade" *The New York Times*, 6 January 2017; Mark Landler, "Trump Under Fire for Invoking Nazis in Criticism of U.S. Intelligence," *The New York Times*, 11 January 2017.

[69] "Remarks by President Trump and Vice President Pence at CIA Headquarters," 21 January 2017, https://www.whitehouse.gov/briefings-statements/remarks-president-trump-vice-president-pence-cia-headquarters/.

[70] Julie Hirschfeld Davis and Matthew Rosenberg, "With False Claims, Trump Attacks Media on Turnout and Intelligence Rift," *The New York Times*, 21 January 2017.

[71] Mark Landler and Richard Pérez-Peña, "Flynn Was Brought Down by Illegal Leaks to News Media, Trump Says," *The New York Times*, 15 February 2017.

20

again, however, these accusations backfired.[72] Faced with mounting evidence that he was unlikely to win a legitimacy contest with the intelligence agencies, Trump adopted a stance of publicly supporting those agencies, while calling their conclusions into question when they threatened to undermine his presidency.

The most prominent of these incidents came in July of 2018, when Trump held his first summit with Russian President Vladimir Putin. In a remarkable post-summit news conference, Trump appeared to agree with Putin on a wide range of issues, making no mention of Russia's military intervention in Ukraine, its annexation of Crimea, or the Novichok chemical attack on a Russian dissident in Britain. When asked specifically about the intelligence agencies' finding that Russia had interfered in the elections, Trump acknowledged that "Dan Coats came to me and some others and said they think it's Russia," but that, "I have President Putin. He just said it's not Russia," and that, "I don't see any reason why it would be."[73]

The backlash against Trump's performance in Helsinki, and in particular his apparent willingness to believe Putin's word over the unanimous agreement of his own intelligence agencies, was again fierce and bipartisan. US Senator John McCain called it a "disgraceful performance,"[74] and other Republican and Democratic members of Congress similarly criticized the President's failure to accept the views of the intelligence community.[75] Back in the United States, DNI Coats released a same-day, two-sentence press release:

> The role of the Intelligence Community is to provide the best information and fact-
> based assessments possible for the President and policymakers. We have been clear
> in our assessments of Russian meddling in the 2016 election and their ongoing,
> pervasive efforts to undermine our democracy, and we will continue to provide
> unvarnished and objective intelligence in support of our national security.[76]

---

[72] Max Fisher, "What Happens When You Fight a 'Deep State' That Doesn't Exist," *The New York Times*, 10 March 2017.

[73] Remarks by President Trump and President Putin of the Russian Federation in Joint Press Conference, 16 July 2018, https://www.whitehouse.gov/briefings-statements/remarks-president-trump-president-putin-russian-federation-joint-press-conference/.

[74] Quoted in "Trump Sides with Russia Against FBI at Helsinki Summit," *BBC News*, 16 July 2018.

[75] See e.g. "Trump-Putin Summit Is Over. The Head-Scratching? Not So Much," *The New York Times*, 16 July 2018.

[76] "Statement from DNI Coats," 16 July 2018, https://www.dni.gov/index.php/newsroom/press-releases/item/1888-statement-from-dni-coats.

In the face of nearly universal condemnation, Trump claimed that he had misspoken, and that he had meant to say that he saw no reason why it *wouldn't* be Russia that was hacking US servers.[77] Nevertheless, Trump would continue in the subsequent months to cast doubt on the intelligence community's unanimous conclusions about Russia and the 2016 elections.

Indeed, a very similar sequence of events played out in the autumn of 2018, following the murder of *Washington Post* journalist Jamal Khashoggi in the Saudi embassy in Turkey. By mid-November, the CIA had reportedly concluded with "high confidence" that the crown prince had ordered the execution. Yet Trump, who had from the start indicated that he believed the royal family's denials, released a highly unusual public statement calling these findings into question. "Our intelligence agencies continue to assess all information," the President wrote, "but it could very well be that the Crown Prince had knowledge of this tragic event – maybe he did and maybe he didn't!"[78] In the statement, as in later interviews, Trump argued that "we may *never* know all of the facts surrounding the murder," but that the US should stand with Saudi Arabia due to Saudi assistance in the fight against Iran as well as US arms sales to the Saudis.[79]

Trump is not the first US president to experience a fraught relationship with his intelligence agencies. Richard Nixon was famously mistrustful of the CIA, and he tangled behind the scenes with CIA and FBI leaders over directives to manipulate intelligence to support the President's policy positions, and to provide intelligence on the President's enemies.[80] The full extent of Nixon's interactions with his intelligence agencies did not become clear for decades, and the same is likely true of the behind-the-scenes interactions between Trump and the intelligence community. It has been reported that Trump asked Coats and NSA Director Mike Rogers in March 2017 to deny publicly the existence of any evidence of collusion between the Trump campaign and Russia, and that he asked Coats and Pompeo to intervene with FBI Director Comey to back off on his investigation of Michael Flynn. In both cases these officials reportedly question refused the

---

[77] "Quoted in Matt Flegenheimer, "Would It or Wouldn't It Be Russia: Trump Goes Double Negative," *The New York Times*, 17 July 2018.

