

Empowering the “Honest Broker”: Lessons Learned from the National Security Council Under President Donald J. Trump

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Other Views:

- *How The National Security Council Has Changed Under Trump*, ALL THINGS CONSIDERED, NPR, Sept. 11, 2019, <https://www.npr.org/2019/09/11/759899351/how-the-national-security-council-has-changed-under-trump>.
- John Gans, *Enacting Trump’s Revenge Campaign*, ATLANTIC, Feb. 27, 2020, <https://www.theatlantic.com/ideas/archive/2020/02/cuts-nsc-are-not-about-number-staffers/607144/>.
- Susan Rice, *Reflecting on the National Security Council’s Greatest Asset: Its People*, OBAMA WHITE HOUSE ARCHIVES, Jan. 17, 2017, <https://obamawhitehouse.archives.gov/blog/2017/01/17/reflecting-nscs-greatest-asset-its-people-0>.
- Kathryn Dunn Tenpas, *Crippling the Capacity of the National Security Council*, BROOKINGS, Jan. 21, 2020, <https://www.brookings.edu/blog/fixgov/2020/01/21/crippling-the-capacity-of-the-national-security-council/>.

On September 18, 2019, Robert O’Brien took over as President Donald J. Trump’s National Security Advisor.¹ In so doing, O’Brien became the fourth person to hold the position in President Trump’s Administration, following Michael Flynn, H.R. McMaster, and John Bolton. Flynn’s tenure was brief: his 24-day term in the role was the shortest in the history of the presidency.² Both Bolton and McMaster served as National Security Advisor for far longer, making significant marks on the National Security Council (NSC), as did O’Brien, who served as the National Security Advisor through the end of President Trump’s time in the White House. The proper role and structure of the NSC is an open question, as evidenced by the vastly different philosophies of Flynn, McMaster, Bolton, and O’Brien. This essay will tell the story of the NSC under President Trump and explore the ways in which the Council’s structure and operations differed under each National Security Advisor.

The National Security Act of 1947, in which Congress established the NSC, laid out Congress’ vision of the Council as an advisory entity. In the Act, the NSC was created under Title I, “Coordination for National Security.”³ The Act provided that the Council’s function was “to advise the President with respect to the integration of domestic, foreign, and military policies relating to the national security so as to enable the military services and the other departments and agencies of the Government to cooperate more effectively in matters involving the national security.”⁴ At the time of the law’s enactment, the Council was to be composed only of the President, the Secretary of State, the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, and the Chairman of the National Security Resources Board.⁵ The Act empowered the President to also designate other Cabinet Secretaries to the Council “from time to time,” as well as the Chairman of the Munitions Board and the Chairman of the Research and Development Board.⁶ It further provided that for any additional member to be designated, the President would have to obtain the advice and consent of the Senate.⁷

1 See Vivian Salama, *Trump Names Robert O’Brien as National Security Adviser*, WALL STREET J., Sept. 18, 2019, <https://www.wsj.com/articles/trump-names-robert-o-brien-as-national-security-adviser-11568813464>.

2 See Derek Hawkins, *Flynn Sets Record with Only 24 Days as National Security Adviser. The Average Tenure is About 2.6 Years.*, WASHINGTON POST, Feb. 14, 2017, <https://www.washingtonpost.com/news/morning-mix/wp/2017/02/14/flynn-sets-record-with-only-24-days-as-nsc-chief-the-average-tenure-is-about-2-6-years/>.

3 National Security Act of 1947, Pub. L. No. 80-235, 61 Stat. 496 (1947).

4 *Id.*

5 *Id.*

6 *Id.*

7 *Id.*

Congress created the NSC in 1947 “as part of a general reorganization of the U.S. national security apparatus.”⁸ In so doing, the legislature sought to coordinate American foreign policy with the nation’s defense operations.⁹ Various presidents have oriented and reoriented the NSC. The Council grew in both size and importance under President Richard Nixon’s National Security Advisor, Henry Kissinger. Evan Thomas opines that while Congress created the NSC in 1947, “it didn’t really become the true engine of foreign policy making until the Nixon years.”¹⁰ Kissinger expanded the NSC from an advisory entity to one that possessed “the power to review and either approve or reject the bureaucracy’s ideas; and if the options were still bad, [Kissinger] authorized the NSC staff to ‘develop new ones for the president.’”¹¹ He also bolstered the number of NSC staff from 12 to 34.¹² Kissinger’s moves established the NSC as a power center in the executive branch (one which, conveniently, revolved around him). But perhaps the most significant reforms occurred under General Brent Scowcroft, who was National Security Advisor under President George H.W. Bush. Scowcroft instituted a system that featured a Principals Committee, a Deputies Committee, and interagency policy committees. It is from this system that “[t]he current [NSC] policy process has generally evolved.”¹³ Today, the Principals Committee “is the most senior interagency body of the national security process. It’s the last stop before taking a major national-security decision to the president.”¹⁴ Most memorably, however, was how Scowcroft viewed his role—as National Security Advisor, he endeavored to be an “honest broker.”¹⁵

The office of National Security Advisor itself is an outgrowth of the Executive Secretary position for which Congress provided in the original legislation.¹⁶ The National Security Advisor heads

the NSC staff (which has grown greatly in size since the Kissinger days) and, with the President’s approval, organizes the Council in the way that she or he sees fit.¹⁷ The position is not subject to Senate confirmation, though some argue that it should be, given the manifold responsibilities that Congress (and the President, through executive order) has conferred upon the office.¹⁸ There is no doubt that the National Security Advisor role has accumulated more and more power since its inception, tracking generally with the NSC’s evolution “from a statutorily-mandated meeting of cabinet-level officials into a complex system of coordination, adjudication, and in some instances formulation . . . of policies among relevant departments and agencies.”¹⁹

Today, the NSC continues to occupy a significant place in the American foreign policy bureaucracy, particularly because the State Department and the Pentagon have typically been at odds with one another since Congress created the latter department. In the context of Secretary of State George Shultz and Defense Secretary Caspar Weinberger’s disputes under President Ronald Reagan, *Foreign Policy* described the infighting as State and the Pentagon’s “usual bureaucratic battles.”²⁰ Moreover, “[t]ensions” between President George W. Bush’s Secretary of State Colin Powell and Secretary of Defense Donald Rumsfeld were “a persistent feature of Bush administration deliberations.”²¹ These disagreements may frustrate the decision-making process for presidents, which is when the efficiency of the NSC may present an appealing contrast to a President looking for policy options. Often, while Cabinet Secretaries are busy managing their respective departments, participating in various ceremonial duties, testifying before Congress, and disagreeing with one another, the National Security Advisor is a single person just down the hall from the Oval Office, with a staff of hundreds under him in the White House ready to serve the President at a moment’s notice. By the mid-1990s, the D.C. Circuit agreed that “successive presidents [had] expanded the NSC’s responsibilities . . . to secure their personal control over the fragmented national security apparatus.”²²

In recent years, prior to the start of the Trump Administration, two major developments have helped to shape the modern NSC. First was the creation of the Homeland Security Council (HSC) under President George W. Bush on October 8, 2001, less than

8 See *History of the National Security Council 1947-1997*, Office of the Historian, Bureau of Pub. Affairs, U.S. Dep’t of State, (1997), available at <https://fas.org/irp/offdocs/NSChistory.htm>.

9 See *id.*

10 Evan Thomas, *Running the World: In the War Room*, N.Y. TIMES, June 26, 2005, <https://www.nytimes.com/2005/06/26/books/review/running-the-world-in-the-war-room.html>.

11 Daniel Bessner, *The Making of the Military-Intellectual Complex*, NEW REPUBLIC (May 29, 2019), <https://www.newrepublic.com/article/153997/making-military-intellectual-complex>.

12 *National Security Council Institutional Files (H-Files)*, RICHARD NIXON PRESIDENTIAL LIBR., <https://www.nixonlibrary.gov/finding-aids/national-security-council-institutional-files-h-files> (last visited Feb. 21, 2021).

13 CHARLES P. RIES, IMPROVING DECISIONMAKING IN A TURBULENT WORLD 13 (2016), available at https://www.rand.org/content/dam/rand/pubs/perspectives/PE100/PE192/RAND_PE192.pdf.

14 Kelly Magsamen, *What Trump’s Reshuffling of the National Security Council Means*, ATLANTIC (Jan. 30, 2017), <https://www.theatlantic.com/politics/archive/2017/01/the-trump-national-security-council-analysis/514910/>.

15 *Celebrating the ‘Impeccable Integrity and Unbounded Courage’ of Brent Scowcroft*, ATLANTIC COUNCIL, Sept. 10, 2020, <https://www.atlanticcouncil.org/blogs/new-atlanticist/celebrating-the-impeccable-integrity-and-unbounded-courage-of-brent-scowcroft/>.

16 See Richard A. Best Jr., *The National Security Council: An Organizational Assessment*, CONG. RESEARCH SERV., 6, 29-30 (2011), available at <https://>

fas.org/sqp/crs/natsec/RL30840.pdf.

17 See *id.* at Summary.

18 See *id.* at 30.

19 Press Release, Senator Ron Johnson, Background on the National Security Council and the President’s Recent Moves (July 17, 2017).

20 John Gans & Maya Gandhi, *Trump’s National Security Council Is Replicating Reagan’s Chaos*, FOREIGN POL’Y, June 21, 2019, <https://www.foreignpolicy.com/2019/06/21/bolton-nscl/>.

21 Gerald F. Seib & Carla Anne Robbins, *Powell-Rumsfeld Feud Is Now Hard to Ignore*, WALL STREET J., Apr. 25, 2003, <https://www.wsj.com/articles/SB105122331147126500>.

22 *Armstrong v. Executive Office of the President*, 90 F.3d 553, 561 (D.C. Cir. 1996).

a month after the September 11 terrorist attacks.²³ President Bush established the HSC through executive order.²⁴ In the Bush White House, the HSC took over domestic security issues, while the NSC focused solely on international issues.²⁵ President Barack Obama did away with this delineation, merging the HSC and the NSC into one “National Security Staff.”²⁶ The second major development was a provision that Congress passed in 2016, capping NSC staff at 200.²⁷ The number had grown from 50 under President George H.W. Bush to 100 under President Bill Clinton to 200 under President George W. Bush.²⁸ President Obama’s NSC ballooned to over 400 staffers, drawing criticism for drifting into operations (as opposed to focusing on policy development); taking a “more granular approach to the issues”; and holding a “seemingly endless number of interagency meetings.”²⁹ The key issue was that the Obama NSC was seen as micromanaging the departments.³⁰ Upon then-candidate Trump’s victory in the 2016 presidential election, the stage was set for reform.

An analysis of the NSC under Flynn, McMaster, Bolton, and O’Brien paints a picture of a key bureaucratic institution in the executive branch, whose power can be wielded and whose structure can be shaped in numerous ways.

I. THREE WEEKS WITH MICHAEL FLYNN

Shortly after the election, President Trump announced that he would hire Flynn as National Security Advisor.³¹ The choice of Flynn for the role did not come as much of a surprise—a three-star general, Flynn had been a key and early backer of the President’s upstart White House bid, “campaigned alongside him, and developed a close and trusted relationship with the candidate and his senior aides at a time when few serious Republicans would

agree to advise him.”³² When President Trump assumed office, Flynn set about cutting NSC staff by about 50 percent.³³

Aside from Flynn’s ultimate ouster, perhaps the most significant development during his short tenure was the invitation of White House Chief Strategist Steve Bannon to the NSC’s meetings and Bannon’s designation as a “regular attendee” at Principals Committee meetings.³⁴ Based on contemporary reporting, it seems that the decision to invite Bannon to the NSC meetings was likely the President’s, not Flynn’s.³⁵ In fact, the rationale appears to have been ensuring that Flynn actually carried out the new Administration’s NSC objectives.³⁶ Although Bannon had served for seven years in the Navy,³⁷ he was primarily a political advisor to President Trump, and the President’s decision to have a political strategist at the meetings drew backlash.³⁸

From an institutional standpoint, the chief non-personal criticism of bringing Bannon in to the NSC was that political operatives should not play a role in Council decision-making.³⁹ Compounding this concern about elevating political considerations over military expertise was the fact that in President Trump’s January 2017 National Security Presidential Memorandum (NSPM) 2, which reorganized the NSC and formalized Bannon’s participation, the Director of National Intelligence and the Chairman of the Joint Chiefs of Staff were downgraded from among the NSC’s “regular members” to “attend[ing only] when issues pertaining to their responsibilities

23 See *Homeland Security Council*, White House Archives: President George W. Bush, <https://georgewbush-whitehouse.archives.gov/hsc/> (last visited Feb. 21, 2021).

24 See *id.*

25 See Kathleen J. McInnis & John W. Rollins, *Trump Administration Changes to the National Security Council: Frequently Asked Questions*, CRS INSIGHT (Jan. 30, 2017), <https://fas.org/sgp/crs/natsec/IN10640.pdf>.

26 See *id.*

27 See Gregory Hellman & Bryan Bender, *Trump Team Building a Wall Inside National Security Council*, POLITICO, Feb. 2, 2017, <https://www.politico.com/story/2017/02/trump-national-security-234526>.

28 See Karen DeYoung, *Rice Favors ‘Mean but Lean’ National Security Council*, WASHINGTON POST, Jan. 17, 2017, https://www.washingtonpost.com/world/national-security/rice-favors-mean-but-lean-national-security-council/2017/01/16/6244aa3c-dc49-11e6-ad42-f3375f271c9c_story.html.

29 Daniel M. Gerstein & Sarah M. Gerstein, *Presidential Policy Directive One: Forming the National Security Council*, HILL, Dec. 2, 2016, <https://thehill.com/blogs/pundits-blog/the-administration/308440-presidential-policy-directive-1-forming-the-national>.

30 See *id.*

31 See Bryan Bender, *Trump Names Mike Flynn National Security Adviser*, POLITICO, Nov. 18, 2016, <https://www.politico.com/story/2016/11/michael-flynn-national-security-adviser-231591>.

32 Eliana Johnson et al., *Flynn’s White House Influence Is Outliving His Short Tenure*, POLITICO, May 9, 2017, <https://www.politico.com/story/2017/05/09/michael-flynn-trump-white-house-238139>.

33 See Josh Siegel, *After Michael Flynn’s Departure, How Trump Can Stabilize National Security Council, Avoid Leaks*, DAILY SIGNAL, Feb. 16, 2017, <https://www.dailysignal.com/2017/02/16/after-michael-flynn-departure-how-trump-can-stabilize-national-security-council-avoid-leaks/>.

