

O'Callaghan, Edward C. (ODAG)

From: O'Callaghan, Edward C. (ODAG)
Sent: Tuesday, August 27, 2019 4:40 PM
To: Rosen, Jeffrey A. (ODAG); Hovakimian, Patrick (ODAG)
Subject: Fwd: Andrew McCabe
Attachments: Letter to Deputy Attorney General Rosen (August 27, 2019).pdf; ATT00001.htm; Exhibit A to August 27, 2019 Letter to Jeffrey A. Rosen.docx; ATT00002.htm; Exhibit B to August 27, 2019 Letter to Jeffrey A. Rosen.pdf; ATT00003.htm

Edward C. O'Callaghan
202-514-2105

Begin forwarded message:

From: "Michael Bromwich" <mrbrbromwich@bromwichlaw.com>
To: "O'Callaghan, Edward C. (ODAG)" <ecocallaghan@jmd.usdoj.gov>
Cc: "Liu, Jessie (USADC)" <JLiu3@usa.doj.gov>, "David Schertler" <dschertler@schertlerlaw.com>
Subject: Andrew McCabe

Dear Ed,

Attached please find a letter to Deputy Attorney General Rosen that follows up on the oral presentation provided by Dave Schertler and me on Friday. We hope this is helpful in your consideration of whether to bring charges against Mr. McCabe. Exhibits A (DOJ declinations) and B (Trump tweets and statements) are the same documents we sent to you Friday, but we thought it would be helpful for you have everything in one place.

In the event the Deputy Attorney General approves moving forward, we reiterate our request to provide a letter to the Attorney General. We understood that the DAG has no objection to our doing so. As we stated at the meeting, we would be prepared to submit such a letter within 24 hours of hearing that the Department intends to move forward. Needless to say, we hope no such letter is necessary.

Please let me know if you have any questions.

MRB

**PUBLIC STATEMENTS BY DONALD TRUMP
ABOUT ANDREW MCCABE**

DATE	TIME (UTC)	MEDIUM	STATEMENT
2016 10 24 (Mon)	n/a	Campaign rally	[O]ne of the closest people to Hillary Clinton [...] gave more than \$675,000 to the campaign of the spouse, the wife, of the top FBI official, who helped oversee the investigation into Mrs. Clinton's illegal email server. So the man that was investigating her from the FBI, his wife runs for office and they give her more than \$675,000 to run.[...] And it's unbelievable how Hillary Clinton got away with the email lie, the email scam, the email corruption, but now at least we have a pretty good idea.
2016 10 25 (Tue)	n/a	Interview (Fox News)	Terry McAuliffe, they gave to the FBI person at the high level, who was doing the investigation, who was in charge of the investigation. They gave his wife \$675,000. Now you think of that. Now, that's Clinton giving the money because that's how close they are. So Clinton gave the FBI agent, who was top person, who's the top person in charge of her email case, which is a disgrace that she got off of that.[...] She gave money at a huge clip, \$675,000, to the wife of the FBI agent who was in charge of her investigation. Let me tell you something. That's a criminal act.
2017 07 19 (Wed)	n/a	Interview (NY Times)	TRUMP: I mean, look at what we have now. We have a director of the F.B.I., acting, who received \$700,000, whose wife received \$700,000 from, essentially, Hillary Clinton. 'Cause it was through Terry. Which is Hillary Clinton. HABERMAN: This is [Andrew] McCabe's wife, you mean? TRUMP: McCabe's wife. She got \$700,000, and he's at the F.B.I. I mean, how do you think that? But when you say that and think about this for a second. I don't think you could give me a whole string of new information. I don't think I could really have there's only so much. You know, you can only say many things. After that it gets boring, O.K.?
2017 07 25 (Tue)	10:21	Twitter	Problem is that the acting head of the FBI & the person in charge of the Hillary investigation Andrew McCabe got \$700,000 from H for wife!
2017 07 26 (Wed)	13:48	Twitter	Why didn't A.G. Sessions replace Acting FBI Director Andrew McCabe a Comey friend who was in charge of Clinton investigation but got....
	13:52	Twitter	...big dollars (\$700,000) for his wife's political run from Hillary Clinton and her representatives. Drain the Swamp!
2017 12 03 (Sun)	12:24	Twitter	RT @paulsperry : Wray needs to clean house. Now we know the politicization even worse than McCabe's ties to McAuliffe/Clinton. [...]
	12:45	Twitter	Tainted (no, very dishonest?) FBI "agent's role in Clinton probe under review." Led Clinton Email probe. @foxandfriends Clinton money going to wife of another FBI agent in charge.
2017 12 23 (Sat)	20:27	Twitter	How can FBI Deputy Director Andrew McCabe the man in charge along with leakin' James Comey of the Phony Hillary Clinton investigation (including her 33,000 illegally deleted emails) be given \$700,000 for wife's campaign by Clinton Puppets during investigation?
	20:30	Twitter	FBI Deputy Director Andrew McCabe is racing the clock to retire with full benefits. 90 days to go?!!!
2017 12 24 (Sun)	12:25	Twitter	.@FoxNews FBI's Andrew McCabe "in addition to his wife getting all of this money from M (Clinton Puppet) he was using allegedly his FBI Official Email Account to promote her campaign. You obviously cannot do this. These were the people who were investigating Hillary Clinton."
2018 01 24 (Wed)	n/a	White House press gaggle	Well, McCabe got more than \$500,000 from essentially Hillary Clinton. And is he investigating Hillary Clinton? [...] Do you remember, did anybody hear many of my speeches when I talked about McCabe? He was the star of my speech. This isn't now. And I said a man who was more or less in charge of her that, the wife got \$500,000 from Terry. Now Terry is Hillary. And, yeah, I mean [...]

**PUBLIC STATEMENTS BY DONALD TRUMP
ABOUT ANDREW MCCABE**

DATE	TIME (UTC)	MEDIUM	STATEMENT
2018 03 17 (Sat)	4:08	Twitter	Andrew McCabe FIRED a great day for the hard working men and women of the FBI A great day for Democracy. Sanctimonious James Comey was his boss and made McCabe look like a choirboy. He knew all about the lies and corruption going on at the highest levels of the FBI!
	17:34	Twitter	The Fake News is beside themselves that McCabe was caught called out and fired. How many hundreds of thousands of dollars was given to wife's campaign by Crooked H friend Terry M who was also under investigation? How many lies? How many leaks? Comey knew it all and much more!
2018 03 18 (Sun)	12:22	Twitter	Spent very little time with Andrew McCabe but he never took notes when he was with me. I don't believe he made memos except to help his own agenda probably at a later date. Same with lying James Comey. Can we call them Fake Memos?
2018 04 07 (Sat)	20:52	Twitter	Lawmakers of the House Judiciary Committee are angrily accusing the Department of Justice of missing the Thursday Deadline for turning over UNREDACTED Documents relating to FISA abuse FBI Comey Lynch McCabe Clinton Emails and much more. Slow walking what is going on? BAD!
2018 04 13 (Fri)	19:36	Twitter	DOJ just issued the McCabe report which is a total disaster. He LIED! LIED! LIED! McCabe was totally controlled by Comey McCabe is Comey!! No collusion all made up by this den of thieves and lowlifes!
2018 04 15 (Sun)	11:57	Twitter	The big questions in Comey's badly reviewed book aren't answered like how come he gave up Classified Information (jail) why did he lie to Congress (jail) why did the DNC refuse to give Server to the FBI (why didn't they TAKE it) why the phony memos McCabe's \$700,000 & more?
2018 04 16 (Mon)	12:25	Twitter	Comey drafted the Crooked Hillary exoneration long before he talked to her (lied in Congress to Senator G) then based his decisions on her poll numbers. Disgruntled he McCabe and the others committed many crimes!
2018 04 19 (Thu)	22:46	Twitter	James Comey just threw Andrew McCabe "under the bus." Inspector General's Report on McCabe is a disaster for both of them! Getting a little (lot) of their own medicine?
2018 04 26 (Thu)	n/a	Interview (Fox News)	You look at McCabe where he takes \$700,000 from somebody supporting Hillary Clinton. He takes \$700,000 for his wife's campaign. [. . .] He took \$700,000 dollars. And you look at the corruption at the top of the FBI it's a disgrace, and our Justice Department which I try to stay away from, but at some point, I won't our Justice Department should be looking at that kind of stuff[....]
2018 05 18 (Fri)	13:38	Twitter	Why isn't disgraced FBI official Andrew McCabe being investigated for the \$700,000 Crooked Hillary Democrats in Virginia led by Clinton best friend Terry M (under FBI investigation that they killed) gave to McCabe's wife in her run for office? Then dropped case on Clinton!
2018 05 20 (Sun)	13:11	TwitterAt what point does this soon to be \$20,000,000 Witch Hunt, composed of 13 Angry and Heavily Conflicted Democrats and two people who have worked for Obama for 8 years, STOP! They have found no Collussion with Russia, No Obstruction, but they aren't looking at the corruption...
	13:19	Twitter	...in the Hillary Clinton Campaign where she deleted 33,000 Emails got \$145,000,000 while Secretary of State paid McCabes wife \$700,000 (and got off the FBI hook along with Terry M) and so much more. Republicans and real Americans should start getting tough on this Scam.
2018 05 24 (Thu)	12:34	Twitter	Not surprisingly the GREAT Men & Women of the FBI are starting to speak out against Comey McCabe and all of the political corruption and poor leadership found within the top ranks of the FBI. Comey was a terrible and corrupt leader who inflicted great pain on the FBI! #SPYGATE