[78] "Statement from President Donald J. Trump on Standing with Saudi Arabia," 20 November 2018, https://www.whitehouse.gov/briefings-statements/statement-president-donald-j-trump-standing-saudi-arabia/.

[79] Ibid.

[80] Matteo Faini, "America's National Security Agencies under Trump: Lessons from the Nixon Administration," *War on the Rocks*, 21 December 2016.

Electronic copy available at: https://ssrn.com/abstract=3327624

requests, but full details of these and other behind-the-scenes interactions are likely to emerge only in time.[81]

What *was* clear two years into the Trump presidency was the public-facing aspect of Trump's relationship with the intelligence community. As the GD framework suggests, a competent intelligence community can, in the process of obtaining accurate national security information, also produce information that endangers Trump's policy priorities and his presidency. Trump's initial response to the Obama-era intelligence agencies was to adopt slash-and-burn efforts to undermine those agencies' credibility and legitimacy. Later in his Presidency, Trump took a more measured approach, abstaining from frontal attacks on the DNI or the CIA but calling their findings into question. That measured response would not be in evidence with respect to the DOJ or the FBI.

2. The Justice Department and the FBI

The Department of Justice is an executive department whose leadership is appointed by and responsible to the President, and the Federal Bureau of Investigation reports in turn to the Department of Justice. Neither the DOJ nor the FBI is an independent agency, and both can be considered as agents of the President, who are expected to carry out his policies. Presidential control over federal law enforcement is not absolute, however, but circumscribed by formal rules that offer protections to career civil servants and establish lines of accountability for special counsels and prosecutors, and by informal norms that that limit communications between the President and federal prosecutors about ongoing criminal investigations. Each of these limits was designed to ensure that the administration of justice is not politicized, with law-enforcement officials either targeting the President's political enemies or looking the other way with respect to crimes by the President or his allies.[82]

During the first two years of the Trump administration, these rules and norms were strained in ways not seen since Nixon, most notably by Trump's determination to bring an end to the Trump-Russia investigation. Although the full story is unlikely to be known for years, we already

---

[81] See e.g. Adam Entous and Ellen Nakashima, "Trump Asked Intelligence Chiefs to Push Back Against FBI Collusion Probe after Comey Revealed Its Existence," *The Washington Post*, 22 May 2017; and Adam Entous, "Top Intelligence Official Told Associates Trump Asked Him If He Could Intervene with Comey on FBI Russia Probe," *The Washington Post*, 6 June 2017.

[82] Jack Goldsmith, "Independence and Accountability at the Department of Justice," *Lawfare*, 30 January 2018.

see a clear pattern in which Trump sought repeatedly to influence the conduct of criminal investigations into his campaign's or his own affairs; to replace intermediaries at the DOJ and FBI who persisted in such investigations; and, where the first two efforts had failed, to publicly discredit those individuals and institutions.

In PA terms, Trump could and did use his power of appointment as a control mechanism, hiring and firing a succession of leaders of the DOJ and FBI and attempting to influence the conduct of criminal investigations. However, as the President would discover, neither his political appointees nor career bureaucrats were consistently willing to accept presidential direction with respect to criminal investigations. Furthermore, Trump also discovered that firing and replacing DOJ and FBI officials with more pliant successors, while legally possible, came with significant political costs, since efforts to fire officials could be perceived as obstructing justice, and new nominees for senior positions faced potentially difficult Senate nomination hearings. It is in this context, where both goal divergence and the costs of traditional control mechanisms were high, that the GD framework would lead us to expect the President to undermine the competence of the intermediaries. Trump's law-and-order platform precluded major cuts to departmental expertise or operational capacity,[83] and so Trump again took a more public route, seeking to undermine the credibility and legitimacy of the DOJ and FBI.[84]

In terms of his proximate intermediaries in the criminal justice system, Trump selected as his first Attorney General Senator Jeff Sessions, who had been an early Trump supporter and who moved the Department dramatically to the right on issues related to immigration and civil rights.[85] Trump's first FBI Director was James Comey, a career official who had been appointed by Obama in 2013 for a 10-year term. Comey was a controversial figure for his role in the Hillary Clinton e-mail investigation, and unlike Sessions had no prior relationship with Trump.