34 See WHITE HOUSE: OFFICE OF THE PRESS SEC’Y, NATIONAL SECURITY PRESIDENTIAL MEMORANDUM – 2 (January 28, 2017), available at <https://fas.org/irp/offdocs/nspm/nspm-2.pdf>; Jordan Brunner, *Does Steve Bannon’s Role on the Principals Committee Require Senate Confirmation?*, LAWFARE, Jan. 31, 2017, <https://www.lawfareblog.com/does-steve-bannons-role-principals-committee-require-senate-confirmation>.

35 See Nicholas Schmidle, *Michael Flynn, General Chaos*, NEW YORKER, Feb. 18, 2017, <https://www.newyorker.com/magazine/2017/02/27/michael-flynn-general-chaos>.

36 See Carol E. Lee & Eli Stokols, *Steve Bannon Removed from National Security Council with Trump’s Signoff*, WALL STREET J., Apr. 5, 2017, <https://www.wsj.com/articles/steve-bannon-removed-from-security-councils-principals-committee-1491407076> (“Steve was put there as a check on [Mike] Flynn,’ [a senior administration] official said.”).

37 Mark D. Faram, *Steve Bannon and the National Security Council: What We Can Learn from His Navy Career*, NAVY TIMES, Feb. 1, 2017, <https://www.navytimes.com/news/your-navy/2017/02/01/steve-bannon-and-the-national-security-council-what-we-can-learn-from-his-navy-career/>.

38 See, e.g., Michael G. Mullen, *I Was on the National Security Council. Bannon Doesn’t Belong There.*, N.Y. TIMES, Feb. 6, 2017, <https://www.nytimes.com/2017/02/06/opinion/i-was-on-the-national-security-council-bannon-doesnt-belong-there.html>.

39 See Yochi Dreazen, *Steve Bannon Now Gets to Help Decide War and Peace*, VOX, Jan. 31, 2017, <https://www.vox.com/policy-and-politics/2017/1/31/14447394/steve-bannon-nsc-trump-white-house-flynn-terrorism-iran-islam-yemen>.

and expertise are to be discussed.”⁴⁰ Professor I.M. Destler speculated that this could have either been a “demotion, or . . . a practical acknowledgement that, say, economic issues don’t require official military or intelligence community input.”⁴¹

Some commentators put these moves in starker terms. “[A] political operative with zero national security or foreign policy experience will now have the same status as the heads of the Pentagon and State Department—and will in some ways outrank the nation’s top military officer and the head of the entire intelligence community,” read a *Vox* piece about Bannon published shortly after the issuance of NSPM 2.⁴² A *New York Times* op-ed by former Chairman of the Joint Chiefs of Staff Michael Mullen lamented that “institutionalizing [Bannon’s] attendance threatens to politicize national security decision making.”⁴³ David Axelrod, a White House Senior Advisor under President Obama, wrote in a piece for *CNN* that “President Trump has blazed new ground. Bannon will exercise authority no political adviser has had before.”⁴⁴

The Axelrod essay was itself a response to the Trump White House justifying Bannon’s invitation by pointing to Axelrod’s and former Press Secretary Robert Gibbs’s own attendance at NSC meetings during their time in the Obama Administration.⁴⁵ Axelrod defended his and Gibbs’s participation, noting that the two simply “sat on the sidelines as . . . *silent* observer[s]” at a *limited* number of meetings, as opposed to the Bannon arrangement.⁴⁶ Still, the Bannon move seemed like the logical next step after having political staffers Axelrod and Gibbs “observe” NSC meetings. And it was not without historical precedent.⁴⁷ Even Mullen acknowledged being “perfectly aware that political

concerns color the national security decisions that any president makes,” ticking off various major national security moves of President Obama and opining that they “were all informed—if not dominated—by political calculations.”⁴⁸ Ultimately, Mullen’s issue appears not to have been with the political realities of presidential decision-making, but with *where* political considerations get discussed: “[T]hose [political] decisions were made outside the confines of the Situation Room, where the security council meets. . . . That’s the way it should be.”⁴⁹

Is this argument particularly compelling? After all, the Situation Room is not a holy sanctuary; it is another office space in the White House in which executive branch officials work to assist the President in the execution of his or her duties as Commander in Chief. And having a political advisor in the room does not give that advisor plenary power; she or he can offer worthwhile perspective on policy options that the NSC is considering presenting to the President, who will undoubtedly have politics in mind when considering those options. Part of the National Security Advisor’s role as an “honest broker” is to be a filter—certain policy prescriptions are just not politically feasible, and if an advisor like Axelrod or Bannon can flag that issue at the development stage, it saves the President time and sharpens the recommendations coming out of the NSC. Ideally, the political advisor would cover the National Security Advisor’s blind spots, preparing her or him for potential differences of opinion in the Oval Office.

A legitimate issue may arise if the political advisor leverages NSC invitee status to build out a policy-driving apparatus, expanding his role past providing strategic counsel to running a shadow Council. Some in the media alleged that Bannon was attempting to do something like this, reporting that Bannon established a “Strategic Initiatives Group” within the NSC.⁵⁰ The White House, however, later indicated that Senior Advisor Jared Kushner’s Office of American Innovation (a standalone White House component that was not cabined within the NSC or anywhere else) became the more significant “internal policy shop” after its March 2017 inception.⁵¹ But whether Bannon’s Strategic Initiatives Group actually existed, and whether it was actually as powerful as Bannon’s detractors feared it was, the Chief Strategist’s maneuvering caught the attention of Flynn. Although

40 I.M. Destler, *How to Read Trump’s National Security Council Reboot*, POLITICO, Jan. 29, 2017, <https://www.politico.com/magazine/story/2017/01/how-to-read-trumps-national-security-council-reboot-214709>. NSPM 2 did not last very long before the White House amended it to reinstate a member of the intelligence community as a regular meeting attendee. Instead of the Director of National Intelligence (DNI), however, President Trump designated the Director of the Central Intelligence Agency (CIA), Mike Pompeo, as said attendee. See Eric Geller, *Trump Adding CIA Chief back to National Security Council*, POLITICO, Jan. 30, 2017, <https://www.politico.com/story/2017/01/trump-national-security-council-cia-234381>. Such a move likely reflected the President’s unique admiration of Pompeo, rather than any desire to choose between the CIA and the Office of the DNI as institutions; indeed, Director Pompeo soon earned a promotion to Secretary of State. See Gardiner Harris & Thomas Kaplan, *Senate Confirms C.I.A. Chief Mike Pompeo to Be Secretary of State*, N.Y. TIMES, Apr. 26, 2018, <https://www.nytimes.com/2018/04/26/us/politics/mike-pompeo-secretary-of-state.html>.

41 Destler, *supra* note 40.

42 Dreazen, *supra* note 39.

43 Mullen, *supra* note 38.

44 David Axelrod, *David Axelrod: I Woke up This Morning as an Alternative Fact*, CNN, Jan. 31, 2017, <https://www.cnn.com/2017/01/30/opinions/david-axelrod-i-woke-up-this-morning-as-an-alternative-fact/index.html>.

45 *See id.*

46 *Id.* (emphasis added).

47 *See* Russell Spivak & Jordan Brunner, *Is Steve Bannon’s Role on the National Security Council Actually Unprecedented?*, LAWFARE, Feb. 2, 2017, <https://www.lawfareblog.com/steve-bannons-role-national-security-council-actually-unprecedented>.

48 Mullen, *supra* note 38.

49 *See id.*

50 *See* Julie Smith & Derek Chollet, *Bannon’s ‘Strategic Initiatives’ Cabal Inside the NSC Is Dangerous Hypocrisy*, FOREIGN POL’Y, Feb. 1, 2017, <https://foreignpolicy.com/2017/02/01/bannons-strategic-initiatives-cabal-inside-the-nsc-is-dangerous-hypocrisy/>.

51 *See* Jonathan Easley, *WH: Internal Bannon Think Tank Never Actually Existed*, HILL, Apr. 4, 2017, <https://thehill.com/homenews/administration/327296-wh-internal-bannon-think-tank-never-actually-existed>; Presidential Memorandum on the White House Office of American Innovation, White House Archives: President Donald J. Trump (Mar. 27, 2017), <https://trumpwhitehouse.archives.gov/presidential-actions/presidential-memorandum-white-house-office-american-innovation/>.

Flynn originally set out to cut NSC staff, “in a contest for power with Bannon, [he] soon seemed to realize that the traditional setup [of the NSC] could help him build influence in the White House.”⁵² As a result, Flynn’s incentives became misaligned with the President’s agenda; where the President wanted to streamline the NSC, it became in Flynn’s interest to do the opposite. The White House had a principal-agent problem. Bannon’s closeness to the President threatened Flynn’s operation of his own White House component.

Two other notable moves from President Trump’s initial organization of the NSC were the revival of the HSC and the exclusion of the Energy Secretary from meetings of the Principals Committee.⁵³ The reader will recall that President Obama had integrated the HSC back into the NSC, dissolving the domestic (HSC)/international (NSC) divide that President Bush had created when he established the HSC in the wake of 9/11.⁵⁴ To start his Administration, President Trump restored the pre-Obama division. And as for the President’s removal of Secretary of Energy Rick Perry from Principals Committee meetings, Democratic congressmen Frank Pallone Jr. of New Jersey (then-Ranking Member of the House Energy and Commerce Committee) and Bobby Rush of Illinois (then-Ranking Member of the Committee’s Energy Subcommittee) objected strongly to the move.⁵⁵ In February 2017, Congressmen Pallone and Rush penned a letter to President Trump “urging him to reconsider his decision.”⁵⁶ The congressmen worried that without the Energy Secretary on the Principals Committee, energy security might not receive proper prioritization in the national security policymaking process.⁵⁷

Flynn was forced to resign on February 13, 2017, less than a month into President Trump’s White House tenure.⁵⁸ At the time, reporting indicated that Flynn’s fatal mistake was misleading Vice President Mike Pence about the nature of his conversations with Russian Ambassador Sergey Kislyak.⁵⁹ President Trump later tweeted that Flynn’s lies to the Federal Bureau of Investigation about conversations with Kislyak also contributed to his ouster.⁶⁰

52 See Schmidle, *supra* note 35.

53 See McInnis & Rollins, *supra* note 25. Although the Energy Secretary is included in the Council as a standing member, the President may remove the Secretary from the Principals Committee.

54 See Magsamen, *supra* note 14.

55 See Press Release, House Committee on Energy & Commerce, Pallone, Rush Urge Trump to Reappoint Secretary of Energy to the NSC Principals Committee (Feb. 21, 2017), available at <https://energycommerce.house.gov/newsroom/press-releases/pallone-rush-urge-trump-to-reappoint-secretary-of-energy-to-the-nsc>.

56 *Id.*

57 See *id.*

58 See Maggie Haberman et al., *Michael Flynn Resigns as National Security Adviser*, N.Y. TIMES, Feb. 13, 2017, <https://www.nytimes.com/2017/02/13/us/politics/donald-trump-national-security-adviser-michael-flynn.html>.

59 See *id.*

60 See Maggie Haberman et al., *Trump Says He Fired Michael Flynn ‘Because He Lied’ to F.B.I.*, N.Y. TIMES, Dec. 2, 2017, <https://www.nytimes.com/2017/12/02/us/politics/trump-michael-flynn.html>.

With Flynn gone, the Trump Administration began to search for a replacement. In the meantime, retired lieutenant general Keith Kellogg briefly stepped in as Acting National Security Advisor.

II. H.R. McMASTER TAKES THE REINS

One week later, the President selected decorated lieutenant general H.R. McMaster to replace Flynn as National Security Advisor.⁶¹ From an ideological standpoint, McMaster seemed like an awkward choice. The *New York Times* reported that two of McMaster’s chief boosters during the selection process were Chris Brose (the staff director of the Senate Armed Services Committee under Arizona Senator John McCain) and Arkansas Senator Tom Cotton.⁶² Upon McMaster’s hiring, Senator McCain (who represented once widely held Republican views on foreign policy⁶³) jubilantly tweeted that McMaster was an “outstanding choice” for the position.⁶⁴ But on the campaign trail, candidate Trump had run *against* the Republican foreign policy consensus, rankling longtime national security leaders in the party apparatus.⁶⁵ Indeed, in March 2016, “dozens of Republican foreign policy experts” signed onto a letter denouncing then-candidate Trump.⁶⁶ Five months later, a group described as “[f]ifty of the nation’s most senior Republican national security officials” signed another letter, criticizing him in harsher terms.⁶⁷

President Trump’s personal feud with the late Senator McCain was well-publicized, but they also had significant disagreements about foreign policy. On one side was a President who rode to a decisive victory in the 2016 South Carolina

[com/2017/12/02/us/politics/trump-michael-flynn.html](https://www.nytimes.com/2017/12/02/us/politics/trump-michael-flynn.html).

61 See Peter Baker & Michael R. Gordon, *Trump Chooses H.R. McMaster as National Security Adviser*, N.Y. TIMES, Feb. 20, 2017, <https://www.nytimes.com/2017/02/20/us/politics/mcmaster-national-security-adviser-trump.html>.

62 See *id.*

63 See Michael Tracey, *Did John McCain Draw the Curtain on Neoconservatism?*, SPECTATOR, Aug. 31, 2018, <https://spectator.us/topic/john-mccain-draw-curtain-neoconservatism/>.

64 John McCain (@SenJohnMcCain), TWITTER (Feb. 20, 2017, 4:44 PM), <https://twitter.com/SenJohnMcCain/status/833794401289793539>.

65 See, e.g., Dan Roberts, *Donald Trump Unveils ‘America First’ Foreign Policy Plan*, GUARDIAN, Apr. 27, 2016, <https://www.theguardian.com/us-news/2016/apr/27/donald-trump-foreign-policy-speech>; Tim Hains, *Trump Mocks Bill Kristol: ‘This Poor Guy,’ ‘All He Wants to Do Is Go to War and Kill People’*, REALCLEARPOLITICS, May 25, 2016, https://www.realclearpolitics.com/video/2016/05/25/trump_mock_bill_kristol_this_poor_guy_all_he_wants_to_do_is_go_to_war_and_kill_people.html.

66 See Michael Crowley, *GOP Hawks Declare War on Trump*, POLITICO, Mar. 3, 2016, <https://www.politico.com/story/2016/03/trump-clinton-neoconservatives-220151>.