**PUBLIC STATEMENTS BY DONALD TRUMP
ABOUT ANDREW MCCABE**

DATE	TIME (UTC)	MEDIUM	STATEMENT
2018 06 15 (Fri)	n/a	Interview (Fox News)	Q: Sounds like Comey made some bad judgments but nothing criminal. TRUMP: Well, if you look at what happened and don't forget all of these people like Strzok, what he did was criminal, Strzok and so many others. McCabe is now up Q: You mean the bias, the animus TRUMP: Oh, they all work for Comey. And Comey knew everything that was going on. You think McCabe didn't tell him everything? McCabe told him everything, and McCabe is up for criminal right now
2018 06 28 (Thu)	12:30	Twitter	Peter Strzok worked as the leader of the Rigged Witch Hunt for a long period of time he got it started and was only fired because the gig was up. But remember he took his orders from Comey and McCabe and they took their orders from you know who. Mueller/Comey best friends!
2018 07 17 (Tue)	n/a	Interview (Fox News)	I also think that when you watch Peter Strzok and Lisa Page, when you watch all of the things that have happened and Comey happened, Comey, take a look at that, and McCabe, who has got some pretty big problems, I assume, you look at the deception, the lies, what's gone on in the last fairly long period of time [...] These are people that in my opinion are truly they're bad people.
2018 08 01 (Wed)	14:01	Twitter	Russian Collusion with the Trump Campaign one of the most successful in history is a TOTAL HOAX. The Democrats paid for the phony and discredited Dossier which was along with Comey McCabe Strzok and his lover the lovely Lisa Page used to begin the Witch Hunt. Disgraceful!
2018 08 11 (Sat)	13:17	Twitter	Why isn't the FBI giving Andrew McCabe text messages to Judicial Watch or appropriate governmental authorities. FBI said they won't give up even one (I may have to get involved DO NOT DESTROY). What are they hiding? McCabe wife took big campaign dollars from Hillary people.....
	13:18	TwitterWill the FBI ever recover it's once stellar reputation so badly damaged by Comey McCabe Peter S and his lover the lovely Lisa Page and other top officials now dismissed or fired? So many of the great men and women of the FBI have been hurt by these clowns and losers!
2018 08 19 (Sun)	11:30	Twitter	No Collusion and No Obstruction except by Crooked Hillary and the Democrats. All of the resignations and corruption yet heavily conflicted Bob Mueller refuses to even look in that direction. What about the Brennan Comey McCabe Strzok lies to Congress or Crooked's Emails!
2018 08 24 (Fri)	10:17	Twitter	"Department of Justice will not be improperly influenced by political considerations." Jeff this is GREAT what everyone wants so look into all of the corruption on the "other side" including deleted Emails Comey lies & leaks Mueller conflicts McCabe Strzok Page Ohr.....
	n/a	Political event	Man, these are nasty people. They are nasty and dishonest. You notice the way nobody looks at them? Is that deep state or what? Explain that. Nobody looks at them, all of the sting. McCabe, you have the beautiful Lisa Page and her wonderful FBI agent. [...] What a group. Comey. Lies and leaks. He's a liar and he's a leaker. No, it's true I mean, why is this guy being looked at? [...] We're gonna straighten it out it's gonna get straightened out.
2018 08 29 (Wed)	4:11	Twitter	Hillary Clinton's Emails many of which are Classified Information got hacked by China. Next move better be by the FBI & DOJ or after all of their other missteps (Comey McCabe Strzok Page Ohr FISA Dirty Dossier etc.) their credibility will be forever gone!
2018 09 17 (Mon)	14:36	Twitter	Immediately after Comey's firing Peter Strzok texted to his lover Lisa Page "We need to Open the case we've been waiting on now while Andy (McCabe also fired) is acting. Page answered "We need to lock in (redacted). In a formal chargeable way. Soon." Wow a conspiracy caught?
2018 09 20 (Thu)	n/a	Interview (Fox News)	Well it has to come to an end. It's so bad for our country. I call it the witch hunt. It is so bad for our country, and when you see Strzok and Page and McCabe, with his lies, they gets fired for lying. You see all of the things, and Comey for lying and leaking you see what went on. It's got to come to an end....

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ABOUT ANDREW MCCABE**

DATE	TIME (UTC)	MEDIUM	STATEMENT
2018 09 26 (Wed)	n/a	Press conference	You know, I call it a witch hunt. And it is a witch hunt. If you look at the FBI, uh, statements with Strzok and his lover, Lisa Page. If you look at all of the things that have gone on in the FBI, if you look at McCabe taking \$700,000 from a Hillary Clinton PAC, essentially run by Terry McAuliffe, who's her best friend in the world, and he gives them hundreds of thousands of dollars and he's in charge of her campaign and his wife is getting all of this money to run she lost to run....
2018 10 11 (Thu)	n/a	Interview (Fox News)	They gave him \$750,000 for his wife. Nobody even knows if she spent the money. She might not have spent the money. And this was at the time that she was being investigated by McCabe. So McCabe is investigating Hillary Clinton and they her PAC, essentially, run by her best friend, is paying McCabe \$750,000; to me, that's a big deal....
2018 11 15 (Thu)	14:49	Twitter	Universities will someday study what highly conflicted (and NOT Senate approved) Bob Mueller and his gang of Democrat thugs have done to destroy people. Why is he protecting Crooked Hillary Comey McCabe Lisa Page & her lover Peter S and all of his friends on the other side?
2019 01 12 (Sat)	14:20	Twitter	Lyin' James Comey Andrew McCabe Peter S and his lover agent Lisa Page & more all disgraced and/or fired and caught in the act. These are just some of the losers that tried to do a number on your President. Part of the Witch Hunt. Remember the "insurance policy?" This is it!
2019 01 14 (Mon)	n/a	White House press gaggle	The people that started that investigation are McCabe, who's a proven liar and was fired from the FBI [...]
2019 02 14 (Thu)	14:39	Twitter	Disgraced FBI Acting Director Andrew McCabe pretends to be a "poor little Angel" when in fact he was a big part of the Crooked Hillary Scandal & the Russia Hoax a puppet for Leakin' James Comey. I.G. report on McCabe was devastating. Part of "insurance policy" in case I won....
	14:55	TwitterMany of the top FBI brass were fired forced to leave or left. McCabe's wife received BIG DOLLARS from Clinton people for her campaign he gave Hillary a pass. McCabe is a disgrace to the FBI and a disgrace to our Country. MAKE AMERICA GREAT AGAIN!
2019 02 18 (Mon)	12:15	Twitter	Wow so many lies by now disgraced acting FBI Director Andrew McCabe. He was fired for lying and now his story gets even more deranged. He and Rod Rosenstein who was hired by Jeff Sessions (another beauty) look like they were planning a very illegal act and got caught.....
2019 02 19 (Tue)	2:53	Twitter	"The biggest abuse of power and corruption scandal in our history and it's much worse than we thought. Andrew McCabe (FBI) admitted to plotting a coup (government overthrow) when he was serving in the FBI before he was fired for lying & leaking." @seanhannity @FoxNews Treason!
	3:26	Twitter	Remember this Andrew McCabe didn't go to the bathroom without the approval of Leakin' James Comey!
	16:05	Twitter	I never said anything bad about Andrew McCabe's wife other than she (they) should not have taken large amounts of campaign money from a Crooked Hillary source when Clinton was under investigation by the FBI. I never called his wife a loser to him (another McCabe made up lie)!
2019 02 20 (Wed)	12:03	Twitter	"Andrew McCabe gave absolutely no evidence of any threat to substantiate his ABSURD claim." @LouDobbs
	n/a	White House press conference	Well, I think Andrew McCabe has made a fool out of himself over the last couple of days, and he really looks to me like sort of a poor man's J. Edgar Hoover. He's a I think he's a disaster. And what he was trying to do was terrible and he was caught. I'm very proud to say we caught him. So we'll see what happens. But he, uh, he is a disgraced man. He was terminated not by me he was terminated by others. The IG report was a disaster, a disaster from his standpoint, anybody reading the IG report would say, "How could a man like this be involved with the FBI?"
2019 03 15 (Fri)	13:47	Twitter	So if there was knowingly & acknowledged to be "zero" crime when the Special Counsel was appointed and if the appointment was made based on the Fake Dossier (paid for by Crooked Hillary) and now disgraced Andrew McCabe (he & all stated no crime) then the Special Counsel.....