Trump's relations with both men, and with the civil servants serving beneath them, were almost immediately soured by the rapidly unfolding Trump-Russia investigation. One week into his presidency, on January 27th, Trump hosted Comey for a private dinner at which, according to

---

[83] DOJ and FBI budgets declined slightly over the first two years of the Trump administration. U.S. Department of Justice, *FY 2018 Agency Financial Report*, https://www.justice.gov/doj/fy-2018-agency-financial-report.

[84] Benjamin Wittes, "The President vs. Federal Law Enforcement: Trump Attacks Everyone," *Lawfare*, 20 July 2017; Benjamin Wittes, "Why Trump's War on the Deep State is Failing – So Far," *Lawfare,* 1 January 2018.

[85] See e.g. Katie Benner, "Justice Dept. Rank-and-File Tell of Discontent Over Sessions's Approach," *The New York Times*, 19 October 2018.

Comey's testimony, Trump told Comey that "I need loyalty, I expect loyalty."[86] Two weeks later, following the resignation of National Security Advisor Michael Flynn for lying to the FBI, the President reportedly asked Comey to "let go" of the Flynn investigation.[87] Notwithstanding these requests, Comey and his leadership team at the FBI pressed on with the investigation, and on March 20th, he confirmed to the House Intelligence Committee that the Bureau was investigating possible ties between the Trump campaign and Russia.[88]

In principle, the FBI Director reports directly to the Attorney General in all matters, including the Russia investigation, placing Comey under Sessions's supervision. In March, however, following revelations that he had misled the Senate regarding his contacts with Russian Ambassador Sergei Kislyak, Sessions announced that he would recuse himself from all decisions regarding the Russia probe, leaving the direction of the investigation in the hands of his incoming deputy, Rod Rosenstein.[89]

Over the coming weeks, Trump expressed his dissatisfaction with the FBI and the DOJ both privately and publicly, referring Comey by name as "the best thing that ever happened to Hillary Clinton,"[90] and referring to the Russia probe itself as a "taxpayer funded charade."[91] On May 9th, 2017, Trump took perhaps the most consequential step of his Presidency, firing Comey as Director of the FBI. Although the President enjoys the right to fire an FBI Director before the end of his term, the context of the firing raised concerns that Trump was attempting to obstruct the Russia investigation. These concerns were further inflamed when it was learned that Trump was reported to have told visiting Russian officials that, "I faced great pressure because of Russia. That's taken off."[92]

---

[86] For Comey's account of the meeting, see James B. Comey, "Statement for the Record Senate Select Committee on Intelligence," 8 June 2017, https://www.intelligence.senate.gov/sites/default/files/documents/os-jcomey-060817.pdf.

[87] Comey 2017.

[88] Matthew Rosenberg, Emmarie Huetteman, and Michael S. Schmidt, "Comey Confirms F.B.I. Inquiry on Russia; Sees No Evidence of Wiretapping," *New York Times*, 21 March 2017.

[89] Mark Landler and Eric Licthblau, "Jeff Sessions Recuses Himself from Russia Inquiry," *The New York Times*, 2 March 2017.

[90] https://twitter.com/realDonaldTrump/status/859601184285491201.

[91] https://twitter.com/realdonaldtrump/status/861713823505494016?lang=en.

[92] Matt Apuzzo, Maggie Haberman and Matthew Rosenberg, "Trump Told Russians That Firing 'Nut Job' Comey Eased Pressure from Investigation," *The New York Times*, 19 May 2017.