67 See David E. Sanger & Maggie Haberman, *50 G.O.P. Officials Warn Donald Trump Would Put National Security ‘at Risk’*, N.Y. TIMES, Aug. 8, 2016, <https://www.nytimes.com/2016/08/09/us/politics/national-security-gop-donald-trump.html>; see also Michael Crowley & Alex Isenstadt, *GOP Foreign Policy Elites Flock to Clinton*, POLITICO, July 6, 2016, <https://www.politico.com/story/2016/07/national-security-clinton-trump-225137> (“Donald Trump is driving Republican foreign policy elites into the arms of Hillary Clinton, as several more Reagan and Bush administration veterans say they not only oppose Trump but will likely vote for Clinton this fall.”).

Republican primary, and ultimately the GOP nominating contest, after denouncing the Iraq war as a mistake.⁶⁸ On the other was a Senator who, just months after McMaster's appointment, would not-so-subtly criticize President Trump in a speech for "abandon[ing] the ideals we have advanced around the globe [and refusing] the obligations of international leadership for the sake of some half-baked, spurious nationalism cooked up by people who would rather find scapegoats than solve problems."⁶⁹ And although Senator Cotton had supported candidate Trump during the latter's campaign for President, *The Atlantic* published a piece in July 2016 that astutely pointed out significant areas of foreign policy disagreement between the two men (chief among them the role of the United States in the international community).⁷⁰ In Eisenhowerian fashion, President Trump was also a critic of the military industrial complex, even stating near the end of his presidency: "I'm not saying the military's in love with me. The soldiers are. The top people in the Pentagon probably aren't because they want to do nothing but fight wars so all of those wonderful companies that make the bombs and make the planes and make everything else stay happy."⁷¹

Nevertheless, McMaster was the pick. President Trump offered some insight into why he chose McMaster, noting, "He's a man of tremendous talent and tremendous experience. . . . He is highly respected by everyone in the military, and we're very honored to have him."⁷² McMaster also had a reputation in the military as a "disruptor," endearing him to a President who had disrupted the traditional political system.⁷³ The decorated officer was reportedly not the President's first choice for the role; retired vice admiral and former Navy SEAL Robert S. Harward allegedly turned down the job when offered it first.⁷⁴

McMaster quickly went to work at the NSC, making changes to the staffing arrangement. In his first two weeks, he "did away . . . with two deputy assistant spots" to remove an "extra layer" of staff on the Council.⁷⁵ One of those deputies, David Cattler, had been close to Flynn and served under

him at the Defense Intelligence Agency during the Obama Administration.⁷⁶ At his first NSC meeting, McMaster eschewed use of the phrase "radical Islamic terrorism," opining that it was unhelpful.⁷⁷ Perhaps McMaster's most significant act related to the internal structure of the NSC was urging President Trump to issue a new directive that reorganized the Council. The new directive removed Steve Bannon from the organizing document; restored the Chairman of the Joint Chiefs of Staff, the Director of National Intelligence, and the Secretary of Energy⁷⁸ as regular attendees at the Principals Committee meetings; and elevated the United States Ambassador to the United Nations (at the time, the position was held by former South Carolina Governor Nikki Haley) to regular attendee status.⁷⁹ In addition, McMaster scored a victory in taking the HSC off of "equal footing" with his NSC, reintegrating the former Council into (and under) the latter as under President Obama.⁸⁰

McMaster continued to remake the NSC as the months went on. He made former Bush Administration staffer and Goldman Sachs partner Dina Powell his Deputy National Security Advisor⁸¹ and removed two Flynn loyalists—Derek Harvey and Rich Higgins.⁸² Flynn deputy K.T. McFarland departed the NSC and was nominated to be U.S. Ambassador to Singapore (the

⁷⁶ See *id.*

⁷⁷ See Mark Landler & Eric Schmitt, *H.R. McMaster Breaks with Administration on Views of Islam*, N.Y. TIMES, Feb. 24, 2017, <https://www.nytimes.com/2017/02/24/us/politics/hr-mcmaster-trump-islam.html>.

⁷⁸ The Secretary plays a critical role in the national security world, given the Department of Energy's responsibility "for the U.S. nuclear weapons arsenal as well as the security of the nation's energy grid infrastructure." Kyle Feldscher, *Energy Secretary Rick Perry Added to National Security Council*, WASHINGTON EXAMINER, Apr. 5, 2017, <https://www.washingtonexaminer.com/energy-secretary-rick-perry-added-to-national-security-council>. Indeed, the National Nuclear Security Administration is a bureau of the Department of Energy. See *National Nuclear Security Administration*, U.S. Dep't of Energy, <https://www.energy.gov/nnsa/national-nuclear-security-administration> (last visited Feb. 21, 2021).

⁷⁹ See Bryan Bender, *Bannon's Departure Solidifies McMaster's Control over the NSC*, POLITICO, Apr. 5, 2017, <https://www.politico.com/story/2017/04/bannon-mcmaster-national-security-council-236921>; Mallory Shelbourne, *Perry, Haley Added to National Security Council Principals Committee*, HILL, Apr. 5, 2017, <https://thehill.com/homenews/administration/327458-perry-haley-added-to-security-council-principals-committee>.

⁸⁰ See Robert Costa et al., *Bannon Removed from Security Council as McMaster Asserts Control*, WASHINGTON POST, Apr. 5, 2017, https://www.washingtonpost.com/politics/bannon-removed-from-security-council-as-mcmaster-asserts-control/2017/04/05/ffa8b5d2-1a3a-11e7-bcc2-7d1a0973e7b2_story.html.

⁸¹ See Tara Palmeri & Ben White, *Dina Powell to Be Named Trump's Deputy National Security Adviser*, POLITICO, Mar. 15, 2017, <https://www.politico.com/story/2017/03/dina-powell-national-security-236110>.

⁸² See Ken Dilanian, *McMaster Removes Flynn Pick Derek Harvey from National Security Council*, NBC NEWS, July 27, 2017, <https://www.nbcnews.com/politics/donald-trump/mcmaster-removes-flynn-pick-derek-harvey-national-security-council-n787146>; Jana Winter & Elias Groll, *Here's the Memo That Blew up the NSC*, FOREIGN POL'Y, Aug. 10, 2017, <https://foreignpolicy.com/2017/08/10/heres-the-memo-that-blew-up-the-nscl>.

⁶⁸ See Zaid Jilani, *Neoconservatives Declare War on Donald Trump*, INTERCEPT, Feb. 29, 2016, <https://www.theintercept.com/2016/02/29/neoconservatives-declare-war-on-donald-trump/>.

⁶⁹ Scott Neuman, *In Speech, Sen. McCain Decries 'Half-Baked, Spurious Nationalism'*, NPR, Oct. 17, 2017, <https://www.npr.org/sections/thetwo-way/2017/10/17/558247566/in-speech-sen-mccain-decries-half-baked-spurious-nationalism>.

⁷⁰ See Uri Friedman, *Why Would a Republican Hawk Support Donald Trump?*, ATLANTIC, July 3, 2016, <https://www.theatlantic.com/international/archive/2016/07/tom-cotton-donald-trump/489890/>.

⁷¹ Daily Caller (@DailyCaller), TWITTER (Sept. 7, 2020, 2:16 PM), <https://twitter.com/DailyCaller/status/1303034314997858308>.

⁷² Baker & Gordon, *supra* note 61.

⁷³ See *id.*

⁷⁴ See Julie Hirschfeld Davis & Eric Schmitt, *Trump's Pick to Replace Flynn Turns Down the Job*, N.Y. TIMES, Feb. 16, 2017, <https://www.nytimes.com/2017/02/16/us/politics/robert-harward-national-security-adviser.html>.

⁷⁵ Eliana Johnson et al., *McMaster Rolls Back Flynn's Changes at NSC*, POLITICO, Mar. 1, 2017, <https://www.politico.com/story/2017/03/mcmaster-national-security-council-staff-changes-235579>.

nomination ultimately did not pan out).⁸³ McMaster was initially unsuccessful in attempting to get rid of Ezra Cohen-Watnick, a Trump loyalist on the NSC who was close with Bannon and Jared Kushner, pushing to the point that the President personally intervened against McMaster; eventually, however, McMaster managed to send Cohen-Watnick packing.⁸⁴ As Charlie Savage put it in the *New York Times*, McMaster was “moving to put a more traditionally professional stamp on the operations of the [NSC].”⁸⁵ Some context may be important to explain McMaster’s consolidation of power. In the summer of 2017, as McMaster began to ramp up removals, President Trump replaced White House Chief of Staff Reince Priebus (former Chairman of the Republican National Committee) with John Kelly, a four-star general who had been serving as the Homeland Security Secretary.⁸⁶ Between Kelly, Secretary of Defense James Mattis (another four-star general⁸⁷), and McMaster, military leaders were ascendant in the Trump Administration.

Some observers lauded Kelly, Mattis, and Secretary of State Rex Tillerson as the Administration’s “Axis of Adults,” including McMaster and CIA Director Mike Pompeo in the general sentiment.⁸⁸ These commentators “point[ed] to the men’s influence in the Tomahawk strike in Syria—in contrast to President Trump’s isolationist slogans on the campaign trail; the outreach to China, compared to the President’s threats to launch a trade war; a possible escalation of the war in Afghanistan; and President Trump’s hardening stance toward Russia.”⁸⁹ Some opined that “[t]hrough near daily contact with” these foreign policy principals, the President’s “world view appear[ed] to be morphing more closely to match hawkish conservatives of the Bush administration.”⁹⁰ Media reports linked McMaster to President Trump’s later decision to increase troops in Afghanistan, despite the President’s initial instinct to withdraw U.S. forces

from the Middle Eastern nation.⁹¹ Trump-skeptical Republican foreign policy operatives, who had not originally been willing to work for the President, began to “put[] names into the ring to work in one of the ‘safe zones’ with Mattis, Tillerson or Kelly[.]”⁹²

Against the backdrop of these developments, McMaster began to draw the ire of Trump supporters. By August 2017, as a punchy *Washington Times* lede put it, President Trump was “defending . . . McMaster amid a steady drumbeat from conservatives . . . calling on the president to fire him for alleged disloyalty.”⁹³ The story cited McMaster’s “purge of Trump loyalists from the [NSC], a heated debate about sending more U.S. troops to Afghanistan[,] and a report that he allowed former Obama administration aide Susan E. Rice to keep her security clearance.”⁹⁴ The Rice move particularly offended conservatives, given reports that she had “unmasked the identities of Trump transition aides in conversations with Russian officials.”⁹⁵ *Breitbart*, a Trump-friendly media outlet (formerly run by Bannon) that had originally covered McMaster’s hiring in a favorable manner, turned on McMaster after the Afghanistan decision, labeling him a “globalist” (a term of derision in the pro-Trump “America First” foreign policy space).⁹⁶ Conferring the moniker on McMaster “was part of a months-long war that Breitbart [had] been waging against Trump’s top foreign policy adviser, publishing article after article attacking McMaster as soft on jihadism, hostile to Israel, and disloyal to the president.”⁹⁷

Daniel Horowitz of the website *Conservative Review* penned an op-ed on August 9, 2017 entitled “Trump’s defense of HR McMaster is indefensible.” Horowitz painted the Cohen-Watnick/Harvey/Higgins removals as proof that McMaster “fired all of the pro-Israel staff from the NSC”; criticized McMaster’s hiring of Linda Weissgold, who had authored the “Benghazi talking points” that rebutted the popular Republican narrative on the issue; called out other personnel decisions that “brought in Obama’s people” and “protected staffers who reported directly to [Obama foreign policy advisor] Ben Rhodes”; and highlighted policy disagreements between McMaster and the President’s campaign rhetoric.⁹⁸ McMaster survived the criticism and continued in

83 See Adam Entous, *The Agonizingly Slow Downfall of K.T. McFarland*, *NEW YORKER*, Jan. 29, 2018, <https://www.newyorker.com/news/news-desk/the-agonizingly-slow-downfall-of-k-t-mcfarland>.

84 See Zack Beauchamp, *Trump’s Allies in the National Security Council Are Being Taken Out*, *VOX*, Aug. 2, 2017, <https://www.vox.com/world/2017/8/2/16087434/ezra-cohen-watnick-fired>.

85 Charlie Savage, *K.T. McFarland, Deputy National Security Adviser, Is Expected to Leave Post*, *N.Y. TIMES*, Apr. 9, 2017, <https://www.nytimes.com/2017/04/09/us/politics/mcfarland-deputy-national-security-adviser-expected-to-leave-post.html>.

86 See Tara Palmeri et al., *Priebus out as Chief of Staff. Gen. John Kelly to Replace Him*, *POLITICO*, July 28, 2017, <https://www.politico.com/story/2017/07/28/trump-names-gen-john-kelly-as-chief-of-staff-priebus-out-241105>.

87 See Connor O’Brien, *Mattis Confirmed as Defense Secretary*, *POLITICO*, Jan. 20, 2017, <https://www.politico.com/story/2017/01/mattis-confirmed-as-defense-secretary-233940>.

88 See Kimberly Dozier, *New Power Center in Trumpland: The Axis of Adults*, *DAILY BEAST*, May 5, 2017, <https://www.thedailybeast.com/new-power-center-in-trumpland-the-axis-of-adults>.

89 *Id.*

90 *Id.*

91 See David Choi, *H.R. McMaster Showed Trump a Black-and-White, 1972 Image of Afghan Women Walking in Miniskirts to Convince Him of a Plan for Afghanistan*, *BUS. INSIDER*, Aug. 22, 2017, <https://www.businessinsider.com/trump-afghanistan-plan-mcmaster-photo-1972-women-2017-8>.

92 Dozier, *supra* note 87.

93 Dave Boyer, *Trump, McMaster Meet amid Purge of National Security Staffers, Susan Rice Revelation*, *WASHINGTON TIMES*, Aug. 3, 2017, <https://www.washingtontimes.com/news/2017/aug/3/trump-mcmaster-meet-amid-purge-security-staffers/>.

94 *Id.*

95 *Id.*

96 See Zack Beauchamp, *Breitbart’s War on Trump’s Top National Security Aide*, *VOX*, Aug. 23, 2017, <https://www.vox.com/world/2017/8/23/16180032/breitbart-mcmaster-bannon-war>.