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DATE	TIME (UTC)	MEDIUM	STATEMENT
2019 03 27 (Wed)	n/a	Interview (Fox News)	[A]nd as you know, Clapper lied, and perhaps the statute of limitations ran out on that one, but it didn't run out on Comey, it didn't run out on Brennan or Strzok or Page or McCabe. I mean, McCabe, his wife got hundreds of thousands of dollars. He was running the FBI and running all sorts of cases, and his wife got hundreds of thousands of dollars from essentially Clinton's, from Clinton's closest friend. And then he rules so favorably. I mean, he tries to say that he wasn't involved. [...] I don't believe that. But, you know, she got all those good rulings.
2019 05 02 (Thu)	1:00	Twitter	RT @JudicialWatch: @TomFitton discusses that "Obama, Biden, Clinton, Susan Rice, the DNC, John Brennan, Comey, Clapper, Kerry, McCabe, Loretta Lynch, Peter Strzok & more need to be investigated by the FBI & DOJ for crimes against @realDonaldTrump.
2019 05 10 (Fri)	n/a	Interview (Politico)	You know, they talk about "investigate the investigators." And when you look at what's happened with Strzok and Page and McCabe and Comey and all of the terrible things that took place, I think, you know....
2019 05 23 (Thu)	n/a	White House press conference	Q: Sir, the Constitution says Treason is punishable by death. You've accused your adversaries of treason. Who specifically are you accusing of treason? TRUMP: Well, I think a number of people, and I think what you look is that they have unsuccessfully tried to take down the wrong person. . . . [I]f you look at McCabe
2019 05 30 (Thu)	n/a	White House press gaggle	It doesn't work that way. Plus, we had a business dispute. Plus, [Muller's] relationship with Comey was extraordinary. Now, one other thing I'll say: Why didn't he investigate Strzok, and Page, and McCabe, and Comey and all the lies, and Brennan and the lies, and Clapper and the lies to Congress, and all of the things that happened to start this investigation?
2019 06 14 (Fri)	n/a	Interview (Fox News)	[I]f things happen that are, you know, like the McCabes of the world, they act like these little innocent people. They're not innocent. These are very, very dangerous people....
2019 06 19 (Wed)	n/a	Interview (Fox News)	So, you look at that, that's a total conflict of interest, how can somebody where you have a dispute be ruling? And his best friend, or very close to it, is Comey and Comey played a big part of this, because McCabe didn't do anything without Comey. McCabe was totally dominated by Comey. He did nothing. Andrew McCabe was a bad guy, but Andrew McCabe did nothing without calling Comey. He wouldn't there's an expression: he wouldn't go to the bathroom without getting Comey's approval.[...] Well, that's to subvert government. What they did was unbelievable that they could do a thing like that. And they reported to McCabe who I think is a terrible, terrible guy. And, you know, the FBI, you have some of the finest people in the world, and you know that, and we say all the time.
2019 07 13 (Sat)	11:56	Twitter	Andy McCabe is a major sleazebag. Among many other things he took massive amounts of money from Crooked Hillary reps for wife's campaign while Hillary was under "investigation" by FBI! https://t.co/bHweiBBj7z
2019 07 24 (Wed)	11:36	Twitter	Why didn't Robert Mueller & his band of 18 Angry Democrats spend any time investigating Crooked Hillary Clinton Lyin' & Leakin' James Comey Lisa Page and her Psycho lover Peter S Andy McCabe the beautiful Ohr family Fusion GPS and many more including HIMSELF & Andrew W?
2019 07 25 (Thu)	n/a	Interview (Fox News)	Well, Comey is a liar and a leaker and that's obvious. All you have to do is just follow him along and see what he said to Congress. Clapper and Brennan and all of these people, McCabe, these are bad people. My opinion, they are very bad people. They've been very bad for the country. They were I used to think incompetent but they are really I guess competent at other things and maybe bad things, but we'll see what happens. [...]
2019 07 28 (Sun)	3:49	Twitter	The real Collusion the Conspiracy the Crime was between the Clinton Campaign the DNC Fusion GPS Christopher Steele.....(and many others including Comey McCabe Lisa Page and her lover Ohr and his wonderful wife and on and on!). @replouiegohmert



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August 27, 2019

BY EMAIL AND FEDEX

Honorable Jeffrey A. Rosen
Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC. 20530-0001

Re: Andrew McCabe

Dear Deputy Attorney General Rosen:

As you know, we represent Andrew McCabe, the former Deputy Director of the FBI, in connection with a grand jury investigation being conducted by the United States Attorney's Office for the District of Columbia. The investigation has been ongoing for approximately 18 months – *i.e.*, since February 2018.

On Wednesday, August 21, we met with Jessie K. Liu, the United States Attorney for the District of Columbia, and her staff, and on Friday, August 23, we met with you, Ms. Liu and members of your respective staffs. This letter supplements the oral presentation we made to you on August 23.

We believe the indictment of Mr. McCabe on false statements charges would be a grievous mistake. Most importantly, Mr. McCabe committed no crime. He never, at any point, lied or intentionally misled anyone. Thus, charging him with false statements would be inconsistent with the evidence that Mr. McCabe's inaccurate statements to the FBI's Inspections Division and the Department of Justice's Office of the Inspector General (OIG) were the product of an innocent failure to recall, not deliberate lies.

This letter provides information on a number of subjects related to the exercise of prosecutorial discretion in this matter. First, we summarize the background for the allegations of false statements. Second, we discuss the alleged false statements we understand the Government to be considering, and the evidentiary problems with proving such charges. Third, we address selective prosecution issues implicated by this case. Fourth, we discuss the profound problems created by President Trump's relentless personal attacks on Mr. McCabe, including repeated calls for his investigation and prosecution. Fifth, we discuss the extensive *Brady* and *Giglio* problems that would be presented by the prosecution of Mr. McCabe. Sixth, we discuss the classified information issues that would be created by such a prosecution. Seventh, we provide a list of character witnesses who would be called to testify at trial and whose testimony alone would establish reasonable doubt about the Government's case. Finally, we point out the political issues that suffuse this case and that any trial would not be able to avoid.

For those reasons, and the numerous additional reasons outlined in this letter, we ask that you carefully review the case and exercise your discretion to decline prosecution. It is the right thing to do – both for Mr. McCabe and for the Department.

