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October 3, 2020

Honorable Lindsey Graham
Chairman
Senate Judiciary Committee
Washington, DC. 20530

Re: October 6 Scheduled Testimony

Dear Chairman Graham:

This is to advise you that my client, former FBI Deputy Director Andrew G. McCabe, will not appear at the hearing currently scheduled for Tuesday, October 6, and entitled “Oversight of the Crossfire Hurricane Investigation: Day 4.” The reason is the manifest danger of doing so in the face of an outbreak of the Covid-19 virus among members of the Committee and its staff, the full scope of which cannot be known at this time and will not be known by Tuesday. Mr. McCabe is eager to testify voluntarily and in person at a future date when it is safe to do so.

As you know, Mr. McCabe has been willing to testify voluntarily and in person from the moment we were originally contacted by your staff early last month. From the outset, we established several conditions, one of which is that his testimony be provided in person rather than using Zoom or some other videoconferencing platform. The reason for that condition was – and is – because a witness answering questions remotely via videoconference is at a distinct disadvantage in answering those questions. We witnessed this disadvantage during the testimony of former Deputy Attorney General Sally Yates on August 5, 2020, when you and other members of the Committee frequently interrupted and spoke over Ms. Yates so that many of her answers could not be understood. We witnessed the same dynamic during last week’s Committee hearing when former FBI Director James B. Comey was interrupted by you and other members while he was giving answers, to the point that Senator Whitehouse had to request that you stop doing so.

Mr. McCabe established various other conditions for his voluntary testimony a month ago. Even though one of the most important among those conditions – obtaining access to

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various materials that would refresh his recollection, including his unclassified FBI personal calendars and his personal notes – was not met by the Department of Justice and the FBI,¹ Mr. McCabe was still prepared to testify voluntarily and in person on October 6 as recently as the latter part of this past week. However, since that time, it has been reported that at least two members of your Committee – Senators Mike Lee and Thom Tillis – have tested positive for Covid-19, and it may well be that other members of the Committee and staff who plan to attend the hearing will test positive between now and then, or may have been exposed to the virus and may be a carrier. Under these circumstances, an in-person hearing carries grave safety risks to Mr. McCabe, me, and senators and staff who would attend.

Mr. McCabe is willing, able, and eager to testify in person about Crossfire Hurricane at any time in the future when it is safe to do so. But he is not willing to put his family's health at risk to do so. For these reasons, we are unwilling to appear in person for the October 6 hearing; and for reasons of fairness, we are unwilling to testify remotely. A fair and appropriate hearing of this kind – which is complex and contentious – simply cannot be conducted other than in person.

Very truly yours,



Michael R. Bromwich

Cc: Honorable Dianne Feinstein
Ranking Member

¹ We copied you on our September 29 letter to DOJ Inspector General Michael E. Horowitz requesting an investigation into the egregious denial of access to these materials on transparently specious grounds.