97 *Id.*

98 Daniel Horowitz, *Trump’s Defense of HR McMaster Is Indefensible*, *CONSERVATIVE REV.*, Aug. 9, 2017, <https://www.conservativereview.com/>

his role. Powell left the White House in late 2017.⁹⁹ For his part, McMaster would later go on to say that the “deep state” narrative about the NSC staff was “damaging.”¹⁰⁰

McMaster’s most significant bureaucratic accomplishment as National Security Advisor was probably the production of the Trump Administration’s “National Security Strategy” (NSS) document. The 68-page report, released in December 2017,¹⁰¹ charted a roadmap for foreign policy in the Trump Administration.¹⁰² The importance of having an NSS cannot be overstated. A centralized document from the White House detailing the President’s national security policy provides key direction to the various executive branch agencies pursuing objectives in the national security space. As an example, Secretary Ryan Zinke of the U.S. Department of the Interior cited the NSS in framing the Department’s report about the dangers of American reliance on countries like China for “critical minerals” used in manufacturing key American goods.¹⁰³

Unfortunately for McMaster, his relationships with key officials like Kelly and Mattis deteriorated as 2017 turned to 2018.¹⁰⁴ As Mark Perry reported in *Foreign Policy*, the issue was “not McMaster’s discipline or competence, but his temperament and relative lack of experience.”¹⁰⁵ Perry’s article explained that McMaster’s management style lent itself more to a military operation than it did to the Beltway.¹⁰⁶ As one senior Defense Department official put it, “It may have helped if he’d had a D.C. tour in the Pentagon or NSC or somewhere.”¹⁰⁷ One writer made the point that “in Washington, patience, nuance, a certain political deftness and a studied deference to senior civilian officials

is prized.”¹⁰⁸ It appears McMaster lost the confidence of Kelly and Mattis when McMaster’s relationship with the President went south.¹⁰⁹ Multiple outlets reported on the President’s issues with McMaster, chief among them his briefing style and “rigid . . . thinking.”¹¹⁰ Of note, a *New York Times* article written in February 2017 about McMaster’s hiring raised the point that “for all his war-making experience, [he] has little background in navigating Washington politics, which could be a challenge for him in his new role with a fractious national security team to corral.”¹¹¹ The observation proved prescient.

The National Security Advisor is not just an advisor—she or he is also a bureaucratic leader in charge of a complex governmental entity. Consider that even with an experienced D.C. hand (Dina Powell, a former Bush official) as his deputy, McMaster struggled to negotiate the bureaucratic hurdles that came with the job. Further, four-star generals Kelly and Mattis reportedly saw McMaster (a three-star general) as beneath them and treated him as such.¹¹² Given the need for the National Security Advisor to manage an interagency policy process that includes the Defense Department, Defense Secretary Mattis’ dim view of McMaster likely frustrated the latter’s ability to carry out his duties. Ultimately, the President fired McMaster on March 22, 2018.¹¹³

III. BOLTON ASSUMES COMMAND

The day after President Trump announced the end of McMaster’s tenure as National Security Advisor, the President chose John Bolton to occupy the role next.¹¹⁴ Bolton was not a three-star general like Flynn or McMaster; rather, he was a Yale-educated attorney who had worked in a law firm, served in various Republican administrations, and spent time in the D.C. think tank world as an influential commentator on international affairs and national security issues.¹¹⁵ Many government observers knew Bolton best from his failed nomination to be the United States Ambassador to the United Nations under President George W. Bush; President Bush gave Bolton an interim appointment,

[news/trumps-defense-of-hr-mcmaster-is-indefensible/](https://www.washingtonpost.com/news/trumps-defense-of-hr-mcmaster-is-indefensible/).

99 See Jordan Fabian & Max Greenwood, *Dina Powell Leaving Trump White House*, HILL, Dec. 8, 2017, <https://thehill.com/homenews/administration/363970-wapo-dina-powell-leaving-white-house>.

100 Daniel Chaitin, *McMaster Says ‘Deep State Narrative’ ‘Very Damaging’ and Calls for 9/11-Style Commission to Examine Pandemic Response*, WASHINGTON EXAMINER, Apr. 24, 2020, <https://www.washingtonexaminer.com/news/mcmaster-says-deep-state-narrative-very-damaging-and-calls-for-9-11-style-commission-to-examine-pandemic-response>.

101 See Aaron Mehta, *Trump’s National Security Strategy Unveiled, with Focus on Economics*, DEFENSE NEWS, Dec. 18, 2017, <https://www.defensenews.com/breaking-news/2017/12/18/trumps-national-security-strategy-unveiled-with-focus-on-economics/>.

102 WHITE HOUSE, NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA (2017), available at <https://trumpwhitehouse.archives.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf>.

103 See Matthew Daly, *Zinke: US Reliance on Foreign Minerals a Security Risk*, DENVER POST, Dec. 20, 2017, <https://www.denverpost.com/2017/12/20/interior-dept-says-us-relies-china-for-critical-minerals/>.

104 See Mark Perry, *McMaster’s Problem Isn’t Trump. It’s Mattis and Kelly*, FOREIGN POL’Y, Mar. 7, 2018, <https://foreignpolicy.com/2018/03/07/mcmasters-problem-isnt-trump-its-mattis-and-kelly/>.

105 *Id.*

106 *See id.*

107 *Id.*

108 *Id.*

109 *See id.*

110 David Choi, *H.R. McMaster Is Reportedly Becoming Increasingly Frustrated, and It’s Fueled Speculation He Could Be on His Way Out*, BUS. INSIDER, Mar. 1, 2018, <https://www.businessinsider.com/hr-mcmaster-threatened-to-quit-white-house-trump-2018-3>.

111 Baker & Gordon, *supra* note 61.

112 *See Perry, supra* note 104.

113 See Eliana Johnson, *McMaster Firing Opens Plan to Oust Other Top Trump Officials*, POLITICO, Mar. 23, 2018, <https://www.politico.com/story/2018/03/22/mcmaster-firing-trump-officials-cabinet-482165>.

114 See Mark Landler & Maggie Haberman, *Trump Chooses Bolton for 3rd Security Adviser as Shake-Up Continues*, N.Y. TIMES, Mar. 22, 2018, <https://www.nytimes.com/2018/03/22/us/politics/hr-mcmaster-trump-bolton.html>.

115 See Karen DeYoung, *John Bolton, Famously Abrasive, Is an Experienced Operator in the ‘Swamp’*, WASHINGTON POST, Mar. 23, 2018, https://www.washingtonpost.com/world/national-security/john-bolton-famously-abrasive-is-an-experienced-operator-in-the-swamp/2018/03/23/b9b72000-2eab-11e8-8ad6-fbc50284fce8_story.html.

“which lasted until Democrats took control of Congress in the 2006 elections.”¹¹⁶ In a sense, Bolton was the anti-McMaster; he was “known among both admirers and critics for his masterful grasp of how to manipulate the bureaucracy and the policymaking process.”¹¹⁷ Some worried that Bolton would use this “masterful grasp” and weaponize the institution of the NSC to push his own views on the President, as opposed to emulating the “honest broker” ideal attributed to Brent Scowcroft.¹¹⁸

As with McMaster’s initial consolidation of influence, the hiring of John Bolton did not occur in a vacuum. A week prior, President Trump had replaced Secretary of State Tillerson with CIA Director Pompeo.¹¹⁹ Both Pompeo (a former congressman) and Bolton were politically savvy than were Tillerson (an oil executive with no substantive political experience prior to joining the Trump Administration¹²⁰) and McMaster. At the time, the question of how Pompeo and Bolton would interact was one of great interest in the media.¹²¹ From an institutional standpoint, the relationship mattered in the context of the NSC having “steadily increased its role in foreign policy decision-making at the expense of the State Department” over the years.¹²²

The specter of a “bureaucratic turf war” between Bolton’s NSC and Pompeo’s State Department prompted one writer with the Brookings Institution to recommend a new conception of the two entities, concluding that calls to shrink the NSC and return it to its old mandate “reflect a desire to return the NSC to a halcyon past that probably never existed and certainly can’t be recreated.”¹²³ The author noted that State’s “preeminence in diplomacy” had eroded over the years and suggested that the Department instead “concentrate its limited resources on the four functions where it has a competitive advantage to exercise greater influence in the interagency decision-making process and demonstrate value to the president”: area expertise, authority to negotiate on behalf of the President, influencing of foreign audiences, and consular services.¹²⁴

Bolton, whom the President had considered for the job as far back as the Flynn resignation,¹²⁵ immediately became

a power center in the West Wing. Even “[b]efore joining the administration, [Bolton] met regularly with the President in the Oval Office to discuss foreign policy.”¹²⁶ When Bolton became the National Security Advisor, the President “made it clear that Bolton report[ed] directly to him, not chief of staff John Kelly.”¹²⁷ Like McMaster, Bolton began to carry out ambitious personnel changes as soon as he took office. Further marginalizing the HSC, Bolton pushed out Homeland Security Advisor Tom Bossert. Nadia Schadlow, a senior NSC official who had written the National Security Strategy, left the White House, as did Ricky Waddell (who had replaced Powell as Deputy National Security Advisor) and top NSC communications official Michael Anton.¹²⁸ In their place, Bolton hired his own people, including Sarah Tinsley and Garrett Marquis (both of whom had worked with Bolton in the past).¹²⁹ He brought in Mira Ricardel to be Deputy National Security Advisor, “a shot across the bow at Mattis,” with whom Ricardel had clashed on Pentagon appointments during the first months of the Trump Administration.¹³⁰ Ricardel would be let go just a few months later when First Lady Melania Trump “issued an extraordinary call for her ouster” (allegedly after a clash between Ricardel and the First Lady’s staff regarding an official trip to Africa).¹³¹ In addition, the *New York Times* reported in May 2018 that prior to formally joining the White House staff, a “shadow” NSC of candidates under consideration for Council jobs, including eventual Bolton Deputy National Security Advisor Charles Kupperman, was advising Bolton on NSC issues.¹³²

In standing in the White House and in management style, Bolton differed substantially from McMaster. Bolton “pared back the number of people accustomed to playing a bigger role

116 *Id.*

117 *Id.*

118 See Philip Elliott, *Donald Trump Just Hired John Bolton. Here’s Why That Makes Some Nervous*, TIME, Mar. 23, 2018, <https://time.com/5212129/john-bolton-hr-mcmaster-donald-trump/>.

119 See Landler & Haberman, *supra* note 114.

120 See Gardiner Harris, *Rex Tillerson Is Confirmed as Secretary of State amid Record Opposition*, N.Y. TIMES, Feb. 1, 2017, <https://www.nytimes.com/2017/02/01/us/politics/rex-tillerson-secretary-of-state-confirmed.html>.

121 See, e.g., Thomas M. Hill, *Can Pompeo and Bolton Coexist?*, BROOKINGS (June 7, 2018), <https://www.brookings.edu/blog/fixgov/2018/06/07/can-pompeo-and-bolton-coexist/>.

122 *Id.*

123 *Id.*

124 See *id.*

125 See Spencer Ackerman, *Trump Appoints HR McMaster as National Security Adviser*, GUARDIAN, Feb. 20, 2017, <https://www.theguardian.com/us-news/2017/feb/20/trump-appoints-hr-mcmaster-national-security-adviser>.

[com/us-news/2017/feb/20/trump-appoints-hr-mcmaster-national-security-adviser](https://www.nytimes.com/us-news/2017/feb/20/trump-appoints-hr-mcmaster-national-security-adviser).

126 Kaitlan Collins, *Bolton Adds Two Loyalists to the National Security Council*, CNN, May 29, 2018, <https://www.cnn.com/2018/05/29/politics/john-bolton-hires-new-communication/index.html>.

127 *Id.*

128 See Jonathan Swan, *Scoop: Ricky Waddell Is Leaving the White House*, AXIOS, Apr. 12, 2018, <https://www.axios.com/deputy-national-security-adviser-ricky-waddell-white-house-898300a5-3ba2-4aef-a029-018dd0c89d43.html>. Anton, some will recall, authored the *Flight 93 Election* essay during the 2016 presidential campaign under a pseudonym. See Daniel W. Drezner, *The Flight from the ‘Flight 93 Election’*, WASHINGTON POST, Apr. 10, 2018, <https://www.washingtonpost.com/news/posteverything/wp/2018/04/10/the-flight-from-the-flight-93-election/>.

129 See Collins, *supra* note 126.

130 See Aaron Mehta, *After First Lady Slam, Mattis’ Foe Ricardel Appears on Thin Ice*, DEFENSE NEWS, Nov. 13, 2018, <https://www.defensenews.com/news/pentagon-congress/2018/11/14/after-first-lady-slam-mattis-foe-ricardel-appears-on-thin-ice/>.

131 See Andrew Restuccia & Caitlin Oprysko, *White House Dumps Senior Official After Clash with Melania Trump*, POLITICO, Nov. 14, 2018, <https://www.politico.com/story/2018/11/14/mira-ricardel-still-employed-melania-990744>.

132 See Kenneth P. Vogel, *Meet the Members of the ‘Shadow N.S.C.’ Advising John Bolton*, N.Y. TIMES, May 21, 2018, <https://www.nytimes.com/2018/05/21/us/politics/advising-bolton-a-shadow-nsc-of-cronies.html>.

in important national security debates and . . . convened fewer [Principals Committee] meetings than [did] his predecessor[.]”¹³³ In addition to private huddles with his smaller group of more politically oriented advisors, he started to confer regularly alone with Secretaries Pompeo and Mattis over breakfast or lunch, and he participated in “frequent one-on-one” meetings with President Trump.¹³⁴ In this way, Bolton established the NSC as an entity on par with State and Defense, as opposed to simply a paper-pushing component. Bolton was not only more of an equal to Pompeo and Mattis than McMaster had been to Tillerson and Mattis, but he was also the leader of an NSC more interested in achieving specific policy outcomes. The focus on “shorter meetings and a smaller group of decision makers” was said to better suit President Trump,¹³⁵ and it also made sense in response to the Obama-era criticism of the NSC as a micromanager. Given the NSC’s proximity to the President, the Council can be an effective driver of executive orders and other national security documents that require the President’s stamp of approval.

The NSC has gotten itself into trouble with Cabinet heads when its officials have attempted to micromanage the departments. Chuck Hagel, who was Defense Secretary under President Obama, famously said that “[t]here were always too many meetings, too many people in the room, too many people talking. Especially young, smart 35-year-old PhDs who love to talk, because that’s the way you let everybody know how smart you are, is how much you talk.”¹³⁶ Upon leaving the NSC, Steve Bannon said, “Susan Rice operationalized the NSC during the last administration. I was put on to ensure that it was de-operationalized.”¹³⁷ Did Bolton re-operationalize the Council? Yes, but that arguably misses the point.