I. Factual Background

In the fall of 2016, Mr. McCabe was serving as the Deputy Director of the FBI. He had been elevated to that position earlier in the year as the culmination of a distinguished and unblemished 20-year career as an FBI agent. In late October 2016, Mr. McCabe was advised by a senior FBI public affairs officer that a reporter for the *Wall Street Journal*, was working on a story involving the 2015 Virginia State Senate campaign of Mr. McCabe's wife, Dr. Jill McCabe. The reporter was specifically focused on the funds Dr. McCabe's campaign had obtained from political action committees associated with the Democratic Party and then-Governor Terry McAuliffe. Immediately upon hearing of the reporter's inquiries, Mr. McCabe advised Director Comey and others in the FBI of the forthcoming *WSJ* story and worked through public affairs personnel to address significant inaccuracies in the reporting. The story about Dr. McCabe's campaign appeared online on October 23 and in the print version of the *Wall Street Journal* on October 24. Following the story's publication, then-candidate Trump publicly cited it at a campaign rally on October 24, falsely accusing the FBI of dropping the Clinton email investigation in 2016 because of the unrelated political contributions received in 2015 by Dr. McCabe's campaign. He repeated his accusations during an October 25 interview on Fox News.

Also on October 24, the *WSJ* reporter advised the FBI that he was reporting a follow-up story that eventually came to include issues surrounding the re-opening of the Clinton email investigation and internal controversies and disagreements within the FBI about both the email investigation and the FBI's investigations of the Clinton Foundation.

The reporter advised the FBI that, based on unauthorized disclosures by various other FBI officials, he was prepared to report that Mr. McCabe had shut down the Clinton Foundation investigations because of political pressure from the Department of Justice.

This was completely false. In consultation with other FBI personnel, and after candidate Trump's attacks on the FBI as a partisan agency, Mr. McCabe considered ways to rebut the claim. He determined that the most effective rebuttal was to share a conversation between Mr. McCabe and a Department of Justice official in August 2016. In that conversation, the DOJ official had questioned the propriety of the FBI's continuing its investigation of the Clinton Foundation. Angered by what he perceived to be an attempt to exercise political influence on the FBI's investigative activities, Mr. McCabe asked, "Are you asking me to shut down a validly predicated investigation?" In response, the DOJ official said that, of course, was not his intention. Because this conversation effectively rebutted the *WSJ* reporter's thesis, Mr. McCabe authorized the head of the FBI's public affairs office and his special counsel to share the conversation with the reporter. That information was included in a story that appeared online on October 30 and in the print version of the *Wall Street Journal* on October 31. The Government has acknowledged that Mr. McCabe had the full authority to make the disclosure, either directly or indirectly. The story was quickly overtaken by events and forgotten.

II. The Alleged False Statements

A. The May 9, 2017 Statements to the FBI's Inspections Division

In February 2017, Mr. McCabe authorized the opening of an unrelated leaks investigation based on an article that appeared in *Circa News*, a now-defunct online publication. The investigation was assigned to the FBI's Inspections Division. On April 11, agents from the Inspections Division interviewed Mr. McCabe at length regarding his knowledge of events related to the *Circa News* leak. Pursuant to Inspections Division protocols, the agents drafted a lengthy proposed signed sworn statement based on their interview of Mr. McCabe and sent it to him for his review and correction. The agents made an appointment with Mr. McCabe for the early afternoon of May 9 to review his proposed changes to the draft statement.

On the afternoon of May 9, the agents met with Mr. McCabe. Mr. McCabe understood that the meeting was for the sole purpose of discussing his proposed changes on the draft signed sworn statement regarding the *Circa News* leak. He had no advance notice that the discussion would extend to any subject other than his draft signed, sworn statement, and no hint that it would include questions about the six months-old *WSJ* story. This was a breach of Inspections Division protocol, which is based on principles

of fair notice, and caused serious disagreement between the two Inspections Division agents, one of whom strongly advised against doing so because it was inconsistent with Inspections Division practices and protocols. The dissenting agent was overruled by his supervisor.

Towards the end of the May 9 meeting with Mr. McCabe, after a lengthy discussion about his requested changes to the draft signed sworn statement, the agents showed him the October 31 *WSJ* story and asked whether he had authorized the disclosure of the conversation with the Justice Department official. He was confused and caught by surprise by the sudden change of topics, and gave inaccurate answers about whether he knew the source of the information about the August 2016 call with the DOJ official that appeared in the *WSJ* story. He simply did not remember the specifics about the disclosure. The exchange was brief. The agents incorporated the new information into a revised draft of the signed sworn statement, but the meeting about the revisions to the statement was quickly overtaken by events. Within a few hours of the May 9 meeting, Director Comey was fired by the President and Mr. McCabe became Acting Director of the FBI. He was immediately immersed in a broad set of critical management and substantive issues, including but not limited to addressing a demoralized and fearful workforce who had lost a respected leader, issues related to the Russia investigation and the appointment of a special counsel to oversee that investigation, and other ongoing sensitive law enforcement and national security matters. Although the Inspections Division agents subsequently sent Mr. McCabe a revised draft signed sworn statement that incorporated his inaccurate answers about the *WSJ* story, Mr. McCabe never signed it. Other than the few minutes that afternoon, just hours before he assumed the position of Acting Director, there is no evidence that Mr. McCabe spent any time focusing on this issue.

B. The July 28, 2017 Statements to the DOJ OIG

Almost three months later, on July 28, Mr. McCabe was contacted by an official in DOJ's Office of the Inspector General. In substance, and without disclosing the reason, the official stated that it was a matter of great urgency that the OIG be able to meet with Mr. McCabe that same day. At the time, Mr. McCabe knew that he was a subject of at least one aspect of an ongoing OIG investigation, based on the OIG's January 2017 public announcement that centered on its review of the FBI's activities in connection with the Clinton email investigation, but that also included at least one allegation that centered on Mr. McCabe. As a result, he consulted by phone with his private counsel, who was outside the country. Although Mr. McCabe was concerned about being questioned outside the presence of his counsel, he felt obligated as the top official in the FBI to respond to the OIG's request that they meet with him on an urgent basis. The OIG also represented to Mr. McCabe that he would not be interviewed without counsel about

matters on which he was a subject of the investigation, and that the meeting was simply an opportunity to bring something urgent to his attention.

At his meeting with the OIG investigators that afternoon, Mr. McCabe was confronted with the fact that his special counsel, Lisa Page, and FBI special agent Peter Strzok had exchanged thousands of text messages. Among other things, these messages disclosed a close personal relationship between Page and Strzok and also contained strong political opinions that were critical of Donald Trump. As soon as he was confronted with the volume and character of the text messages, Mr. McCabe immediately began focusing on the steps he needed to take to address the management issues they raised, including but not limited to contacting Special Counsel Robert S. Mueller III, to whose team Mr. Strzok had been assigned.

Despite Mr. McCabe's articulated misgivings about proceeding with any questioning, the OIG investigators proceeded to question him about some of the Strzok-Page text messages, including one that appeared to refer obliquely to the August 2016 conversation between McCabe and the DOJ official. Mr. McCabe had not spent a moment thinking about the disclosure he had authorized or the *WSJ* article since the few moments when he was questioned about it on May 9, and he again gave inaccurate answers to questions about the *WSJ* article that OIG investigators continued to ask, even after Mr. McCabe had clearly expressed discomfort with proceeding further.

After returning to the FBI that afternoon, and dealing with the management issues posed by the Strzok-Page texts, Mr. McCabe began thinking further about the questions he had been asked, and specifically about whether he had authorized Ms. Page and FBI public affairs personnel to share with the *WSJ* reporter his August 2016 discussion with the DOJ official. Within two business days of the session with the OIG, Mr. McCabe contacted the lead OIG investigator to correct the record and state that he had in fact authorized Ms. Page to make the disclosure. Prior to doing so, he did not discuss the *WSJ* disclosure with Ms. Page or the FBI public affairs official. Instead, during his follow-up phone call with the OIG, Mr. McCabe suggested that the OIG investigators do so. Mr. McCabe corrected the record about the disclosure based purely on his refreshed recollection that he had authorized the disclosure.

