

STATEMENT BY MICHAEL R. BROMWICH, COUNSEL TO ANDREW McCABE

The Office of the Inspector General (OIG) report served as the basis for Andrew McCabe's termination, 26 hours before he was scheduled to retire with a full law enforcement officer pension and health insurance. The rush to judgment – and the rush to terminate Mr. McCabe – were unprecedented, unseemly, and cruel. His treatment was far more harsh and far less fair than he deserved, and his reward for the loyalty he showed to his country over the course of his career was a truncated form of administrative due process, including the lack of any right to appeal outside the Department of Justice (DOJ).

The rush to termination was nothing short of extraordinary – a process that normally takes many months, if not longer, was completed in 23 days. The OIG first made its draft report available on February 21. Mr. McCabe was required to make an oral presentation and defense to the OIG on February 23 and was given an inflexible deadline to submit written comments on the draft report by February 26. Requests for additional time were denied. This timetable precluded counsel from being able to speak to witnesses and develop evidence that refuted the allegations against Mr. McCabe.

The next stage of the process likewise was accelerated in a way inconsistent with DOJ precedent and administrative due process. We were given access to the FBI-OPR administrative file for the first time on March 9 and were advised that the process could not and would not be extended past March 16, the last business day before Mr. McCabe's 50th birthday, when his full retirement benefits would vest. It was virtually impossible for us to review the extensive administrative record, prepare for a meeting with DOJ officials, and provide a final written submission in a week's time – but that is what we were compelled to do. We asked for more time, but that request was denied. This rush to the finish line was unfortunate and deeply unfair.

We were also troubled when we learned that Attorney General Sessions would be the final decision maker. For many months, the President has placed enormous – indeed unprecedented – pressure on the Attorney General, belittling him and expressing displeasure with his decisions, especially his decision to recuse himself from the Russia investigation. Taken together with the President's sustained and outrageous criticism of Mr. McCabe, including clearly expressing, via numerous tweets, his desire that Mr. McCabe be fired before he became eligible for his full retirement rights, the pressure on the Attorney General to terminate Mr. McCabe was enormous. Nevertheless, we requested that in the event of a recommendation to terminate, we be given the opportunity to meet with the Attorney General to make our case that termination was unjustified and inappropriate. We never received a response to the request.

Separate and apart from our profound concerns about the process, we believe the OIG report utterly failed to support the decision to terminate Mr. McCabe. In written submissions to the OIG and DOJ, we demonstrated that the charges were unsupported by the evidence and that the OIG's conclusions and the FBI-OPR proposal to terminate Mr. McCabe were unjustified.

The core weakness of the OIG report is the lack of any understandable motive for his alleged wrongdoing. It is undisputed that Mr. McCabe was one of three senior FBI officials authorized to share information with the media, including on sensitive investigative matters. He chose to exercise that authority in October 2016, during one of the most turbulent periods in the history of the Bureau, with the knowledge of Director Comey and other senior members of FBI management. His purpose was to protect the institutional reputation of the FBI against false claims, including that a sensitive investigation was being shut down for political reasons.

Mr. McCabe's recollection of discussions he had with Director Comey about this issue is extremely clear; Director Comey's recollection is, by his own acknowledgment, not at all clear. And yet two of the lack of candor allegations are based on Director Comey's admittedly vague and uncertain recollection of those discussions.

The other allegations of lack of candor against Mr. McCabe – based on statements he made to the FBI's Inspections Division and the OIG – are more properly understood as the result of misunderstanding, miscommunication, and honest failures of recollection based on the swirl of events around him, statements which he subsequently corrected. Again, Mr. McCabe had no motive to lie or mislead about media contacts he had the authority to direct, nor did he make any effort to coordinate accounts of the events in question with the two other FBI employees with whom he worked on trying to correct a potentially false narrative.

The rushed decision to terminate Mr. McCabe was not only unfair to him and to his family; it has sent a profoundly troubling message to the DOJ and FBI workforce about the harshness and lack of proportionality of the disciplinary process. That troubling message was reinforced, and made toxic, by the President's celebratory tweet hours after Mr. McCabe's termination.

The President has publicly demanded results from the OIG. His comments have applied inappropriate pressure on that office and DOJ more generally. No one, not even an independent Inspector General, is fully immune from the type of political pressure that has been applied in Mr. McCabe's case. When the President expressed his doubts about the OIG's capacity to handle matters properly within its jurisdiction, he further tainted the process.

During the course of his 21-year career, Mr. McCabe stepped up to accept every challenge the FBI and this country presented. He served this country with courage and distinction in a series of difficult and important assignments, including as Acting Director after the President's summary dismissal of Director Comey. Instead of conveying the thanks of a grateful nation, the President and the White House chose to subject Mr. McCabe to repeated *ad hominem* attacks, before and after his termination.

In the full context of this case, the termination of Mr. McCabe was completely unjustified. And the rush to fire him, at the goading of the President, was unworthy of the great traditions of the Department of Justice.

Michael R. Bromwich served as the Inspector General for the Department of Justice from 1994 to 1999. He has served as counsel to Andrew McCabe in this matter.

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