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September 29, 2020

Honorable Michael E. Horowitz  
Inspector General  
United States Department of Justice  
950 Pennsylvania Ave., NW  
4<sup>th</sup> floor  
Washington, DC. 20530

**Re: Request for Investigation**

Dear Inspector General Horowitz:

This is to request that your office investigate the misconduct of Federal Bureau of Investigation (FBI) and Department of Justice (DOJ) personnel in improperly denying our client, former FBI Deputy Director Andrew G. McCabe, access to specific materials in its possession relevant to testimony he has been requested to give before the Senate Judiciary Committee. Mr. McCabe has been asked to testify early next month regarding the Committee's "investigation" into "Crossfire Hurricane," the name for the FBI's investigation into the relationship between Russia and the 2016 presidential campaign of Donald Trump. We believe the FBI's actions in denying Mr. McCabe access to materials such as his personal calendars and his personal notes for the relevant periods – which would refresh Mr. McCabe's memory and enable him to provide complete and accurate testimony – is a violation of Mr. McCabe's rights, is contrary to fundamental fairness, and obstructs and impedes the ability of the Judiciary Committee to obtain the testimony it seeks.

We were contacted by Senate Judiciary Committee staff late last month, requesting that Mr. McCabe provide voluntary testimony to the Committee regarding "Crossfire Hurricane." Mr. McCabe willingly agreed to do so, provided that the Committee facilitate McCabe's gaining access to materials in the custody and control of the FBI that would assist him in providing such

testimony. As you know, Mr. McCabe fully cooperated with your investigation into the origins of the Russia investigation, which culminated in a report you issued in December 2019.<sup>1</sup>

The chronology of the FBI's and DOJ's misconduct in this matter is as follows. On September 8, I sent an email to Senate Judiciary Committee staff that memorialized an agreement reached orally several days earlier with Committee staff and that set forth the conditions under which Mr. McCabe would agree to testify voluntarily. A central condition was "Mr. McCabe will be provided access to relevant documents in advance of the hearing." Committee staff had previously agreed to that condition in principle pending identification of the specific materials. In that same email, we specified the materials to which Mr. McCabe sought access, including his calendars and personal notes from the relevant period. We asked staff to pass those requests on to the FBI. In response to my September 8 email, Committee staff responded, "We have already begun the process via the FBI of getting access to the relevant materials that you cite." We were subsequently advised by Committee staff that we would be contacted by the FBI to discuss our document requests and obtaining access to the documents.

On September 15, I was contacted by lawyers from the FBI to confirm the specifics of our document requests. We walked the FBI lawyers through the requests, explained the reasons for requesting the materials, and clarified some confusion about the date range for the requests. The FBI lawyers said they would discuss the requests internally and let us know their decision and would attempt to do so by the end of the week.

Instead of hearing back from the FBI, we learned from *Committee staff* the very next day, September 16, that the FBI considered our document access request "unmanageably voluminous" and reaching material "outside the topic or scope of the Crossfire Hurricane investigation" – in short, that the FBI was unwilling to facilitate Mr. McCabe's review of *any* of the requested documents. We immediately contacted the FBI's representatives and requested to speak with them to discuss their response to the requests.

On Friday, September 18, we spoke with two lawyers from the FBI's Office of General Counsel. We advised them that we had learned from the Committee that the FBI considered our document requests overbroad. In the interests of reaching an accommodation, we significantly narrowed our requests both in terms of substance and date range. At the core of our requests remained the materials any witness would want to refresh his recollection and ensure accurate testimony – calendars and personal notes from the relevant period. It was clear throughout the call that the FBI had made no efforts to determine the volume of materials that would need to be produced in response to the requests despite its characterizations to the Committee.

The FBI lawyers' objection to producing Mr. McCabe's calendars was that they might contain classified material. Even a cursory check would have demonstrated to the FBI lawyers that the calendars were kept on an unclassified FBI system. Notwithstanding the clear lack of

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<sup>1</sup> *Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation* (December 2019).

diligence by the FBI in investigating our requests, we proceeded during that same phone call to substantially narrow those requests. As to Mr. McCabe's personal notebooks, the FBI lawyers argued that information beyond Crossfire Hurricane-related information would be included in McCabe's notebooks and that somehow this would be inappropriate, even though these notes were all made by Mr. McCabe himself.

The FBI lawyers then inadvertently shared part of their actual agenda, stating, "Of course, we are in an interesting posture ourselves given the ongoing litigation," clarifying that they were referring to Mr. McCabe's civil lawsuit alleging that DOJ and the FBI acted unlawfully in terminating his employment with the FBI in early 2018. In short, the FBI lawyers were acknowledging that a factor in their deliberations, if not the overriding factor, was that somehow Mr. McCabe might review materials that could somehow be used to his advantage in his civil suit.

At the conclusion of the September 18 telephone call, we requested that the FBI provide a response early during the week of September 22. The FBI lawyers committed to getting back to us no later than September 22 after they consulted their superiors. When we asked who in the FBI would be making the decision, one of the FBI lawyers said, "A variety of different decision makers. It is a unique circumstance, especially given the ongoing litigation."<sup>2</sup>

On September 23, one of the FBI lawyers with whom we had been dealing called me to say that even though we had significantly narrowed our document access requests, the FBI continued to deem our requests "burdensome and overbroad," without explaining how the FBI had come to that determination. Further, the FBI lawyers said the Bureau "has a policy of generally not providing documents to former employees and does not see a basis to make an exception to that policy under these circumstances." Our follow-up request to be provided with a copy of the "policy" has gone answered.

We do not believe such a policy exists, but instead that the FBI has made a discretionary decision, very likely in consultation with DOJ leadership that has borne animus towards Mr. McCabe for the last three years, and at least in part because of his pending civil litigation against DOJ and the FBI. In addition, the FBI lawyers with whom we have dealt have disingenuously led us to believe that if we narrowed our requests, they would seriously consider providing us with access, as Senate Judiciary Committee had pledged at the outset. We have been chasing an illusion.

The facts and circumstances described in this request for an OIG investigation demonstrate that the FBI has improperly and unjustifiably blocked Mr. McCabe from obtaining access to materials that would refresh and enhance his recollection of matters that occurred

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<sup>2</sup> On September 24, 2020, Judge Randolph Moss of the United States District Court for the District of Columbia denied in full the Justice Department's motions to dismiss Mr. McCabe's civil suit and for summary judgment. *McCabe v. Barr*, -- F. Supp 3d --, 2020 WL 5668711 (D.D.C. Sept. 24, 2020). The case will now move to discovery.

several years ago in connection with his upcoming Senate Judiciary Committee testimony. The FBI's decisions, likely in consultation with DOJ leadership, violate Mr. McCabe's rights to be properly prepared to testify under oath, is contrary to fundamental fairness, and as a result works to obstruct and impede the Senate Judiciary Committee's investigation.

We ask that you investigate these allegations promptly and thoroughly. We believe you will determine they are supported by substantial evidence. If that is the case, we request that you identify who in the FBI and DOJ is responsible for the decisions to deprive Mr. McCabe of fair and reasonable access to relevant materials, and refer the matter to appropriate personnel to impose sanctions on those found responsible.

Please let me know if you need any further information.

Very truly yours,



Michael R. Bromwich

Cc: Honorable William Pelham Barr  
Attorney General

Honorable Christopher A. Wray  
Director  
Federal Bureau of Investigation

Honorable Lindsey Graham  
Chairman  
Senate Judiciary Committee

Honorable Dianne Feinstein  
Ranking Member  
Senate Judiciary Committee