C. Proof Problems

The weaknesses in any false statement charges based on the events of May 9 or July 28 are profound. As to the May 9 statements to the FBI's Inspections Division, there is no evidence that Mr. McCabe had any reason to focus on or remember the specific events in late October 2016 that led him to authorize the disclosure to the *WSJ* reporter. He had every reason to believe that the questioning would be limited to the *Circa News*

leak, as Inspections Division protocol dictated. He was not given advance notice of the new topic, not provided with any documents in advance of the meeting to refresh his recollection, and had no reason to think about the *WSJ* disclosure before it was sprung on him towards the end of the May 9 meeting. As a result, he provided inaccurate statements. However, Mr. McCabe never signed the revised draft signed sworn statement that incorporated the inaccurate information about the *WSJ* story. In view of the Inspections Divisions policies and protocols, it is far from clear that a witness's statement is considered complete until and unless the witness signs the statement. In any event, we are unaware of any false statements case that has *ever* been brought based on statements to the Inspections Division that were never verified by a signed sworn statement.

As to the July 28 statements to the OIG, the evidence will show that Mr. McCabe was questioned by the OIG investigators under false pretenses. There was no true urgency to interview Mr. McCabe on any aspect of the text messages that day. The urgency was to inform Mr. McCabe that the text messages existed and that he might well need to make significant management decisions based on his knowledge of their existence. Mr. McCabe immediately did so by notifying Special Counsel Mueller about Mr. Strzok and subsequently reassigning Mr. Strzok and Ms. Page. Mr. McCabe was given no advance warning by the OIG that he was going to be questioned about the text messages, much less that he was going to be questioned about anything having to do with the *WSJ* story. In fact, he had no occasions to think about the *WSJ* story since the brief encounter with the Inspections Division almost three months earlier. In short, the OIG sandbagged Mr. McCabe about something he had no reason to remember.

We have become aware that there was some concern within the OIG about the way Mr. McCabe was lured into the interview on the basis of, at best, misleading representations. Email messages documenting those concerns are being released in connection with FOIA lawsuits filed in connection with Mr. McCabe's termination in March 2018, and they will cast the OIG's conduct with respect to this interview in a negative light. More importantly, Mr. McCabe's voluntary and unsolicited correction of the *WSJ*-related portion of his testimony within two business days of the July 28 interview profoundly weakens any charge based on alleged false statements during the OIG interview. We are unaware of any false statement case that has ever been brought by DOJ where the witness has proactively and voluntarily – and without any intervening event – corrected the record within days of his inaccurate testimony. This is in stark contrast to at least two recent cases where no such proactive correction was made: the investigations involving K.T. McFarland, the President's National Security Advisor, and Jefferson B. Sessions III, the former Attorney General, after which no charges were brought.

A fundamental weakness of false statement charges based on either the May 9 or July 28 answers is the absence of any motive for Mr. McCabe to lie about the disclosures he had authorized. Motive is not an element of the offense, but it hard to imagine a jury convicting on false statement charges in the absence of evidence that Mr. McCabe had a motive to lie. As noted above, Mr. McCabe was fully authorized by the FBI's media policy to make the disclosure of his conversation about the Clinton Foundation investigation, either directly or indirectly, to the *WSJ*. Whether or not Mr. McCabe's decision was correct, or can be second-guessed in retrospect, is irrelevant; he was authorized to make the decision that he made. He has testified on multiple occasions that he did so to protect the non-partisan and apolitical reputation of the FBI, not out of self-interest. One of the other key witnesses involved in the matter has supported that testimony in prior sworn testimony. Indeed, a week before this authorized disclosure to the *WSJ*, then-candidate Trump was attacking the FBI for corrupt decision-making concerning Secretary Clinton — a fact that further bolstered Mr. McCabe's motive to defend the Bureau from campaign-driven politicization.

There is no dispute that at the time the *WSJ* reporter was working on the first of the two October 2016 stories, Mr. McCabe advised Director Comey that he was working with other FBI personnel on correcting inaccuracies in the reporting. There *is* a dispute whether Mr. McCabe told Director Comey about his decision to authorize the disclosure in advance of his doing so, and/or after the article appeared on October 30/31. Mr. McCabe says unequivocally that he did; Director Comey has testified far more equivocally that he did not. But the factual dispute does not matter. Mr. McCabe simply did not have a compelling reason to conceal the disclosure from Director. He had even less of a reason to conceal it from the Inspections Division six months later. And he had absolutely no reason to lie about it when he met with the OIG on July 28. There is no persuasive theory of motive that explains Mr. McCabe's intentionally providing false information to the Inspections Division or the OIG.

III. Selective Prosecution

Separate and apart from the factual weaknesses in any false statement charges based on Mr. McCabe's May 9 and July 28 statements, DOJ simply does not bring criminal cases in these or similar circumstances. As Attorney General Barr noted in his March 24, 2019 letter analyzing whether the President had obstructed justice, the absence of evidence of an underlying crime is centrally relevant to whether a person had criminal intent. While some of the essential elements of obstruction of justice differ from the essential elements of false statements, Attorney General Barr's analysis is equally applicable here: the absence of an underlying crime, or even underlying misconduct, bears directly on whether an individual had the requisite criminal intent to make a false

statement, and whether the government will be able to prove that a defendant had such criminal intent.

Whatever the niceties of the legal analysis, the fact is that the Department does not bring false statement prosecutions in the absence of underlying misconduct or criminal conduct, and in the majority of cases declines prosecution even where such misconduct or criminal conduct exists. We have collected a set of cases, all but one of which have been posted on the DOJ OIG website over the past 3-4 years, that summarize investigations in which the OIG found underlying misconduct by DOJ personnel, and that false statements were subsequently made to the OIG investigators. In none of those cases did DOJ bring a criminal false statements case against the individual. And the cases we have collected, and attached to this letter, with one exception, are DOJ OIG investigations. (*See Attachment A.*) Unlike the OIG, the FBI does not post similar information about its investigations where false statements were made to investigators and prosecution was declined. We have no doubt that the number of such cases would be enormous if the FBI provided comparable data concerning its own investigations.

In short, given the profound factual weaknesses in the case, and the fact that DOJ rarely brings false statement cases even when the false statements relate to underlying misconduct, there is no valid law enforcement reason for bringing a criminal case against Mr. McCabe. Mr. McCabe is not above the law, and is certainly not entitled to special treatment or dispensation because he formerly held a position of great responsibility in the federal government. By the same token, he should not be singled out for harsher treatment because of that position. To do otherwise would be "headhunting," which is contrary to the Department's traditions and practices throughout its history. No line FBI agent would be charged on these facts, nor would an FBI SAC, nor a Deputy US Marshal, nor a DEA Special Agent. The declinations we are providing prove that proposition.

Accordingly, if DOJ were to bring false statement charges against Mr. McCabe on these facts, it would be contrary to consistent Department practice as well as the fair administration of justice. We would move to dismiss the indictment for selective prosecution and would expect it to be the subject of extensive discovery and evidentiary hearings in the District Court.

IV. Vindictive and Retaliatory Prosecution

Over the past three years, since the October 2016 publication of the first *WSJ* article about Dr. McCabe's 2015 Virginia State Senate campaign, Mr. McCabe has been the subject of unrelenting and vicious personal attacks by the President. In the harshest possible terms, the President has repeatedly called for the investigation and prosecution of Mr. McCabe. The President has broadly and repeatedly targeted members of the law

enforcement and intelligence community whom he has perceived to be his political enemies, but he has lavished special attention on Mr. McCabe. He has repeatedly branded him a criminal, accused him of lying, and more recently accused him of treason, a capital offense. We are unaware of any precedent in this country's history for such attacks, and certainly no precedent for DOJ bringing criminal charges against a person the President has designated as a political enemy and accused of committing crimes. We have attached a chart that contains a non-exhaustive list of the President's attacks on Mr. McCabe, set forth in tweets and other public statements since October 2016. (See Attachment B.)

DOJ has a proud tradition of making investigative and prosecutive decisions independent of political pressure and political influence. The President's conduct concerning Mr. McCabe has made the fair prosecution of any case against Mr. McCabe an impossibility. We will be putting the overwhelming evidence of President Trump's animus towards Mr. McCabe front and center in this case. We will move to dismiss the indictment on various bases, including the grounds that the President's statements, and those of others in his Administration, constitute governmental misconduct and a corruption of our criminal justice system in a way that has not previously occurred. We will argue that the President's behavior, followed by the criminal prosecution of one of his frequently-targeted political enemies, shocks the conscience. We expect that any number of the District Court judges sitting in the District of Columbia will be sympathetic to this argument, and may well dismiss the indictment on the grounds that the federal courts should not be the venue for implementing the President's personal and political vendettas.