One week later, on May 17th, Deputy Attorney General Rosenstein announced the creation of a Special Counsel to investigate "any links and/or coordination between the Russian government and individuals associated with the campaign of President Donald Trump." The position would filled by former FBI Director Robert Mueller, who would report to Rosenstein as long as Sessions remained recused.[93]

The appointment of the Special Counsel presented Trump with an exceptionally stark Governor's Dilemma, in the form of a competent intermediary who, in the conduct of his assigned duties, posed an existential threat to the President, his campaign associates, and his family. For the next eighteen months, as Mueller's team investigated, indicted, and reached cooperation agreements with a growing number of the President's associates, Trump reportedly weighed firing Sessions (which would free Trump to name a new AG who would not be recused), Rosenstein, and Mueller – although in each case White House advisors urged the President to refrain from doing so for fear of political backlash and charges of obstructing justice.[94]

Unable or unwilling to replace the intermediaries who were investigating Trump's campaign and its connections to Russia, Trump undertook a public campaign to discredit the DOJ, the FBI, their leadership, and individual rank-and-file officers, through presidential speeches, interviews, and of course Twitter. A complete accounting of Trump's frequent and often bitter denunciations of these intermediary individuals and institutions is beyond the scope of this chapter. In addition to Comey, Trump also directed a barrage of direct criticism at Andrew McCabe, Comey's deputy director, and at numerous lower-level officials involved in the investigation, including Peter Strzok, Lisa Page, and Bruce Ohr,[95] and more generally about "the lies and corruption going on at the highest levels of the FBI."[96] In 2017, he alleged that the FBI had improperly engaged in surveillance of Trump campaign figure Carter Page on suspicion of serving

---

[93] Rebecca R. Ruiz and Mark Landler, "Robert Mueller, Former F.B.I. Director, Is Named Special Counsel for Russia Investigation," *The New York Times*, 17 May 2017.

[94] Michael S. Schmidt and Maggie Haberman, "Trump Ordered Mueller Fired, but Backed Off When White House Counsel Threatened to Quit," *The New York Times*, 25 January 2018; and

[95] For a detailed list of Trump's tweets against these and other FBI and DOJ officials, see Jennifer Hansler, "Trump's Twitter Attacks on Sessions: An Annotated Timeline," *CNN*, updated 25 August 2018.

[96] Quoted in Adam Serwer, "McCabe's Firing Chips Away at the Justice Department's Independence," *The Atlantic*, 16 March 2018.

as a foreign agent for Russia, explicitly referring to the bureau as the "Deep State."[97] By the fall of 2018, Trump would tell interviewers at Fox & Friends that "I always put 'Justice' now with quotes,"[98] and he promised crowds at his rallies that he would remove the "lingering stench" at the DOJ and FBI.[99]

With respect to Mueller's Office of the Special Counsel, Trump was equally unsparing. Despite advice from his legal team to avoid attacks on the Special Counsel, Trump launched a series of attacks on Mueller. In mid-2017, Trump tweeted, "You are witnessing the greatest WITCH HUNT in American political history – led by some very bad and conflicted people,"[100] and the campaign escalated in the 2018 when Trump began referring to the investigation as "The Robert Mueller Rigged Witch Hunt," and "the illegal Mueller Witch Hunt."[101] Trump also attacked Mueller's team of investigators as "13 Angry Democrats" (referring to the fact that 13 of Mueller's 17 investigators were registered Democrats, ignoring the fact that Mueller himself was a registered Republican), whom he accused of "MEDDLING" in the coming mid-term elections.[102]

These tweets, which include multiple factual inaccuracies,[103] do not represent the first time that a sitting President has questioned the motives or actions of special prosecutors (both Nixon and Bill Clinton had done so), but the tone and relentlessness of Trump's accusations went far beyond those precedents, and all these attacks were amplified by Trump surrogates in the White House, in Congress, and in sympathetic media outlets. There is, moreover, reason to believe that

---

[97] Peter Baker and Katie Benner, "Trump Versus Law Enforcement: A Confrontation with No Precedent," *The New York Times*, 26 May 2018.

[98] Felicia Sonmez, Josh Dawsey, and Anne E. Marimow, "Critics Fear Trump's Attacks Are Doing Lasting Damage to the Justice System," *Washington Post*, 23 August 2018.

[99] Betsy Klein and Maegan Vazquez, "Trump Vows to Rid Justice Department of 'Lingering Stench,'" *CNN,* 21 September 2018.
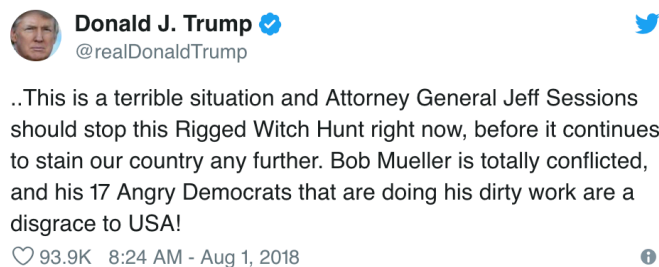
[100] https://twitter.com/realdonaldtrump/status/875321478849363968?lang=en.