At bottom, the issue of operationalization was an issue of lanes. Bolton’s NSC was *operational* in a sense, but instead of micromanaging, it “animated” the President’s America First approach, adding policy meat to the bones of the President’s philosophical worldview.¹³⁸ In some instances, to be sure, Bolton appeared to pursue his own policy goals. One of those was U.S. departure from the International Criminal Court (ICC).¹³⁹ This

may seem to be a problem—after all, as a White House staffer, the National Security Advisor should be singularly focused on furthering the President’s priorities. But in reality, to recruit top talent like Bolton, presidents likely need to promise potential high-quality hires a bit of room to pursue some pet policy projects of their own independent interest. Importantly, the ICC move did not *contradict* any aspect of Trump’s goals in foreign affairs (in fact, they were generally consistent with his skepticism of international institutions), so they did not present a serious issue. On the other hand, some of Bolton’s freelancing on signature policy issues (like opposing the President’s promise to withdraw U.S. troops from Syria) reportedly led the President to feel that Bolton had “pursued an independent foreign policy[.]”¹⁴⁰ And in spite of Bolton’s frequent huddles with Secretaries Mattis and Pompeo, some charged that his informal process did not adequately engage the agencies. Prior to his own resignation, Secretary Mattis (who “clashed frequently with Bolton”) complained about the “paucity” of NSC meetings under Bolton’s leadership.¹⁴¹

Perhaps most notably, Bolton was intimately involved in the President’s diplomatic moonshot with North Korea. Bolton took the National Security Advisor job just weeks after President Trump accepted an invitation to meet with North Korean leader Kim Jong-Un, with the objective of denuclearizing North Korea.¹⁴² The news of the accepted invitation came as a surprise after the President and Kim had traded threats and insults for months.¹⁴³ Secretary Pompeo took the lead on the North Korean negotiations; in contrast, Bolton had “publicly questioned” the diplomacy efforts prior to joining the Administration.¹⁴⁴ But Bolton continued to play a role. He mused that the United States was considering the “Libya model” for North Korean denuclearization, which seemed to make little sense as a note of encouragement for the North Koreans, given that just a few years after Libyan leader Muammar Gaddafi shelved his nuclear program in exchange for sanctions relief in the early 2000s, rebels backed by Washington overthrew and killed him.¹⁴⁵ Kim, unsurprisingly, was disinclined to the idea of suffering a

133 Dion Nissenbaum, *John Bolton Energizes Trump’s Agenda—and His Own*, WALL STREET J., Nov. 18, 2018, <https://www.wsj.com/articles/john-bolton-energizes-trumps-agendaand-his-own-1542546003>.

134 *Id.* Contemporary reporting suggests that a reason for the shift to small, informal get-togethers may have been to clamp down on leaks. See Nahal Toosi et al., *Cabinet Chiefs Feel Shut out of Bolton’s ‘Efficient’ Policy Process*, POLITICO, July 25, 2018, <https://www.politico.com/story/2018/07/25/bolton-cabinet-meetings-mattis-pompeo-trump-740429>.

135 See Nissenbaum, *supra* note 133.

136 Rudy Takala, *WATCH: 3 Former Defense Secretaries Slam White House ‘Micromanagement’*, WASHINGTON EXAMINER, Apr. 7, 2016, <https://www.washingtonexaminer.com/watch-3-former-defense-secretaries-slam-white-house-micromanagement>.

137 Dave Boyer, *Steve Bannon Says Role Was to ‘De-Operationalize’ NSC After Rice’s Tenure*, WASHINGTON TIMES, Apr. 5, 2017, <https://www.washingtontimes.com/news/2017/apr/5/steve-bannon-says-role-was-de-operationalize-ns-c-al>.

138 See Nissenbaum, *supra* note 133.

139 See *id.*

140 Karen DeYoung et al., *John Bolton Puts His Singular Stamp on Trump’s National Security Council*, WASHINGTON POST, Mar. 4, 2019, https://www.washingtonpost.com/world/national-security/john-bolton-single-minded-advocate-puts-his-stamp-on-the-national-security-council/2019/03/04/5c59517e-3609-11e9-854a-7a14d7fec96a_story.html; Karen DeYoung & Karoun Demirjian, *Contradicting Trump, Bolton Says No Withdrawal from Syria Until ISIS Destroyed, Kurds’ Safety Guaranteed*, WASHINGTON POST, Jan. 6, 2019, https://www.washingtonpost.com/world/national-security/bolton-promises-no-troop-withdrawal-from-syria-until-isis-contained-kurds-safety-guaranteed/2019/01/06/ee219bba-11c5-11e9-b6ad-9cfd62dbb0a8_story.html.

141 See *id.*

142 See Ali Vitali, *President Trump Agrees to Meet with North Korea’s Kim Jong Un*, NBC NEWS, Mar. 9, 2018, <https://www.nbcnews.com/politics/white-house/south-koreans-deliver-letter-trump-kim-jong-un-n855051>.

143 See *id.*

144 See Nissenbaum, *supra* note 133.

145 See Joshua Berlinger, *Bolton Says US Considering Libya Model for North Korean Denuclearization*, CNN, Apr. 30, 2018, <https://www.cnn.com/2018/04/30/asia/north-korea-bolton-libya-intl/index.html>.

similar fate. The President participated in a summit with Kim in Singapore on June 12, 2018, during which Kim pledged a “firm and unwavering commitment to complete denuclearization of the Korean Peninsula.”¹⁴⁶ But North Korea made no actual progress on denuclearization, and Bolton gave multiple public statements in the following months denouncing North Korea’s failure to live up to its word.¹⁴⁷ He did so as Secretary Pompeo took a more patient approach.¹⁴⁸ The President and Kim held a second summit in February 2019, which ended with no nuclear agreement.¹⁴⁹

Relations between the U.S. and North Korea took a turn for the worse when, in May 2019, North Korea tested ballistic missiles after a freeze that had begun in late 2017 (the beginning of the President’s diplomacy efforts).¹⁵⁰ The President “downplayed” the tests in a tweet, but Bolton lashed out, telling reporters that the tests violated U.N. resolutions.¹⁵¹ North Korea attacked Bolton, calling him a “structurally flawed” man and a “defective human product” who was “an adviser for security destruction who destroys peace and security.”¹⁵² And then, a shift: during a June 2019 trip to Asia, President Trump tweeted an invitation to meet Kim in the Demilitarized Zone (DMZ) between North and South Korea, and Kim accepted.¹⁵³ The next day, the President traveled to the DMZ and shook hands with Kim.¹⁵⁴ In an unprecedented moment, the President asked if he could step over the border line into North Korea.¹⁵⁵ Kim consented, and President Trump walked

into North Korea, becoming the first sitting U.S. President to set foot in the country.¹⁵⁶ Bolton, in Mongolia “consult[ing] with officials on regional security issues,” was not with the President.¹⁵⁷

One can look at Bolton’s participation in the North Korea talks in either of two ways. The conventional view is that the pugilistic Bolton had a view of the diplomacy efforts that was contrary to that of the President, and that Bolton’s engagement on North Korea purposely frustrated the process. Indeed, Bolton had written a February 2018 op-ed in the *Wall Street Journal* (just a month before his hiring) entitled “The Legal Case for Striking North Korea First.”¹⁵⁸ And given Secretary Pompeo’s approach to North Korea’s denuclearization timeline, a *CNN* article reasonably questioned whether Bolton’s public comments revealed “a possible split within the administration over how to handle Pyongyang.”¹⁵⁹

There is another way to understand Bolton’s impact, however. The President knew well what Bolton’s views on North Korea were when he hired Bolton to be the National Security Advisor, and given the President’s clear belief in the importance of establishing a personal relationship with Kim, Bolton in effect ended up being the “bad cop” to the President and Secretary Pompeo’s “good cop.” With Bolton taking all of the heat from North Korea, the President himself was able to maintain a positive relationship with Kim, as evidenced by the meet-up at the DMZ. Further, Bolton’s proximity to the President may have led the North Koreans to believe that if they pushed the envelope too far, the views of the man who believed in the merits of a pre-emptive strike against North Korea might have their day in the Oval Office. Perhaps, then, Bolton’s public, anti-North Korea posturing was a chess piece in President Trump’s larger diplomatic gambit. We cannot know for sure.

Ultimately, the former (and more obvious) interpretation is probably the right one; after leaving the Administration, Bolton criticized the President’s efforts on North Korea.¹⁶⁰ But from the standpoint of learning lessons from the operations of the NSC and its leaders under President Trump, a key observation emerges. The NSC and the National Security Advisor are institutions, to be sure, but they are also actors in the political process. A President can use the NSC and its leader as diplomatic tools, keeping adversaries guessing about the White House’s position on a certain matter when the State Department or other entities appear to have a different public stance.

One final note about Bolton’s tenure at the NSC: After U.S. Ambassador to the United Nations Nikki Haley announced she

146 Joint Statement of President Donald J. Trump of the United States of America and Chairman Kim Jong Un of the Democratic Peoples Republic of Korea at the Singapore Summit, White House Archives: President Donald J. Trump, June 12, 2018, <https://trumpwhitehouse.archives.gov/briefings-statements/joint-statement-president-donald-j-trump-united-states-america-chairman-kim-jong-un-democratic-peoples-republic-korea-singapore-summit/>.

147 See Eli Watkins, *Bolton: US Still ‘Waiting’ for North Korea to Start Denuclearizing*, CNN, Aug. 7, 2018, <https://www.cnn.com/2018/08/07/politics/john-bolton-north-korea/index.html>; Donna Borak & Zachary Cohen, *John Bolton Says North Korea Failure to Meet Commitments Requires Second Trump-Kim Summit*, CNN, Dec. 4, 2018, <https://www.cnn.com/2018/12/04/politics/bolton-north-korea-summit-commitments/index.html>.

148 See Watkins, *supra* note 147.

149 See Matthew S. Schwartz, *Trump and Kim’s Second Nuclear Summit Ends with No Deal*, NPR, Feb. 28, 2019, <https://www.npr.org/2019/02/28/698848039/second-nuclear-summit-ends-with-no-deal>.

150 See Kim Tong-Hyung, *North Korea Calls John Bolton ‘War Monger’ and ‘Defective Human Product’ over Missile Comment*, USA TODAY, May 27, 2019, <https://www.usatoday.com/story/news/world/2019/05/27/north-korea-calls-bolton-war-monger-over-missile-comment/1249183001/>.

151 See *id.*

152 *Id.*

153 See Kevin Liptak & Allie Malloy, *Trump Tweets Kim Jong Un an Invitation to ‘Shake His Hand’ at DMZ*, CNN, June 29, 2019, <https://www.cnn.com/2019/06/28/politics/donald-trump-kim-jong-un-dmz/index.html>.

154 See Kevin Liptak, *Trump Takes 20 Steps into North Korea, Making History as First Sitting US Leader to Enter Hermit Nation*, CNN, June 30, 2019, <https://www.cnn.com/2019/06/29/politics/kim-jong-un-donald-trump-dmz-north-korea/index.html>.

155 See *id.*

156 See *id.*

157 See Eric Lutz, *John Bolton Left in Mongolia While Trump Schmoozed in North Korea*, VANITY FAIR, July 1, 2019, <https://www.vanityfair.com/news/2019/07/john-bolton-mongolia-trump-tucker-carlson-schmoozed-in-north-korea>.

158 See John Bolton, *The Legal Case for Striking North Korea First*, WALL STREET J., Feb. 28, 2018, <https://www.wsj.com/articles/the-legal-case-for-striking-north-korea-first-1519862374>.

159 Watkins, *supra* note 147.

160 See Vivian Salama & Nancy A. Youssef, *Bolton Criticizes Trump over Moves on North Korea*, WALL STREET J., Dec. 23, 2019, <https://www.wsj.com/articles/bolton-criticizes-trump-over-moves-on-north-korea-11577146673>.

would be departing the Trump Administration, Bolton joined with Kelly (the White House Chief of Staff) and Secretary Pompeo to push for the U.N. Ambassador position to be demoted to sub-Cabinet rank.¹⁶¹ In recent history, the question of Cabinet rank for the U.N. Ambassador has taken on a partisan valence; Republican “Presidents Bush 41 and 43 both demoted their UN ambassadors from Cabinet-level status, while [Democratic] Presidents Clinton and Obama elevated the role upon taking office.”¹⁶² Bolton, Kelly, and Secretary Pompeo got their wish when the President selected U.S. Ambassador to Canada Kelly Craft for the U.N. position.¹⁶³ For Bolton and Pompeo, the move was framed as eliminating “a potential challenge to their foreign policy leadership in White House situation room meetings[.]”¹⁶⁴ And Bolton himself had noted his disapproval of the U.N. Ambassador having Cabinet rank during comments as far back as 2008: “One, it overstates the role and importance the U.N. should have in U.S. foreign policy. Second, you shouldn’t have two secretaries in the same department.”¹⁶⁵

By September of 2019, Bolton had worn out his welcome in the White House.¹⁶⁶ At odds with the President on numerous issues, Bolton and the President’s “differences came to a climax . . . as [Bolton reportedly] waged a last-minute campaign to stop the president from signing a peace agreement at Camp David with leaders of the radical Taliban group.”¹⁶⁷ The President’s account of the end of Bolton’s tenure differed from Bolton’s story; the President said he fired Bolton, while Bolton insisted he resigned.¹⁶⁸ The *New York Times* story on Bolton’s departure noted that Secretary Pompeo had “feuded with [Bolton] for months” and that Vice President Pence was also upset with Bolton over reports linking the VP to opposition to the Taliban deal.¹⁶⁹ The same story also ticked off numerous areas of policy disagreement between the President and Bolton, from North Korea to Iran to Russia, and it alleged that the President felt “bogged down” by another project that was partially Bolton’s brainchild: the “failed effort to push out President Nicolás Maduro of Venezuela[.]”¹⁷⁰

161 See Jonathan Swan, *Trump Officials Want to Demote the Next UN Ambassador*, AXIOS, Oct. 12, 2018, <https://www.axios.com/trump-officials-demote-un-ambassador-cabinet-8d3ebfa2-2bd6-4c86-afaf-6d12500ea9d6.html>.

162 *Id.*

163 *Trump Taps U.S. Ambassador to Canada as His New UN Envoy*, N.Y. DAILY NEWS, Feb. 22, 2019, <https://www.nydailynews.com/news/politics/ny-pol-trump-canada-un-envoy-20190222-story.html>.

164 *Id.*

165 Peter Baker, *Choice for U.N. Backs Action Against Mass Killings*, N.Y. TIMES, Nov. 30, 2008, <https://www.nytimes.com/2008/12/01/us/politics/01rice.html>.

166 See Peter Baker, *Trump Ousts John Bolton as National Security Adviser*, N.Y. TIMES, Sept. 11, 2019, <https://www.nytimes.com/2019/09/10/us/politics/john-bolton-national-security-adviser-trump.html>.

167 *Id.*

168 *See id.*

169 *See id.*

170 *Id.*

Serving just under a year and a half, Bolton outlasted both Flynn and McMaster in the National Security Advisor role.