V. *Brady and Giglio* Issues

The Government frequently faces difficult challenges in complying with the Constitutional imperatives of *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972), to provide the defense with exculpatory information that tends to demonstrate the innocence of the defendant (*Brady*) and impeachment material regarding its witnesses (*Giglio*). This letter need not summarize the numerous cases, including those in the District of Columbia, where convictions have been reversed for the Government's failure to comply with these Constitutional obligations. But we believe that the Government's obligations in this case would be extensive and extremely difficult to adequately discharge.

To refer to only a single strain of the *Brady* and *Giglio* issues implicated by this case, the Government would be required to provide any all records of discussions among the FBI's Inspections Division agents, and other individuals with whom those agents communicated, about the violations of FBI policies and protocols embedded in their May

9 meeting with Mr. McCabe. Those violations bear directly on Mr. McCabe's intent because they relate to his reasonable expectations and explain why he did not refresh his recollection going into that meeting.

Similarly, the Government would be required to provide any and all records of discussions among the DOJ OIG investigators, and anyone with whom these agents communicated, about the misrepresentations made to Mr. McCabe about the purpose for the July 28 meeting. Such evidence would bear on Mr. McCabe's intent, and also on any impeachable biases harbored by the agents investigating Mr. McCabe, given the enormous pressure placed on them by the President's public political vendetta against Mr. McCabe – including his public call to remove Mr. McCabe just two days earlier on July 26. And because the events of those days served as the stated grounds for Mr. McCabe's unlawful dismissal on March 16, 2018, those communications will also include numerous personnel in the FBI, the DOJ OIG, the Office of the Deputy Attorney General, the Office of the Attorney General, and especially the White House, given the President's frequently expressed and deep interest in punishing Mr. McCabe.

We believe that the Government would fail to convince the Court to narrowly interpret the Government's *Brady* and *Giglio* obligations in a false statements case against Mr. McCabe. We believe further that the Government would fail to adequately fulfill those very substantial obligations, with potentially severe adverse consequences for the Government personnel responsible for the failure to produce the information, and for the viability of the prosecution itself.

VI. Classification Issues

While serving as Deputy Director and as Acting Director, Mr. McCabe worked in a highly classified environment around the clock. On a daily basis, he dealt with national security issues, including foreign and domestic terrorist threats, that presented existential threats to this nation. Such issues occupied Mr. McCabe's attention during the period November 2016 through July 2017 and beyond, and were far more memorable than his authorization of the disclosure to the *WSJ* reporter in late October 2016.

Any false statements case will need to demonstrate that Mr. McCabe intended to lie to the FBI on May 9 and the OIG on July 28, rather than his inaccurate answers being the product of an innocent failure to recall. We will seek to obtain in discovery and present at trial evidence information concerning some of the enormously complex and sensitive issues in which Mr. McCabe was involved, many of which are highly classified. This information includes (but is not limited to) Mr. McCabe's personal work notebooks, which contain his detailed notes about the many significant matters that he focused on. Those notes are voluminous, sometimes running several pages on a single day. Mr.

McCabe has had no access to these notebooks since he left the FBI, but he would be entitled to them during discovery. And he would undoubtedly be entitled to present evidence on some of the all-consuming issues, including classified matters, that naturally and understandably crowded out his recollection of the *WSJ* disclosure.

VII. Character Evidence

Rule 404(a)(2)(A) of the Federal Rules of Evidence explicitly authorizes the defendant in a criminal case to offer pertinent character evidence – in this case, Mr. McCabe’s reputation for honesty and integrity. The defense in white-collar criminal cases will frequently present character testimony for this purpose. In the District of Columbia, the standard jury instruction on character evidence provides that “[e]vidence of good character alone may create a reasonable doubt as to a defendant’s guilt, although without it the other evidence would be convincing.” Bergman, *Criminal Jury Instructions for the District of Columbia*, Intsr. 2.213 (5th ed. 2014).

As we have advised the U.S. Attorney, we have obtained commitments from the following individuals to testify as character witnesses on Mr. McCabe’s behalf:

- Eric Holder, former United States Attorney General and United States Attorney for the District of Columbia;
- John Brennan, former Director, Central Intelligence Agency;
- Lt. Gen. James R. Clapper, former Director of National Intelligence;
- David Cohen, former Deputy Director, Central Intelligence Agency;
- John Cohen, former Acting Undersecretary for Intelligence and Analysis, Department of Homeland Security;
- James Cole, former Deputy Attorney General;
- Robert Holley, former Special agent in Charge, Chicago Field Office, FBI;
- Alejandro Mayorkas, former Deputy Secretary, Department of Homeland Security;
- Mary McCord, former Acting Assistant Attorney General for National Security;
- Denis McDonough, former Chief of Staff to President Obama;
- James McJunkin, former Assistant Director in Charge, Washington Field Office, FBI;
- Lisa Monaco, former Assistant to the President for Homeland Security and Counterterrorism;
- Susan Rice, former National Security Advisor to President Obama;
- Kathryn Ruemmler, former White House Counsel; and
- Michael Steinbach, former Executive assistant Director for National Security, FBI.

Nor would the testimony of these witnesses be limited solely to character evidence. Many of these witnesses would also serve as fact witnesses, to testify about the many critical and highly sensitive national security and law enforcement they worked on with Mr. McCabe. They would also testify about their own personal experience that dealing with such issues on a continuing basis has affected their ability to remember certain events that may have seemed important at the time, or might in retrospect be viewed as important by others.

VIII. Political Issues

Unlike almost every criminal case, this case is intertwined with politics. No matter how narrowly the Government attempts to try this case, it is inescapable that the jury will learn about a host of political issues that are relevant to the factual chronology, Mr. McCabe's intent, and the pressures and biases that, consciously or unconsciously, shaped the work of (among others) the agents who interviewed Mr. McCabe and memorialized his statements. These issues will include, at a minimum, the following:

- the FBI's Clinton email investigation;
- the 2016 Presidential election and its aftermath;
- the opening of the investigation into Russia's interference in the election;
- the Intelligence Community's Assessment of Russia's interference;
- the opening of a criminal perjury investigation of the former Attorney General, Jefferson B. Sessions III;
- the President's firing of James Comey; and
- the President's interactions with Mr. McCabe.

These issues simply cannot be avoided, not least because they bear directly on the state of mind of Mr. McCabe and of those who participated in the Inspections Division's and OIG's fact-finding. They will prevent the Government from trying the case narrowly and will vastly complicate the Government's ability to prove its case.

IX. Conclusion

For the reasons stated above, the Department should decline prosecution of Andrew McCabe for alleged false statements made to the FBI and the DOJ OIG. No compelling federal law enforcement interest would be vindicated by pursuing such a case, and indeed the Department has declined to prosecute federal law enforcement personnel in cases where there was underlying misconduct, including criminal misconduct, and false statements made to investigators. Any prosecution of Mr. McCabe will be widely viewed as implementing through the criminal justice system President

Letter to Jeffrey A. Rosen
August 27, 2019
Page 13 of 13

Trump's personal vendetta against Mr. McCabe, and as an unjust and impermissible use of the criminal justice system.

Mr. McCabe gave more than 20 years of his life in honorable service to the FBI, the Department of Justice, and this country. He was fired from his position and his life, and the life of his family, have been turned upside down. Pursuing a criminal prosecution of Mr. McCabe for alleged false statements is unwise and unjust. We respectfully request that you decline prosecution.