[101] Megan Keller, "Trump Revisits Charge That 'Mueller Witch Hunt' Is 'Illegal,'" *The Hill*, 16 September 2018.

[102] Matt Zapotosky, "Trump Said Mueller's Team Has '13 Hardened Democrats.' Here Are the Facts," *The Washington Post*, 18 March 2018.

[103] Mark Murray, "Fact Check: What Trump Got Wrong in His Attacks on Mueller," *NBC News*, 30 July 2018.

Trump's constant drumbeat of attacks undermined public trust in these institutions, at least among Trump's supporters.[104]

Perhaps the most consistent target of Trump's public ire was Attorney General Jeff Sessions, whom Trump excoriated for his decision to recuse himself from supervision of the Russia probe. In a 2017 interview, Trump described Sessions's recusal as "very unfair to the President," and added that, "Sessions should have never recused himself, and if he was going to recuse himself, he should have told me before he took the job and I would have picked somebody else."[105] Although Trump made his dissatisfaction with his Attorney General clear, Sessions refused to resign, and what followed over the next year was an extraordinary barrage of public criticisms of the Attorney General, whom Trump called "weak" and "beleaguered."[106] Trump also repeatedly urged Sessions to investigate purported crimes carried out by his political enemies,[107] and finally called upon Sessions to stop the Mueller investigation:

> **Donald J. Trump** ✓
> @realDonaldTrump
>
> ..This is a terrible situation and Attorney General Jeff Sessions should stop this Rigged Witch Hunt right now, before it continues to stain our country any further. Bob Mueller is totally conflicted, and his 17 Angry Democrats that are doing his dirty work are a disgrace to USA!
>
> ♡ 93.9K   8:24 AM - Aug 1, 2018

Finally, the day after the 2018 mid-term elections, it was announced that Sessions had agreed to resign at Trump's request, effective immediately.[108] Trump's interim replacement would be Matthew Whittaker, who had come to Trump's attention after appearing on cable news arguing that the Mueller investigation had gone too far.[109] Whittaker, an undistinguished figure who had

---

[104] A 2017 Gallup poll showed that only 49% of Republicans responded that the FBI was doing a "good" or "excellent" job, down 13 points from 62% in 2014. R.J. Reinhardt, "In the News: Americans' Views of the FBI," *Gallup*, 30 January 2018.

[105] Peter Baker, Michael S. Schmidt, and Maggie Haberman, "Citing Recusal, Trump Says He Wouldn't Have Hired Sessions," *The New York Times*, 19 July 2017.

[106] Jennifer Hansler, "Trump's Twitter Attacks on Sessions: An Annotated Timeline," *CNN*, updated 25 August 2018..

[107] Stephanie Murray, "Trump Taunts Sessions: 'Come on Jeff, You Can Do It!'" *Politico*, 24 August 2018.

[108] Erica R. Hendry and Molly Finnegan, "Read Attorney General Jeff Sessions' Full Letter to Trump: 'At Your Request, I Am Submitting My Resignation,'" *NPR*, 7 November 2018.

[109] Adam Goldman and Edward Wong, "Trump Installs a Critic of the Mueller Investigation to Oversee It," *The New York Times*, 7 November 2018.

served five years as an attorney for the southern district of Iowa before stepping down for an unsuccessful Senate bid and a stint on the board of the controversial World Patent Marketing, was widely seen as a Trump loyalist who might undermine or shut down the Mueller investigation.[110] In December, the administration announced the nomination of William Barr, who had served as Attorney General in the administration of George W. Bush and appeared eminently qualified,[111] although it would later come to light that Barr had written an unsolicited memorandum for the administration, criticizing Mueller and suggesting very narrow grounds under which the President could be investigated for obstruction of justice.[112]

We do not know the full account of Trump's interactions with his intermediaries in the DOJ and the FBI, nor can we know at this writing the ultimate outcome of the Mueller investigation or the Trump administration. What is clear is that Donald Trump, facing political costs to a strategy of placing nakedly political officials throughout federal law enforcement, opted instead to engage in an unprecedented campaign of criticism and slander against the DOJ, the FBI, and the Office of the Special Counsel, in an effort to undermine their credibility and legitimacy. Trump's open war on his intermediaries in the criminal justice system is thus the most overt manifestation of the Governor's Dilemma in the Trump presidency.