IV. O’BIEN STEPS INTO THE SPOTLIGHT

President Trump selected State Department hostage negotiator Robert O’Brien to follow Bolton as National Security Advisor. O’Brien had been a Los Angeles lawyer before joining the State Department, and he had played a key part in helping the Trump Administration secure the freedom of numerous Americans imprisoned overseas.¹⁷¹ In replacing the bureaucratically inexperienced McMaster with the deftly maneuvering Bolton, the President had made a fundamental change at the position. Now, the big change was the move from Bolton, who had strongly held policy views, to O’Brien, who was said to “bring ‘no outside agenda’ to the job.”¹⁷² Unlike Bolton, O’Brien had a “relative lack of experience . . . with the interagency process[.]”¹⁷³ An op-ed in the *Boston Herald* called O’Brien the “anti-Bolton,” opining that O’Brien’s “quiet and lawyerly” style contrasted with Bolton’s “pugnacity.”¹⁷⁴ Both Secretary Pompeo and Jared Kushner supported O’Brien in the selection process.¹⁷⁵

The O’Brien pick solidified Secretary Pompeo’s position “as the president’s primary foreign-policy advisor.”¹⁷⁶ At this point, the U.N. Ambassador was unquestionably a subordinate of the Secretary; the operationally masterful Bolton was gone, replaced by a more low-key staffer in O’Brien, whom Pompeo had boosted and who saw his role as more of a policy coordinator; new Defense Secretary Mark Esper was just two months removed from his own Senate confirmation;¹⁷⁷ General Kelly was long gone as Chief of Staff, replaced by former White House Office of Management and Budget Director and Congressman Mick Mulvaney, who assumed the role in an acting capacity and evinced more of an

171 See Michael Crowley et al., *Robert O'Brien ‘Looks the Part,’ but Has Spent Little Time Playing It*, N.Y. TIMES, Sept. 18, 2019, <https://www.nytimes.com/2019/09/18/us/politics/national-security-adviser-robert-obrien.html>.

172 *Id.* However, even O’Brien had his own pet projects. *Foreign Policy* reported that O’Brien “made growing the Navy a key focus” as National Security Advisor. See Lara Seligman, *Robert O’Brien Is the Anti-Bolton*, FOREIGN POL’Y, Jan. 27, 2020, <https://foreignpolicy.com/2020/01/27/obrien-bolton-trump-impeachment/>. In the years prior to his hiring at the NSC, O’Brien had advocated for growing the fleet to 350+ ships; indeed, he and the President saw “eye to eye” on the issue. See *id.* But given the fact that a 2018 defense policy bill already mandated growing the Navy to 355 ships, former Pentagon official Loren DeJonghe Schulman described the continued focus on the issue as “a bit odd[.]” *Id.*

173 Crowley, *supra* note 171 (quoting Richard Fontaine, the chief executive of the nonpartisan Center for a New American Security).

174 See Eli Lake, *Trump’s NSA Pick O’Brien Is the Anti-Bolton*, BOSTON GLOBE, Sept. 24, 2019, <https://www.bostonherald.com/2019/09/24/trumps-nsa-pick-obrien-is-the-anti-bolton/>.

175 *See id.*

176 Ivo H. Daalder & I.M. Destler, *Can O’Brien Succeed as National Security Advisor?*, FOREIGN POL’Y, Sept. 20, 2019, <https://foreignpolicy.com/2019/09/20/can-obrien-succeed-as-national-security-advisor/>.

177 See Helene Cooper, *Mark Esper Confirmed as Trump’s Defense Secretary*, N.Y. TIMES, July 23, 2019, <https://www.nytimes.com/2019/07/23/us/politics/mark-esper-secretary-defense.html>.

interest in domestic policy battles;¹⁷⁸ and Secretary Pompeo had demonstrated commitment to the President by spurning the opportunity to run for the U.S. Senate in his home state of Kansas so he could stay on as Secretary of State through the end of the President's term.¹⁷⁹ As a result, O'Brien's interagency process would necessarily have to account for the outsized influence that the State Department's policy preference on any given issue would have with the President, given Secretary Pompeo's rapport and history with President Trump. One major change from Bolton was that O'Brien "reinstated more regular meetings of the . . . principals and deputies committee[s.]"¹⁸⁰

Instead of the typical churn, O'Brien promoted his deputies from within. He elevated two staffers—Victoria Coates and Matt Pottinger—who had served since the beginning of the Trump Administration.¹⁸¹ That Coates (who had been senior director for the Middle East and North Africa) and Pottinger ("the NSC's Asia expert") were now deputies appeared to signal the President's foreign policy "focus on China and the Middle East."¹⁸² As to the broader conception of the NSC, however, O'Brien was intent on cutting down staff. In October 2019, just a month after taking office, he penned an op-ed in the *Washington Post* outlining what his key priorities as National Security Advisor would be.¹⁸³ Reasoning that the NSC staff at the White House "was intended to coordinate policy rather than run it" and that his job was "to distill and present to the president the views and options that come from the various departments and agencies[.]" O'Brien invoked the Scowcroft-ian "honest broker" model to justify streamlining the Council and restoring its historical mission.¹⁸⁴

O'Brien stated that the "NSC staff should not, as it has in the past, duplicate the work of military officers, diplomats or intelligence officers."¹⁸⁵ And on the staffing issue, he identified a specific goal of reducing the 174 policy positions on the NSC "to

under 120 by early 2020."¹⁸⁶ To achieve this objective, O'Brien announced that the White House would "eliminate existing vacancies and consolidate duplicative positions[.]" allowing detailees from other departments and agencies to finish their assignments and return, unreplaced, to their home entities.¹⁸⁷ Finally, O'Brien wrote that he would "combine some functional directorates that duplicate other White House offices" (citing the National Economic Council's competency in handling international economic issues, as an example) and refocus the Council's emphasis on "directorates that cover geographic regions[.]"¹⁸⁸

In an appearance at the Atlantic Council in February 2020, O'Brien discussed his views about his own role as the National Security Advisor. Striking a different tone than Bolton, he noted:

It's not [my] position to be an advocate for one policy or another, not to seek a particular policy outcome; it's to ensure that the President is well-served by the Cabinet departments and agencies in obtaining counsel and formulating his policies. And then, those policies are decided by the *President*. And once the President's made his policy decisions, that they're faithfully executed.¹⁸⁹

In that same set of remarks, O'Brien announced that the White House's streamlining efforts had already concluded—he had succeeded in bringing the NSC policy staff "down to around 115 to 120[.]"¹⁹⁰ He also mentioned that in five months, the NSC had held "over 60 Principal and Deputy Committee meetings" in an effort to improve NSC processes.¹⁹¹

A few months after O'Brien's hiring, the *Washington Times* ran a story about O'Brien's "rightsizing" efforts that provided some key insight into how the Council was originally set up. Rich Higgins, one of the NSC officials purged by McMaster, gave an interview to the news outlet and spoke candidly about his belief in the benefits of the O'Brien approach.¹⁹² Higgins remarked that "the NSC was set up to implement the president's policies through 'command guidance' flowing from the Oval Office to the NSC and then to the various agencies and departments."¹⁹³ This characterization makes sense if one understands it in the context of communicating the President's policy goals to the

178 See Christine Wang, *Trump Names Mick Mulvaney Acting White House Chief of Staff, Replacing John Kelly*, CNBC, Dec. 15, 2018, <https://www.cnbc.com/2018/12/14/trump-names-mick-mulvaney-acting-white-house-chief-of-staff.html>.

179 See Josh Dawsey & John Hudson, *Pompeo Decides Against Run for U.S. Senate Seat in Kansas*, WASHINGTON POST, Jan. 6, 2020, 7:14 PM, https://www.washingtonpost.com/politics/pompeo-decides-against-run-for-us-senate-seat-in-kansas/2020/01/06/2e3b75d6-30dd-11ea-a053-dc6d944ba776_story.html.

180 Daniel Lippman & Meredith McGraw, *Inside the National Security Council, a Rising Sense of Dread*, POLITICO, Apr. 2, 2020, <https://www.politico.com/news/2020/04/02/nsc-coronavirus-white-house-162530>.

181 See Margaret Talev, *O'Brien Names New Deputy National Security Adviser*, AXIOS, Oct. 10, 2019, <https://www.axios.com/obrien-coates-deputy-national-security-adviser-150ebefa-5027-4e84-b3e2-20d9d19dd6dc.html>.

182 See *id.*

183 See Robert C. O'Brien, *Robert C. O'Brien: Here's How I Will Streamline Trump's National Security Council*, WASHINGTON POST, Oct. 16, 2019, https://www.washingtonpost.com/opinions/robert-c-obrien-heres-how-i-will-streamline-trumps-national-security-council/2019/10/16/2b306360-f028-11e9-89eb-ec56cd414732_story.html.

184 See *id.*

185 *Id.*

186 *Id.*

187 See *id.*

188 See *id.*

189 *The View from the West Wing: A Conversation with Robert O'Brien, Assistant to the President for National Security Affairs*, ATLANTIC COUNCIL at 10:37 (Feb. 11, 2020), <https://www.atlanticcouncil.org/event/the-view-from-the-west-wing-a-conversation-with-robert-obrien-assistant-to-the-president-for-national-security-affairs/>.

190 *Id.* at 14:48.

191 See *id.* at 15:09.

192 See Bill Gertz, *FLASHBACK: NSC Chief Slashing Obama's 'Bloated' Staff to Create Tight-Lipped White House Operation*, WASHINGTON TIMES, Dec. 31, 2019, <https://www.washingtontimes.com/news/2019/dec/31/robert-obrien-cuts-national-security-council-staff/>.

193 *Id.*

“fragmented national security apparatus”¹⁹⁴ across the executive branch, without micromanaging the agencies and departments. Higgins charged that a “calcified bureaucracy” was attempting to “obstruct [President Trump’s] and his voters’ agenda,” and he praised O’Brien for “eliminating those obstructing [the President’s] foreign policy desires from the NSC staff and re-orienting the council’s mission.”¹⁹⁵

A key foreign policy event in O’Brien’s tenure occurred in late December 2019. Iranian-linked provocations in Iraq escalated tensions in the Middle East, from a militia group’s attack on a military base in Iraq (which killed an American contractor) to riots at the U.S. embassy in Baghdad.¹⁹⁶ Just a few days later, President Trump authorized a drone strike at Baghdad International Airport that killed Iranian military commander Qasim Soleimani.¹⁹⁷ O’Brien had been intimately involved in the decision to take out Soleimani.¹⁹⁸ The National Security Advisor then proceeded to take a lead role in framing the strike to the national media, warning that Iranian retaliation would be a “very poor decision.”¹⁹⁹ He cited the 2002 Authorization for Use of Military Force as statutory permission to carry out the strike and insisted that the action was defensive in nature, stating that Soleimani (who had been responsible for the deaths of hundreds of American soldiers) was actively planning further attacks on U.S. troops.²⁰⁰

Next, O’Brien and other Trump Administration national security leaders led a closed-door briefing with members of Congress about the strike.²⁰¹ Secretary Pompeo, Secretary Esper, and CIA Director Gina Haspel joined O’Brien.²⁰² Going into the briefing, one of the main criticisms of the strike was that the President’s team had not “adequately detail[ed] the intelligence

justifying” the Soleimani killing.²⁰³ During the discussion, the Trump Administration officials in the room were reportedly unwilling to engage on questions about “the possibility of future military action against Iran[,]” leading Utah Republican Senator Mike Lee to decry the briefing as the “worst” he had seen “on a military issue in his entire nine years serving in the Senate.”²⁰⁴ O’Brien responded that he was “disappointed” by the Senator’s characterization.²⁰⁵

Around the same time, Congress was taking steps to impeach President Trump. First, a bit of backstory: In July 2019, near the end of Bolton’s tenure with the NSC, American and Ukrainian officials gathered in Bolton’s office to discuss U.S.-Ukraine relations. As one set of writers in the *New York Times* put it, “[a]ll went well until the Ukrainians raised one of [newly elected Ukrainian President Volodymyr] Zelensky’s most important issues: An invitation to the White House that [President] Trump had promised in a letter after [President] Zelensky was elected.”²⁰⁶ U.S. Ambassador to the European Union Gordon Sondland responded that Acting Chief of Staff Mulvaney “had guaranteed the invitation as long as Ukraine announced” certain investigations into Russian influence on the 2016 election and allegations of corruption against Democratic presidential contender Joe Biden and his son Hunter.²⁰⁷ Bolton became concerned about this arrangement—a seeming cross between U.S. domestic politics and official foreign policy—and asked that aide Fiona Hill “report what had transpired to” John A. Eisenberg, the NSC’s top lawyer.²⁰⁸

Shortly thereafter, President Trump called President Zelensky and made a similar request, framing it as a “favor.”²⁰⁹ Lieutenant Colonel Alexander Vindman, a career NSC official focused on Ukraine policy who was assigned to take notes on the call between President Trump and President Zelensky, went over to Eisenberg’s office after the call “to question the propriety of the demand for investigations.”²¹⁰ Eisenberg filed the information away and instructed Vindman not to discuss the call, but Vindman’s concerns eventually made their way to a CIA official detailed to the White House.²¹¹ That official filed a whistleblower complaint that ultimately became known to Congress, sparking

194 *Armstrong*, 90 F.3d at 561.

195 Gertz, *supra* note 192.

196 See Elena Moore & Roberta Rampton, *Timeline: How the U.S. Came to Strike and Kill a Top Iranian General*, NPR, Jan. 4, 2020, <https://www.npr.org/2020/01/04/793364307/timeline-how-the-u-s-came-to-strike-and-kill-a-top-iranian-general>.

197 See Michael Crowley et al., *U.S. Strike in Iraq Kills Qasim Soleimani, Commander of Iranian Forces*, N.Y. TIMES, Jan. 2, 2020, <https://www.nytimes.com/2020/01/02/world/middleeast/qassem-soleimani-iraq-iran-attack.html> (updated July 9, 2020).

198 See Jennifer Jacobs & Justin Sink, *As Mideast Tensions Flare, Trump Finds Solace in New Adviser*, BLOOMBERG, Jan. 6, 2020, <https://www.bloomberg.com/news/articles/2020-01-06/as-middle-east-tensions-flare-trump-finds-solace-in-new-adviser>.

199 *White House: Iran Retaliation for Soleimani Killing Would Be Poor Decision*, REUTERS, Jan. 3, 2020, <https://www.reuters.com/article/us-iraq-security-blast-o-brien/white-house-iran-retaliation-for-soleimani-killing-would-be-poor-decision-idUSKBN1Z228H>.