Respectfully,

 (DU)

Michael R. Bromwich
The Bromwich Law Firm PLLC

 (DU)

David Schertler
Schertler & Onorato LLP

Attachments:

- Summary of declinations in false statement matters
- Statements from President Trump re Andrew McCabe, 2016-2019

cc: Honorable Jessie K. Liu (via email)
United States Attorney for the District of Columbia

Kupec, Kerri (OPA)

From: Kupec, Kerri (OPA)
Sent: Monday, April 22, 2019 5:51 PM
To: Ahern, Bill (OAG) **Attorney General Barr**
Subject: Fair/Positive coverage on release of report (Thursday through today)

Release of the Report on the Investigation into Russian Interference in the 2016 Presidential Election – Media Report

April 22, 2019

Prepared for: Office of the Attorney General

Editorial/Opinion (Headlines – Full Text Below):

Not Responsive Records



[The Mueller report concludes it was not needed](#) The Hill (4/20)

Not Responsive Records



[The Mueller report concludes it was not needed](#)

The Hill

April 20, 2019

How would you like to spend two years and \$30 million assembling a report that concludes you were not needed in the first place? Voila: the Mueller report. Nice work if you can get it.

The report is appropriately thick, D.C. thick. It takes more than 400 pages to state the obvious: there was no collusion between the Trump campaign and the Russians to swing the 2016 election. Zip, nada, nothing to see here.

It goes on to tee up a question about obstruction of justice that the special counsel was not asked to investigate — and then doesn't answer it. Wait, what?

These are some of the most elite prosecutors in the country and they went full Hamlet on a legal determination a third-year law student would knock down between Budweisers. This is what we get for \$30 million? Make a call; that's your job as prosecutors.

It doesn't seem the special counsel team is fooling anyone. They showed that they would indict a ham sandwich if they could. The obvious answer is that they had no confidence in a criminal obstruction case.

Instead, they punted to the Trump-appointed attorney general. One gets the sense this may have been by design. Well, what about all the Russians who were indicted by Mueller's team for trying to interfere with the election? Those were chip shot FBI counterintelligence investigations, well in flow, when the special counsel took them over. They didn't need special counsel magic.

Had they remained FBI-controlled cases, the indictments would have been sealed and the subjects arrested when they likely returned to the United States for more mischief in 2020. We can forget about that now.

Attorney General William Barr during his press conference early Thursday said that the "bottom line" is that no American coordinated, conspired or colluded with the Russian government to interfere in the presidential election. America should be grateful, he added.

No, America should be disgusted. Here's a real bottom line: a cabal of politicians and bureaucrats frivolously and cynically manipulated the levers of government to further their own political greed and lust for power by trying to exploit a falsehood. It cost us over \$30 million and needlessly pitted Americans against one another. This is where Barr will find some truly grateful people: the Kremlin in Moscow. Russian intelligence, with little sweat equity, grabbed an opportunity to feed fantastical disinformation to a former British spy hired by operatives of the Clinton campaign. The return on this modest investment has been spectacular for Mr. Putin.

The Russian ploy was seized upon by U.S. bureaucrats and politicians who were either breathtakingly naive

about these sorts of things or purposefully duplicitous.

So let's be clear: any intersection by a Russian with either presidential campaign was part of Russian intelligence objectives. No one can use the "naive excuse" any longer.

Anyone who continues to attempt to exploit empty allegations, including obstruction, in light of the Mueller report findings, is purposefully cooperating with and continuing a Russian active measures campaign that has roiled this country for nearly three years.

But perhaps the greatest tragedy, confirmed by implication in the Mueller report, is that a great institution, the FBI — indeed, a cornerstone agency in the continual struggle to ensure the integrity of our democratic republic — was hijacked by an irresponsible director and deputy director who insulated themselves from the rest of that seasoned, sober organization and embarked on a foolish misadventure fueled by either their stupidity or political bias. It looks like it was a combination of both.

They were egged on, like gullible dupes, by a politically motivated CIA director and director of National Intelligence. Former FBI director James Comey and deputy director Andrew McCabe and the team they assembled on the seventh floor of FBI headquarters started an investigation based on insufficient cause and the obvious Russian active-measures operation.

They likely used investigative techniques that violated established guidelines, ran informants against U.S. Persons in violation of established guidelines, and misused the Foreign Intelligence Surveillance Act (FISA) process to deeply invade the privacy of an American citizen.

And they did all this against the campaign of a person running for president of the United States. When the attorney general characterized this as "unprecedented," he was simply stating a fact.

It will take a special kind of courage to now hold accountable those who misused the positions entrusted to them to further a made up and costly theory of collusion. There is a sense that the attorney general is serious about seeing true justice done.

AG Barr is taking flak, but hopefully will stand firm. The triumph of rule of law over political thuggery is at stake. This is vitally important for future presidential administrations of both parties, and true statesmen will recognize that.

Not Responsive Records

Kerri Kupec

Director

Office of Public Affairs

U.S. Department of Justice

kerri.kupec@usdoj.gov



From: Kupec, Kerri (OPA)
Sent: Friday, August 2, 2019 2:58 PM
To: Attorney General Ahern, Bill (OAG); Rabbitt, Brian (OAG)
Subject: Barr
Joe diGenova: Barr's Comey decision was the right call. But this is just the beginning

The decision not to prosecute former [FBI Director James Comey](#) over his deliberate leaks to the media isn't a sign of weakness or lack of will, but of the professionalism and well-reasoned restraint of President Trump's Department of Justice.

[Attorney General Bill Barr's](#) number one goal since taking the helm at the DOJ has been to restore the impartial and professional ethos that has characterized that agency for more than 200 years.

He is working diligently to cleanse it of the stain of politically driven vindictiveness that Obama-era officials created by grossly mishandling the Clinton email investigation, and then, even more egregiously, orchestrating the series of events that led to the [Russiagate](#) witch hunt. Before this "investigation of the investigators" is over, there will undoubtedly be many cases of misconduct that warrant criminal prosecution. Comey's, however, was not one of them.

What Comey did -- release private memos made in the course of his employment as FBI director to politically damage the president of the United States, who had just fired him for unrelated misconduct -- was absolutely outrageous, and totally unbecoming of the leader of this country's premier criminal investigatory agency. It speaks volumes about Comey's corrupt character and further illustrates why both President Trump and then-Deputy Attorney General Rod Rosenstein concluded that Comey was no longer fit to serve in that role.

Attorney General Barr made the right call. This would have been the first major charging decision of this investigation, which is not the time to go all in on a "maybe" case. To do so would create exactly

the appearance of political vindictiveness and retributivist prosecution he is working so hard to dispel.

In this case, however, even that deplorable conduct did not rise to the level that was possible to prosecute criminally. The career prosecutors assigned to the case [told](#) Fox News that this “wasn’t a close call,” and I can see why. The confidential nature of the memos was too ambiguous. The intent element was too hard to prove.

Attorney General Barr made the right call. This would have been the first major charging decision of this investigation, which is not the time to go all in on a “maybe” case. To do so would create exactly the appearance of political vindictiveness and retributivist prosecution he is working so hard to dispel.

That does not mean, as some are now claiming, that the decision not to prosecute in this particular case is a vindication of Comey, a defeat for the president, or an end to the inquiry surrounding these leaks.

The quest for truth is far more important than the pursuit of retribution against an already-disgraced FBI official whose behavior in office was unbecoming of any public official. There are many of us who want to see James Comey before a jury or in a jail cell, but like Attorney General Barr, I’m more interested in seeing a full and complete accounting of the malfeasance that took place at the DOJ during and after the 2016 presidential campaign.

The release of a pending report by Inspector General Michael Horowitz is, by all accounts, imminent. The product of more than 16 months of investigation, that report will cover far more devious schemes than Comey’s leaking -- Horowitz is finally going to reveal the truth about the dishonest handling of FISA spy-warrant applications against Trump associates.

Horowitz, like Barr, is a true professional. His intrepid work [revealed](#) to the world the whole picture of Comey’s number two, Andy McCabe, whose own improper leaks to the media got him [fired](#) just days before he would have been eligible for a government pension. It was his

extensive investigation through which we learned the full extent of FBI Agent Peter Strzok and DOJ lawyer Lisa Page's anti-Trump text exchanges that disqualified Strzok from further participation in Special Counsel Mueller's probe.

The investigation of the investigators is only just now coming into focus. We already know there was wrongdoing throughout the Obama DOJ, and that it continued among the holdovers from that era after the 2016 election -- and we know that it fueled the most pernicious conspiracy theory in modern American history. Some of that wrongdoing may well be prosecutable.