IV. Conclusions

At the heart of the Governor's Dilemma is the control-competence tradeoff, the hypothesis a Governor faced with high goal divergence between himself and his intermediaries might deliberately opt to undermine their competence. In this chapter, we have examined "Trump's Dilemma," in which President Trump has sought actively to undermine the core competences of his own executive departments and agencies as a means of control. In the first two cases, Trump and his most senior intermediaries moved to undermine the expertise and the operational capacity of the EPA and the Department of State, which he believed to be populated by Deep State opponents. In the second pair of cases, Trump faced an intelligence community and a law

---

[110] Aaron Blake, "Trump's New Acting Attorney General Once Mused About Defunding Robert Mueller," *The Washington Post*, 7 November 2018.

[111] Charlie Savage, "Trump Will Nominate William Barr as Attorney General," *The New York Times*, 7 December 2018.

[112] Daniel Hemel and Eric Posner, "Bill Barr Just Argued Himself Out of a Job," *The New York Times,* 21 December 2018.

enforcement community whose members threatened to bring to light information posing an existential threat to his presidency, and he responded with a highly public campaign to undermine the credibility and legitimacy of those intermediaries.

None of these stories is entirely unprecedented in American political history. Previous Republican administrations have cut the EPA in the service of their deregulatory agendas, and previous administrations of both parties have understaffed and underfunded the State Department. Multiple administrations – most notably Nixon's – have also sought to discredit the intelligence and law enforcement communities, to suppress or discredit evidence of criminal behavior. The Governor's Dilemma, therefore, is not unique to Donald Trump. Nevertheless, the extent and the ruthlessness of the assaults on the departments and agencies examined here – and many others beyond the scope of this chapter – far exceed those of any previous American presidency. While I have focused in this chapter on the reduction of expertise and operational capacity at the EPA and State Department, similar presidential efforts to undermine those same competences were on display at other departments including Interior, Energy, and Agriculture, all vividly captured by Michael Lewis in his muckraking book, *The Fifth Risk*.[113] And while the attacks on the credibility and legitimacy of the intelligence and law enforcement agencies have been particularly visible over the first two years of the Trump administration, these agencies were joined in late 2018 by Federal Reserve Bank, whose legitimacy and independence have been thrown into doubt by the President's strident criticisms.[114]

One unexpected observation that emerges from these case studies is that many of Trump's interactions with his intermediaries involve an effort to impede, or discredit, information generated by federal government officials in the normal, mandated course of their duties. In the case of the EPA, government scientists have spent decades generating and publicizing scientific findings that inform government regulation; yet the Trump administration, committed to a deregulatory agenda, moved to reduce the number of scientists on the payroll of the EPA, dictate the types of data they can draw upon, and limit their ability to convey their findings to the public. In the case of the intelligence agencies, national security professionals collected and conveyed to the President reports about sensitive matters that Trump found personally or politically threatening, and Trump

---

[113] Michael Lewis, *The Fifth Risk* (New York: W.W. Norton & Company, 2018).

[114] Trump Says 'Not Even a Little Bit Happy' with Fed's Powell: Report," *Reuters*, 27 November 2018; and Christopher Condon, "A Timeline of Trump's Quotes on Powell and the Fed," *Bloomberg*, 17 December 2018.

responded by attacking those agencies and their findings. In the case of the DOJ and FBI, finally, Trump has repeatedly attempted to suppress investigations into his own and his associates' conduct, and, failing that, to undermine the credibility and legitimacy of those undertaking them. It is difficult, therefore, to examine Trump's interactions with these bodies without concluding that much of Trump's interaction with his intermediaries has been aimed at undermining their ability to discover and disclose the truth.

This brings us to a final question, namely the costs associated with a President who has sought, with partial success, to increase his control by undermining the competence of his intermediaries in the US federal government. Those costs, I would argue, vary by issue-area and by intermediary, but one cost is common to all the cases examined in this chapter, and that is the undermining of what Jack Goldsmith calls the cultures of commitment of the men and women who seek to serve the public good. As Goldsmith argues:

> Trump's assault on executive branch departments and employees is crippling these cultures of commitment… It is hard to work for a president who attacks you weekly if not daily; who calls into public doubt your independence and integrity; and who shames you with his persistent shamelessness, deceit, and ignorance. The president is succeeding not just in diminishing the reputation of these institutions before the nation, but also in wrecking their aspirations within.[115]

Whether, and how well, the institutions and individuals of the US federal government will withstand the presidential assault on their competence is one of many questions for future scholars to sort out when the dust settles on this extraordinary presidency.

---

[115] Jack Goldsmith, "The Cost of Trump's Attacks on the FBI," *The Atlantic*, 4 December 2017.