200 See Rob Crilly, *White House Says Trump Used Iraq War Authorization to Kill Qasem Soleimani*, WASHINGTON EXAMINER, Jan. 3, 2020, <https://www.washingtonexaminer.com/news/white-house-says-trump-used-iraq-war-authorization-to-kill-qassem-soleimani>.

201 See Brakkton Booker, *National Security Adviser Defends Briefing on Iran Criticized by Lawmakers*, NPR, Jan. 9, 2020, <https://www.npr.org/2020/01/09/795002806/nsa-chief-robert-obrien-defends-briefing-on-iran-criticized-by-lawmakers>.

202 *See id.*

203 *See id.*

204 *Id.*

205 *See id.*

206 Sharon LaFraniere et al., *Trump, Ukraine and Impeachment: The Inside Story of How We Got Here*, N.Y. TIMES, Nov. 11, 2019, <https://www.nytimes.com/2019/11/11/us/ukraine-trump.html>.

207 *See id.*

208 *See id.*

209 See Michael D. Shear & Maggie Haberman, *Do Us a Favor: Call Shows Trump’s Interest in Using U.S. Power for His Gain*, N.Y. TIMES, Sept. 25, 2019, <https://www.nytimes.com/2019/09/25/us/politics/ukraine-transcript-trump.html> (updated Jan. 20, 2021).

210 LaFraniere et al., *supra* note 206.

211 *See id.*

an impeachment inquiry.²¹² Vindman went on to testify before the House of Representatives about what he had heard from his post at the NSC.²¹³ The House, controlled by Democrats, went on to impeach President Trump, but the Republican-led Senate declined to convict.²¹⁴

Vindman (along with his twin brother, NSC ethics lawyer Yevgeny Vindman) was dismissed from the NSC in February 2020 after the Senate rendered its verdict on impeachment.²¹⁵ O'Brien took care to note that Vindman, a detailee to the NSC whose assignment was not set to end until July 2020, was not fired.²¹⁶ Instead, he argued that "the president has to have confidence in his NSC staff to ensure that they're going to execute the agenda he was elected to deliver."²¹⁷ O'Brien stated that "[w]e're not a country where a bunch of lieutenant colonels can get together and decide what the policy is of the United States. . . . We are not a banana republic."²¹⁸ But when "[p]ressed on whether he was alleging that was what had happened in the case of the Vindmans, O'Brien denied that he was."²¹⁹ O'Brien's distinction between firing and reassignment sought to rebut the narrative that the Trump Administration had retaliated against the Vindmans.

As the White House dealt with the consequences of the decision to terminate Soleimani and the fallout from Congress's impeachment efforts, a major crisis loomed on the horizon: the COVID-19, or coronavirus, pandemic. In January, "as [the] mysterious pathogen was infecting its way across China . . . a lower-level policy team [at the NSC] was working frantically to understand the virus and figure out what needed to be done."²²⁰ O'Brien put Pottinger, his deputy and the NSC's Asia expert, in charge of the task force. Pottinger viewed China with skepticism from his time working in the country as a journalist with the *Wall Street Journal*.²²¹ The virus quickly became the most important

issue in the nation. By April, "[t]he administration's models [projected] 100,000 to 240,000 deaths from the virus, and much of the country . . . enacted stringent social distancing policies that would have been unimaginable" in the months before.²²² Pottinger took a hard line against China from the beginning, proposing a plan "to shut down some flights from China in late January[]" and supporting the President's "decision . . . to freeze U.S. funding to the WHO over charges that it failed to hold China to account and muzzled Taiwan's earlier warnings in December about the virus that started in China."²²³ He also "urged [President] Trump and other senior officials to brand the virus with a label so that there would be no mistaking its origins: the Wuhan virus."²²⁴

Pottinger was particularly concerned about "the disparity between official accounts of the novel coronavirus in China, which scarcely mentioned the disease, and Chinese social media, which was aflame with rumors and anecdotes," and on January 14 the NSC convened an interagency meeting about the virus.²²⁵ Pottinger, a former Marine, operated with caution in articulating his policy suggestions while navigating various Trump Administration power centers with different views on the best approach to Sino-American relations, "maintain[ing] a military-style respect for the chain of command" while simultaneously pushing aggressive policies on China.²²⁶ Still, *Politico* reported on a conflict between Pottinger and Acting Chief of Staff Mulvaney over how seriously to take the virus, with Pottinger advocating for more vigilance and Mulvaney taking a more skeptical tack.²²⁷ Around this time, however, in a move that many had been expecting for months, President Trump replaced Mulvaney with conservative Republican Congressman Mark Meadows as Chief of Staff.²²⁸

While Pottinger's star rose, his fellow NSC deputy Victoria Coates' stock fell. For context, in September 2018, an anonymous Trump Administration official had penned an op-ed in the *New York Times* claiming to be part of a "resistance" against the President within the government.²²⁹ Since its publication, the White House had been seeking to discover the identity of the author. In February 2020, Coates became "the target of a

212 See *id.*

213 See Mikhaila Fogel, *Summary of Lt. Col. Alexander Vindman's Deposition Testimony*, LAWFARE, Nov. 11, 2019, <https://www.lawfareblog.com/summary-lt-col-alexander-vindmans-deposition-testimony>.

214 See Bart Jansen et al., *President Trump Acquitted on Both Impeachment Charges, Avoids Removal*, USA TODAY, Feb. 5, 2020, <https://www.usatoday.com/story/news/politics/2020/02/05/trump-impeachment-trial-senate-poised-vote-acquittal/4655192002/>.

215 See Natasha Bertrand, 'We Are Not a Banana Republic': National Security Adviser Defends Vindman Dismissals, POLITICO, Feb. 11, 2020, <https://www.politico.com/news/2020/02/11/banana-republic-obrien-vindman-dismissals-114212>.

216 See *id.*

217 *Id.*

218 *Id.*

219 Nikki Carvajal & Paul LeBlanc, *National Security Adviser Says Vindman Brothers Weren't Fired -- Trump Says Military Should Decide Their Fate*, CNN, Feb. 12, 2020, <https://www.cnn.com/2020/02/11/politics/alexander-vindman-robert-obrien/index.html>.

220 Lippman & McGraw, *supra* note 180.

221 See David Nakamura et al., *Matthew Pottinger Faced Communist China's Intimidation as a Reporter. He's Now at the White House Shaping Trump's Hard Line Policy Toward Beijing.*, WASHINGTON POST, Apr. 29, 2020, [https://www.washingtonpost.com/politics/matthew-pottinger-](https://www.washingtonpost.com/politics/matthew-pottinger-faced-communist-chinas-intimidation-as-a-reporter-hes-now-at-the-white-house-shaping-trumps-hard-line-policy-toward-beijing/)

[faced-communist-chinas-intimidation-as-a-reporter-hes-now-at-the-white-house-shaping-trumps-hard-line-policy-toward-beijing/2020/04/28/5fb3f6d4-856e-11ea-ae26-989cfe1c7c7_story.html](https://www.washingtonpost.com/politics/matthew-pottinger-faced-communist-chinas-intimidation-as-a-reporter-hes-now-at-the-white-house-shaping-trumps-hard-line-policy-toward-beijing/2020/04/28/5fb3f6d4-856e-11ea-ae26-989cfe1c7c7_story.html).

222 Lippman & McGraw, *supra* note 180.

223 Nakamura et al., *supra* note 221.

224 *Id.*

225 See Lawrence Wright, *The Plague Year*, NEW YORKER, Dec. 28, 2020, <https://www.newyorker.com/magazine/2021/01/04/the-plague-year>.

226 See Nakamura et al., *supra* note 221.

227 See Lippman & McGraw, *supra* note 180.

228 See Peter Baker, *Trump Names Mark Meadows Chief of Staff, Ousting Mick Mulvaney*, N.Y. TIMES, Mar. 6, 2020, <https://www.nytimes.com/2020/03/06/us/politics/trump-mark-meadows-mick-mulvaney.html> (updated Apr. 16, 2020).

229 See *I Am Part of the Resistance Inside the Trump Administration*, N.Y. TIMES, Sept. 5, 2018, <https://www.nytimes.com/2018/09/05/opinion/trump-white-house-anonymous-resistance.html>.

whisper campaign . . . making a circumstantial case that she was the identity behind [the] op-ed[.]”²³⁰ Unfortunately for Coates, these rumblings “strained her working relationship with . . . O’Brien[.]”²³¹ Coates was quickly “reassigned as a senior adviser to Energy Secretary Dan Brouillette[.]”²³² A couple of months later, *Real Clear Investigations* published a long piece detailing the allegations against Coates,²³³ which she vehemently denied.²³⁴ Coates was ultimately vindicated when former Department of Homeland Security Chief of Staff Miles Taylor admitted that he was “Anonymous.”²³⁵

As the coronavirus spread, the NSC’s structure and preparedness became points of controversy. The virus response initially ran through the NSC’s Counterproliferation and Biodefense directorate, “the so-called WMD unit[.]”²³⁶ In May 2018, as part of his reorganization of the NSC, Bolton had merged the global health security/pandemic office into the WMD unit.²³⁷ A March 2020 op-ed by Beth Cameron, who led the Global Health Security and Biodefense Directorate under President Obama, charged that the merger created a situation in which the Trump Administration had “no clear White House-led structure to oversee [the coronavirus] response[.]”²³⁸ On Twitter, Bolton dismissed Cameron’s claims.²³⁹ While Cameron wrote that the White House “dissolved” the office, former Trump NSC official Tim Morrison responded with an op-ed of his own, asserting that

what occurred was a reorganization, not a dissolution.²⁴⁰ In a piece for *National Review*, Rebecca Heinrichs wrote, “The facts back up Bolton and Morrison. . . . [T]his reorganization was designed in part to [foster] better cooperation between those monitoring and preparing for intentional biological threats on one hand and for naturally occurring biological threats on the other.”²⁴¹ Still, President Trump’s opponents seized on the issue, with Democratic presidential candidate Joe Biden going as far as expressing interest in elevating the global health security pandemic office to Cabinet level if he were elected President.²⁴²

In addition, *Politico* reported in March that although President Obama’s NSC had developed a post-Ebola outbreak playbook for handling pandemics, the Trump Administration did not use the playbook in its coronavirus response.²⁴³ An NSC official under President Trump commented that the playbook in question was “quite dated and [had] been superseded by strategic and operational biodefense policies published since[.]”²⁴⁴ The official continued by saying that the Trump Administration was executing a “better fit, more detailed[]” plan that still applied “the relevant lessons learned from the playbook and the most recent Ebola epidemic in the [Democratic Republic of the Congo] to COVID-19.”²⁴⁵

The White House decided to bring in Dr. Deborah Birx, the U.S. global AIDS coordinator, to be the White House’s coronavirus response coordinator.²⁴⁶ Dr. Birx entered the White House on a detail assignment to Vice President Pence’s office, but her support staff came from the NSC.²⁴⁷ President Trump tapped Vice President Pence to lead the White House Coronavirus Task Force.²⁴⁸ The Vice President organized the task force “into

230 Jonathan Swan, *Scoop: Top NSC Official Reassigned to Energy Department amid ‘Anonymous’ Fallout*, AXIOS, Feb. 20, 2020, <https://www.axios.com/scoop-top-nsc-official-reassigned-to-energy-department-amid-anonymous-fallout-83edb9b8-d47e-4211-baf7-e06b99004c85.html>.

231 *Id.*

232 *Id.*

233 See Paul Sperry, *Here’s ‘Anonymous,’ Trump Aides Say. And Here’s How They Outed Her.*, REALCLEARINVESTIGATIONS, Apr. 15, 2020, https://www.realclearinvestigations.com/articles/2020/04/15/heres_anonymous_trump_aides_say_and_heres_how_they_outed_her_122684.html.

234 See Alayna Treene, *First Look: Victoria Coates Denies Being ‘Anonymous’*, AXIOS, Apr. 19, 2020, <https://www.axios.com/victoria-coates-denies-being-anonymous-dba3c643-55fe-4516-b0d5-fd34e181b007.html>.

235 See Michael D. Shear, *Miles Taylor, a Former Homeland Security Official, Reveals He Was ‘Anonymous’*, N.Y. TIMES, Oct. 28, 2020, <https://www.nytimes.com/2020/10/28/us/politics/miles-taylor-anonymous-trump.html>.

236 See Lippman & McGraw, *supra* note 180.

237 See Lena H. Sun, *Top White House Official in Charge of Pandemic Response Exits Abruptly*, WASHINGTON POST, May 10, 2018, <https://www.washingtonpost.com/news/to-your-health/wp/2018/05/10/top-white-house-official-in-charge-of-pandemic-response-exits-abruptly/>.

238 Beth Cameron, *I Ran the White House Pandemic Office. Trump Closed It.*, WASHINGTON POST, Mar. 13, 2020, https://www.washingtonpost.com/outlook/nsc-pandemic-office-trump-closed/2020/03/13/a70de09c-6491-11ea-acca-80c22bbe96f_story.html.

239 See John Bolton (@AmbJohnBolton), TWITTER (Mar. 14, 2020, 11:05 AM), <https://twitter.com/AmbJohnBolton/status/1238843788858208257> (“Claims that streamlining NSC structures impaired our nation’s bio defense are false. Global health remained a top NSC priority, and its expert team was critical to effectively handling the 2018-19 Africa Ebola crisis. The angry Left just can’t stop attacking, even in a crisis.”).

240 See Tim Morrison, *No, the White House Didn’t ‘Dissolve’ Its Pandemic Response Office. I Was There.*, WASHINGTON POST, Mar. 16, 2020, <https://www.washingtonpost.com/opinions/2020/03/16/no-white-house-didnt-dissolve-its-pandemic-response-office/>.

241 Rebecca Heinrichs, *The Truth About the National Security Council’s Pandemic Team*, NAT’L REV., Apr. 1, 2020, <https://www.nationalreview.com/2020/04/coronavirus-truth-national-security-council-pandemic-team/>.

242 See Sean Sullivan, *Biden Says He’s Already Choosing a Presidential Transition Team*, WASHINGTON POST, Apr. 17, 2020, https://www.washingtonpost.com/politics/biden-says-hes-already-choosing-a-presidential-transition-team/2020/04/17/63cbb5b4-805e-11ea-9040-68981f488eed_story.html.

243 See Dan Diamond & Nahal Toosi, *Trump Team Failed to Follow NSC’s Pandemic Playbook*, POLITICO, Mar. 25, 2020, <https://www.politico.com/news/2020/03/25/trump-coronavirus-national-security-council-149285>.

