

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051

MINORITY (202) 225-5074

<http://oversight.house.gov>

March 20, 2019

The Honorable William P. Barr  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue N.W.  
Washington, DC 20530

Dear Mr. Attorney General:

We write to request an update on the Justice Department's investigation and prosecution of former Federal Bureau of Investigation (FBI) Deputy Director Andrew McCabe. The Justice Department Office of Inspector General (DOJ OIG) referred McCabe's lack of candor to the United States Attorney for the District of Columbia almost a year ago.<sup>1</sup> McCabe's pattern of lies to FBI and OIG officials was particularly troublesome because they were intended to cover up media leaks that would benefit McCabe personally and professionally. Especially in context of other outrageous conduct by senior FBI officials—including former Director James Comey, former FBI General Counsel James Baker, former FBI Deputy Assistant Director Peter Strzok, and former FBI assistant general counsel Lisa Page—public transparency about the McCabe referral is vital to restoring the FBI's integrity.

McCabe became Acting Director of the FBI on May 9, 2017, upon the President's termination of Comey. In this role, McCabe was part of a small group of senior Justice Department and FBI leadership determining what actions to take against the President for terminating Comey.<sup>2</sup> According to McCabe, one of his first acts as Acting Director was to open

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<sup>1</sup> Pamela Brown and Laura Jarrett, *Justice Dept. watchdog sends McCabe findings to federal prosecutors for possible charges*, CNN (April 19, 2018).

<sup>2</sup> See Transcribed Interview of James Baker 7, Oct. 18, 2018 (Mr. Baker. I believe there were a couple of different meetings, and they -- I believe there were a couple of different meetings, and each time, I think, it was the day after because I believe the meetings went late into the evening. That's to the best of my recollection. Mr. Jordan. Okay. And is it your understanding that there were multiple meetings that Mr. McCabe, Ms. Page, Mr. Rosenstein had about the potential of recording the President? Mr. Baker. I don't know. I know that they had multiple meetings with the Deputy Attorney General discussing a lot of things in the immediate aftermath of the firing, and I don't specifically remember how many times this was discussed. Mr. Jordan. So, just to be clear, the firing of Mr. Comey took place on May 9th, and then the hiring of the special counsel took place on May 17th. So these numerous meetings and the one you had with Mr. McCabe and Ms. Page took place between the 9th and the 17th? Mr. Baker. I believe that's correct."). *Id.* at 11 (Mr. Baker: "...And then there are these -- some number of conversations with the Deputy Attorney General about what to do next, what needs to be done, and my recollection is numerous topics were discussed, and these were among them. The wearing the wire and the 25th Amendment were one of a list, one or two of a list of things that we were going -- that people were going through to try to figure out what to do...").

an obstruction of justice investigation into the President for firing Comey.<sup>3</sup> McCabe's purported justification for the obstruction investigation was his belief the President's removal of Comey was an attempt to obstruct the FBI's investigation into Russian interference in the 2016 election.<sup>4</sup>

At the time of Comey's firing, the FBI had been investigating alleged Russian election interference for nearly a year. Former FBI lawyer Lisa Page and Director Comey both testified before the House Committees on Judiciary and Oversight and Government Reform that the FBI was unsure of the inquiry's direction, even after a year of investigating.<sup>5</sup> Notably, Comey testified, "We opened [the Russian counterintelligence investigation] in late July [2016], [but] didn't know whether we had anything. In fact, when I was fired as director, I still didn't know whether there was anything to it."<sup>6</sup> In light of this information, McCabe's justification for opening an obstruction investigation appears to be pretextual for his true motive—retaliation for Comey's termination.

McCabe's actions here are consistent with his other questionable conduct during his FBI tenure. As the DOJ OIG reported, McCabe disclosed confidential investigative details to a media outlet "to advance his personal interests at the expense of Department leadership."<sup>7</sup> Specifically, to rebut what he believed to be an "incredibly damaging' narrative" about himself, McCabe directed Page and another FBI employee to reveal information related to the FBI's ongoing investigation of the Clinton Foundation investigation.<sup>8</sup> By authorizing the leak, McCabe confirmed the existence of an active FBI investigation in violation of Departmental policies.<sup>9</sup> When confronted by Department personnel about whether he was the source of the leak, McCabe concealed his misconduct by lying to Director Comey and by lying under oath to both the FBI's Inspections Division personnel and the DOJ OIG.<sup>10</sup> McCabe's dishonesty ultimately resulted in his termination from the FBI, at the recommendation of career staff of the Office of Professional

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<sup>3</sup> Casey Quackenbush, *Read the Full Transcript of Former FBI Deputy Director Andrew McCabe's 60 Minutes Interview*, TIME (Feb. 18, 2019); see Legal Sidebar, *The Removal of FBI Director James Comey: Presidential Authority and the Senate's Role in the Appointment of the FBI Director*, CRS REPORTS & ANALYSIS, (May 10, 2017) ("As a constitutional and legal matter, it is widely recognized that the President generally enjoys broad authority to remove the heads of executive branch agencies, including the FBI Director... Although not explicitly stated in the text of the Constitution, the principle that the power to remove is incidental to the power to appoint informed the Supreme Court's 1926 opinion in *Myers v. United States*.").

<sup>4</sup> Casey Quackenbush, *Read the Full Transcript of Former FBI Deputy Director Andrew McCabe's 60 Minutes Interview*, TIME (Feb. 18, 2019).

<sup>5</sup> Lisa Page Transcribed Interview 120-122, July 13, 2018 ("I think this represents that even as far as May of 2017, we still couldn't answer the question..."); James Comey Transcribed Interview 96, Dec. 7, 2018.

<sup>6</sup> James Comey Transcribed Interview 96, Dec. 7, 2018.

<sup>7</sup> INSPECTOR GEN., DEP'T OF JUSTICE, *A Report of Investigation of Certain Allegations Relating to Former FBI Deputy Director Andrew McCabe*, 2, 34 (2018).

<sup>8</sup> *Id.* at 9.

<sup>9</sup> See generally *id.*

<sup>10</sup> *Id.*

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Responsibility,<sup>11</sup> as well as a criminal referral for misleading federal investigators about his media leak.<sup>12</sup>

As you begin the difficult process of restoring trust in the FBI, we believe accountability begins with transparency. We request you provide the Committee with the status of McCabe's criminal referral to the United States Attorney for the District of Columbia. Thank you for your attention to this important matter. Please contact Committee staff at (202) 225-5074 with any questions about this request.

Sincerely,



Jim Jordan  
Ranking Member



Mark Meadows  
Ranking Member  
Subcommittee on Government Operations

cc: The Honorable Elijah E. Cummings, Chairman, Committee on Oversight and Reform  
The Honorable Jerrold Nadler, Chairman, Committee on the Judiciary  
The Honorable Doug Collins, Ranking Member, Committee on the Judiciary  
The Honorable Michael Horowitz, Inspector General, Department of Justice  
The Honorable Jessie K. Liu, United States Attorney, United States Attorney's Office for the District of Columbia

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<sup>11</sup> *Statement by Attorney General on firing of FBI's McCabe*, REUTERS (March 17, 2018) ("... and based on the report of the Inspector General, the findings of the FBI Office of Professional Responsibility, and the recommendation of the Department's senior career official, I have terminated the employment of Andrew McCabe effective immediately.").

<sup>12</sup> Karoun Demirjian and Matt Zapposky, *Inspector general referred findings on McCabe to U.S. attorney for consideration of criminal charges*, WASH. POST (April 19, 2018).