If and when such cases arise, the president's supporters will be glad that Attorney General Barr and his team exercised such restraint in the Comey case. The American people will now be assured that any prosecutions that do go forward will be well-founded, readily provable, and completely devoid of the taint of politics.

We can all now appreciate a return to integrity at the DOJ. The American people deserve nothing less.

Kerri Kupec

Director

Office of Public Affairs

U.S. Department of Justice

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(b) (6)

From: Kupec, Kerri (OPA) Attorney General Barr
Sent: Friday, June 21, 2019 12:07 PM
To: Rabbitt, Brian (OAG); Ahern, Bill (OAG); O'Callaghan, Edward C. (ODAG)
Subject: "Andrew Weissmann, a Top Mueller Prosecutor, Has a Book Deal"

<https://www.nytimes.com/2019/06/21/us/politics/andrew-weissmann-book-deal.html>

Andrew Weissmann, a Top Mueller Prosecutor, Has a Book Deal

Andrew Weissmann, right, was a prosecutor in the special counsel's office, along with Jeannie Rhee and Rush Atkinson. Credit Tom Brenner for The New York Times



Image

Andrew Weissmann, right, was a prosecutor in the special counsel's office, along with Jeannie Rhee and Rush Atkinson. Credit Tom Brenner for The New York Times

By Alexandra Alter and Mark Mazzetti

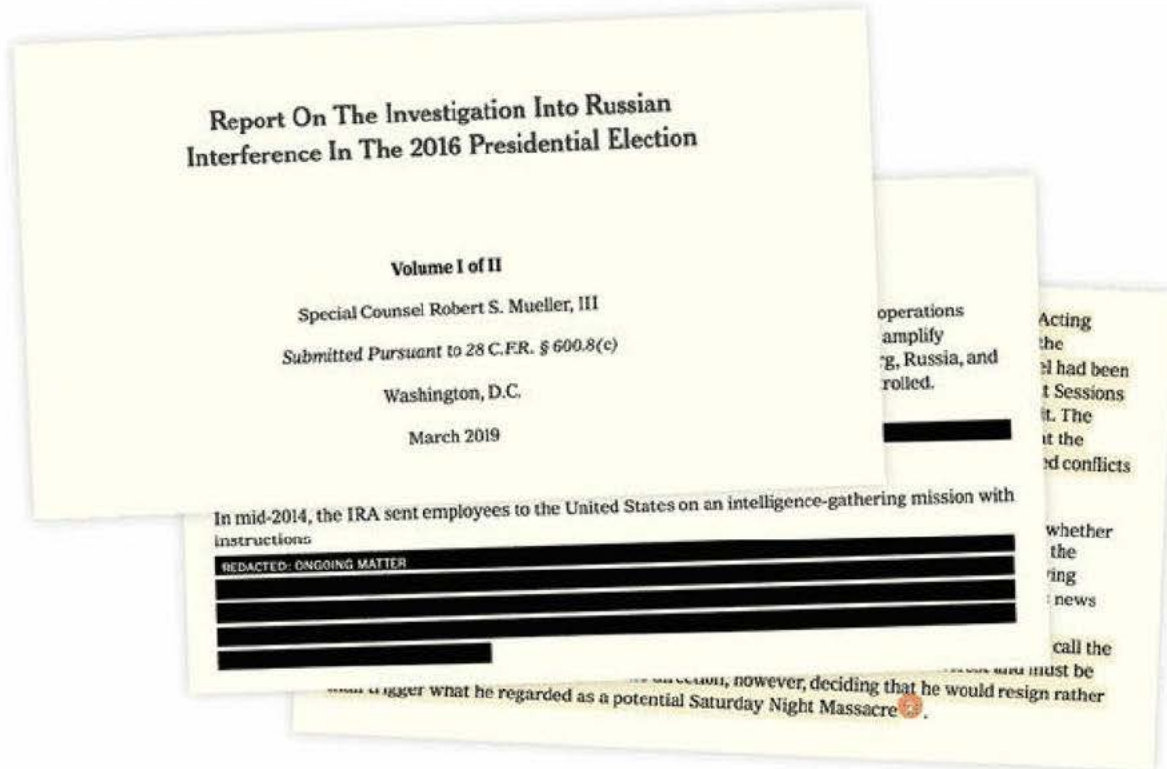
- June 21, 2019

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- [Andrew Weissmann](#), one of the top prosecutors for [Robert S. Mueller III on the Russia investigation](#), is writing a book that will explore his work on the special counsel's inquiry, according to a publishing executive with knowledge of the deal.

Mr. Weissmann appears to be the first prosecutor on the special counsel's team to make a deal

with a publisher, which makes the prospect of an insider account from him especially intriguing. His book was acquired by Random House, according to the publishing executive. Multiple executives at Random House did not respond to requests for comment. It is unclear how much detail Mr. Weissmann will provide about the inner workings of the investigation, and whether his book will provide any major revelations. Mr. Weissmann was central to building the government's case against [Paul Manafort, Mr. Trump's former campaign chairman](#). He did not conduct the investigation into whether President Trump obstructed justice, according to people familiar with the structure of the Mueller team.



[Read the Mueller Report: Searchable Document and Index](#)

[The findings from the special counsel, Robert S. Mueller III, are now available to the public. The redacted report details his two-year investigation into Russian interference in the 2016 presidential election.](#)

Mr. Weissmann's book is likely to be a best seller, given the degree of public interest in the Russia investigation, and his position as one of the top prosecutors for Mr. Mueller. The 448-page Mueller report, which details the findings from the two-year investigation into Russian interference in the 2016 election and potential obstruction of justice, became a best seller this spring after multiple publishers released paperback editions.

ADVERTISEMENT

Mr. Weissmann is the latest former Justice Department official to land a major book deal, following best-selling memoirs by the former F.B.I. director James B. Comey and the former deputy F.B.I. director Andrew G. McCabe. Mr. Trump fired Mr. Comey in May 2017, prompting law enforcement officials to open an investigation into whether he was trying to obstruct the Russia inquiry.

Mr. Mueller ran a fastidiously leakproof legal team and remains something of a cipher. At a rare news conference last month, he expressed a desire to [let his investigators' report speak for itself](#) and a reluctance to testify before Congress, so an account from Mr. Weissmann, one of his top

deputies, is likely to be revelatory. There are also still broad questions about the team's decision not to decide whether the president committed a criminal obstruction-of-justice offense, though Mr. Weissmann was not part of that process.

Over his decades-long legal career, Mr. Weissmann developed a reputation for his aggressive prosecutorial tactics, and for gaining defendants' cooperation in complex cases involving organized crime and financial fraud. His most notorious targets included the Genovese crime family in New York and executives involved in the Enron accounting fraud scandal.

He has had setbacks. The Supreme Court unanimously overturned a conviction of Arthur Andersen, an accounting firm charged with illegally destroying documents related to its audit of Enron, over a narrow issue involving jury instructions. And his efforts to secure Mr. Manafort's cooperation stumbled after Mr. Manafort [violated his plea agreement](#) by repeatedly lying to federal investigators, according to prosecutors.

Mr. Weissmann [stepped down](#) from the special counsel's office this spring, shortly before the release of the Mueller report, and has returned to the faculty of N.Y.U. law school as a senior fellow with the school's Center on the Administration of Criminal Law. He is scheduled to teach a seminar in the fall on national security law and policy.

Publishers have been paying hefty sums for memoirs and tell-alls from former administration officials with insight into the turbulent Trump White House and Justice Department, and have had some blockbusters as a result. Mr. Comey's memoir, "A Higher Loyalty," sold more than one million copies, and Mr. McCabe's book, "The Threat," became an instant best seller, reaching No. 1 on Amazon.

More books from former Justice Department officials are in the pipeline. Peter Strzok, a former F.B.I. agent who worked on the Russia investigation and the inquiry into Hillary Clinton's private email server, is also working on a book about his experiences in the bureau, according to a person in the publishing industry with knowledge of his deal. Mr. Strzok became a frequent target of Mr. Trump's ire at what he termed "the deep state," and was fired last year after a Justice Department inspector general investigation revealed text exchanges where Mr. Strzok was critical of Mr. Trump.

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