244 *Id.*

245 *Id.*

246 See Steven Nelson, *White House Appoints Top AIDS Official as New Coronavirus Coordinator*, N.Y. POST, Feb. 27, 2020, <https://nypost.com/2020/02/27/white-house-appoints-top-aids-official-as-new-coronavirus-coordinator/>.

247 See *id.*

248 See Jill Colvin & Zeke Miller, *Pandemic Task Force Modeled on National Security Council*, ASSOCIATED PRESS, Mar. 20, 2020, <https://apnews.com/article/7cac3428636db830f8b503f93b6e9dc>.

yet have enough information to seriously consider “reductions beyond the near-term 4,500 number.”²⁶⁸

O’Brien, a few days later, commented that he was “not going to get into a public debate with General Milley, [whom] he called ‘a friend’ and ‘a great American.’”²⁶⁹ It was, however, clear which of the two national security officials was taking the public position closer to that of the President. At an Aspen Institute event in the following days, O’Brien stated that “he could ‘guarantee’ that the planned drawdown to 2,500 troops is ‘the order of the commander in chief.’”²⁷⁰ O’Brien continued, “When I speak about troop levels and that sort of thing, I’m a staffer, I staff the president of the United States, so it’s not my practice to speculate.”²⁷¹ Perhaps most notably, he said, “Other people can interpret what I say as speculation or not but I wasn’t speculating then and I wasn’t speculating today. . . . When I’m speaking, I’m speaking for the president.”²⁷²

Contemporary reporting indicates that O’Brien went to significant lengths to remain in the President’s good graces. In terms of issues on which O’Brien focused, “[l]ongtime current and former officials” commented that O’Brien “repeatedly delegated issues that might put him in the president’s crosshairs, such as Russia and the coronavirus pandemic, to his deputy, the State Department or the Defense Department.”²⁷³ Meanwhile, “O’Brien . . . championed a hard-line China policy, an Iran pressure campaign and an expansion of the Navy fleet—all top issues for Trump.”²⁷⁴ In the run-up to the 2020 election, the National Security Advisor also took trips to politically important states like Minnesota and Wisconsin, promoting the President’s record on military issues at various events.²⁷⁵ O’Brien published an op-ed in June 2020 arguing that “President Trump’s efforts have made the American people safer and our nation stronger.”²⁷⁶ And he also emerged as a key attack dog against the World Health Organization as the COVID-19 pandemic raged on, “echoing claims made by” President Trump about the organization’s flaws.²⁷⁷

O’Brien positioned himself as an in-the-building political ally of the President, a rarity in the foreign policy/national security space even within the President’s own Administration. Without a doubt, the President came to trust O’Brien and empowered him to play a significant role in effectuating American foreign policy. O’Brien focused on the idea of a “free and open Indo-Pacific” as key to the U.S.’s strategy of countering China, and in January 2021 he declassified the United States Strategic Framework for the Indo-Pacific (which had served for three years “as the Trump Administration’s overarching strategic guidance for implementing the President’s 2017” NSS document).²⁷⁸ O’Brien also “waged a public and private crusade to get the Pentagon . . . on board” with a rapid build-up of the Navy as a counter-China measure.²⁷⁹ The President credited the NSC, along with State Department officials, for “getting the deal done” with respect to a cease fire between Armenia and Azerbaijan over the disputed area of Nagorno-Karabakh.²⁸⁰ O’Brien got to join Senior Advisor Kushner on the first commercial flight from Tel Aviv to Abu Dhabi in connection with Kushner’s historic breakthrough in Middle East policy.²⁸¹ And despite the reporting that O’Brien was making a conscious effort to avoid Russia policy, he took a public-facing role in the Trump Administration’s negotiations with Russian President Vladimir Putin regarding an important nuclear arms treaty between the two countries.²⁸² The historical record should show that O’Brien was deeply involved in various important aspects of foreign policy during President Trump’s final year in office.

In November 2020, former Vice President Joe Biden defeated President Trump in the presidential election.²⁸³ President Trump, however, did not concede the election, citing what he “claimed were widespread voter irregularities.”²⁸⁴ Almost

268 Lara Seligman, *White House Leans on Pentagon to Fulfill Trump’s Afghanistan Pledge*, POLITICO, Oct. 21, 2020, <https://www.politico.com/news/2020/10/21/trump-afghanistan-pledge-pentagon-430747>.

269 *Id.*

270 Carol E. Lee & Courtney Kube, *O’Brien Confirms Trump Ordered Pentagon to Cut U.S. Troops in Afghanistan to 2,500 by Early 2021*, NBC NEWS, Oct. 16, 2020, <https://www.nbcnews.com/news/military/o-brien-confirms-trump-ordered-pentagon-cut-u-s-troops-n1243740>.

271 *Id.*

272 *Id.*

273 *National Security Adviser O’Brien Jockeys for Future Spot in a Second Trump Administration*, *supra* note 263.

274 *Id.*

275 *See id.*

276 Robert C. O’Brien, *Robert O’Brien: National Security Reforms – President Trump Has Made People Safer, Nation Stronger*, FOX NEWS, June 30, 2020, <https://www.foxnews.com/opinion/national-security-council-reforms-trump-leadership-robert-obrien>.

277 *See* Evan Semones, *Trump’s National Security Adviser Attacks World Health Organization*, POLITICO, May 31, 2020, <https://www.politico.com/news/2020/05/31/trump-obrien-world-health-organization-corrupt-292059>.

[com/news/2020/05/31/trump-obrien-world-health-organization-corrupt-292059](https://www.politico.com/news/2020/05/31/trump-obrien-world-health-organization-corrupt-292059).

278 *See A Free and Open Indo-Pacific*, White House Archives: President Donald J. Trump, <https://trumpwhitehouse.archives.gov/wp-content/uploads/2021/01/OBrien-Expanded-Statement.pdf> (last visited Feb. 22, 2021).

279 *See* Lara Seligman, *How Robert O’Brien Helped Steer the Pentagon Toward a Bigger Navy*, POLITICO, Sept. 22, 2020, <https://www.politico.com/news/2020/09/22/obrien-pentagon-bigger-navy-defense-419775>.

280 *See* Nailia Bagirova & Humeyra Pamuk, *U.S. Announces New Nagorno-Karabakh Ceasefire as Fighting Persists*, REUTERS, Oct. 25, 2020, <https://www.reuters.com/article/us-armenia-azerbaijan-usa/u-s-announces-new-nagorno-karabakh-ceasefire-as-fighting-persists-idUSKBN27A0WQ>.

281 *See* Karen DeYoung, *Kushner, O’Brien to Be on First Commercial Flight from Tel Aviv to Abu Dhabi*, WASHINGTON POST, Aug. 25, 2020, https://www.washingtonpost.com/national-security/kushner-obrien-to-be-on-first-commercial-flight-from-tel-aviv-to-abu-dhabi/2020/08/25/d450786a-e701-11ea-97e0-94d2e46e759b_story.html.

282 *See* Bryan Bender, *O’Brien Calls Putin’s New Nuclear Treaty Offer a ‘Non-Starter’*, POLITICO (Oct. 16, 2020, 1:50 PM), <https://www.politico.com/news/2020/10/16/putin-nuclear-pact-extension-429798>.

283 *See* Jonathan Martin & Alexander Burns, *Biden Wins Presidency, Ending Four Tumultuous Years Under Trump*, N.Y. TIMES, Nov. 7, 2020, <https://www.nytimes.com/2020/11/07/us/politics/biden-election.html> (updated Nov. 18, 2020).

284 *Highlights from the Transition: Trump, Refusing to Concede, Cheers on Supporters*, N.Y. TIMES, Jan. 6, 2021, <https://www.nytimes.com/>

immediately after the election, President Trump fired Secretary Esper, who had resisted some of the President’s directives during his time as Secretary of Defense.²⁸⁵ What happened next was what a *Washington Post* story described as a “Pentagon takeover by . . . National Security Council staff.”²⁸⁶ O’Brien consolidated influence as President Trump installed top NSC officials at the Defense Department, including Christopher Miller as Acting Secretary of Defense.²⁸⁷ For his part, O’Brien commented that he “never wanted Mark Esper’s job” and “just wanted to see Mark Esper succeed and do a great job as secretary of defense.”²⁸⁸ Still, it stands to reason that O’Brien would have had as good a shot as anyone to take over as Defense Secretary had President Trump won a second term.

President Trump’s refusal to concede the election lasted into the new year. On January 6, 2021—just two weeks before President-Elect Biden was set to be inaugurated—supporters of President Trump stormed the U.S. Capitol building in an effort to influence Congress’s certification of the election results in the President-Elect’s favor.²⁸⁹ Things turned violent and multiple people involved in the events, including Capitol Police Officer Brian Sicknick, died.²⁹⁰ In the immediate aftermath, Pottinger and senior NSC official Ryan Tully resigned.²⁹¹ O’Brien reportedly considered walking away as well,²⁹² but he ultimately decided to stay through January 20 “for the continuity of government in the national security realm.”²⁹³

[live/2020/11/14/us/joe-biden-trump.](https://www.washingtonpost.com/archive/local/2020/11/14/us/joe-biden-trump/)

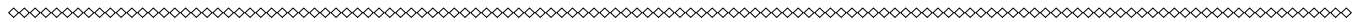
- 285 See Helene Cooper et al., *Trump Fires Mark Esper, Defense Secretary Who Opposed Use of Troops on U.S. Streets*, N.Y. TIMES, Nov. 9, 2020, <https://www.nytimes.com/2020/11/09/us/politics/esper-defense-secretary.html> (updated Nov. 11, 2020).
- 286 Dan Lamothe et al., *Trump Administration Upends Senior Pentagon Ranks, Installing Loyalists*, WASHINGTON POST, Nov. 10, 2020, https://www.washingtonpost.com/national-security/defense-department-election-transition/2020/11/10/5a173e60-2371-11eb-8599-406466ad1b8e_story.html.
- 287 See Paul Sonne, *Trump’s National Security Adviser Says It Looks as Though Biden Won*, WASHINGTON POST, Nov. 16, 2020, https://www.washingtonpost.com/national-security/trumps-national-security-adviser-says-it-looks-like-biden-won/2020/11/16/f4a75fe4-2850-11eb-b847-66c66ace1afb_story.html.
- 288 *Id.*
- 289 See *Woman Dies After Shooting in U.S. Capitol; D.C. National Guard Activated After Mob Breaches Building*, WASHINGTON POST, Jan. 7, 2021, <https://www.washingtonpost.com/dc-md-va/2021/01/06/dc-protests-trump-rally-live-updates/>.
- 290 See Matthew Daly & Michael Balsamo, *Deadly Siege Focuses Attention on Capitol Police*, AP NEWS, Jan. 8, 2021, <https://apnews.com/article/capitol-police-death-brian-sicknick-46933a828d7b12de7e3d5620a8a04583>.
- 291 See Daniel Lippman et al., *Deputy National Security Adviser Resigns After Wednesday’s Chaos*, POLITICO, Jan. 7, 2021, <https://www.politico.com/news/2021/01/06/security-adviser-deputy-possible-resignation-455713>.
- 292 *See id.*
- 293 Kevin Liptak et al., *Some Trump Administration Officials Resign While Others Stay to Prevent Chaos*, CBS 58 WDJT – MILWAUKEE, Jan. 7, 2021, <https://www.cbs58.com/news/mulvaney-joins-others-in-resigning-as-special-envoy-to-northern-ireland>.

President Biden moved quickly to build out his NSC. He chose as his National Security Advisor Jake Sullivan, who had been then-Vice President Biden’s national security advisor and a senior State Department official under then-Secretary of State Hillary Clinton.²⁹⁴ President Biden decided to elevate the homeland security advisor position while installing the first deputy national security advisor for cyber and emerging technology.²⁹⁵ The President also decided to elevate the position of Director of the U.S. Agency for International Development to membership on the NSC.²⁹⁶ This was little surprise, given who the President’s nominee for the role was: former U.N. Ambassador Samantha Power.²⁹⁷ Moreover, the Biden NSC’s early moves have evinced a strong focus on China; *Axios* reported that “[v]irtually every team in” President Biden’s NSC would “incorporate China into their work,” and that the Indo-Pacific team would be the largest regional NSC directorate.²⁹⁸ But perhaps the most consequential shift will be the Biden NSC’s inclusion of a focus on the domestic impact of the NSC’s work as the White House seeks to “break down barriers between national security and domestic policy.”²⁹⁹

V. CONCLUSION

Over the course of his presidency, President Trump made his mark on the history of the National Security Council. So did the National Security Advisors he chose to lead the entity. Michael Flynn, H.R. McMaster, John Bolton, and Robert O’Brien each enjoyed successes and faced challenges as National Security Advisors under President Trump. Their experiences are instructive when considering how best to manage the NSC going forward. In the years to come, the NSC will continue to provide presidents with critical coordination and advice on national security policy. It remains to be seen the direction in which President Biden and his team will take the NSC, but early signs indicate that some key changes are in store for the influential White House component. The Scowcroft “honest broker” model remains a high ideal for national security advisors, and time will tell whether lessons

- 294 See Margaret Brennan, *Biden to Appoint Jake Sullivan as National Security Adviser*, CBS NEWS, Nov. 23, 2020, <https://www.cbsnews.com/news/biden-jake-sullivan-national-security-adviser/>.
- 295 See David E. Sanger, *Biden to Restore Homeland Security and Cybersecurity Aides to Senior White House Posts*, N.Y. TIMES, Jan. 13, 2021, <https://www.nytimes.com/2021/01/13/us/politics/biden-homeland-security-cybersecurity.html>.
- 296 See Andrea Mitchell, *Biden to Nominate Samantha Power to Lead Foreign Aid Agency*, NBC NEWS, Jan. 13, 2021, <https://www.nbcnews.com/politics/2020-election/biden-nominate-samantha-power-lead-foreign-aid-agency-n1254023>.
- 297 *See id.*
- 298 See Bethany Allen-Ebrahimian, *Biden’s Whole-of-National Security Council Strategy*, AXIOS, Feb. 2, 2021, <https://www.axios.com/bidens-whole-of-national-security-council-strategy-431454bb-43dc-45ef-9ccc-8a3f229ba598.html>.
- 299 Karen DeYoung, *Biden’s NSC to Focus on Global Health, Climate, Cyber and Human Rights, as Well as China and Russia*, WASHINGTON POST, Jan. 8, 2021, https://www.washingtonpost.com/national-security/biden-ns-covid-climate-cyber-china/2021/01/08/85a31c8a-5158-11eb-83e3-322644d82356_story.html.



learned from the experience of the NSC under President Trump can permanently solidify a Scowcroft-ian approach to the Council.

