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June 4, 2018

Honorable Charles E. Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington D.C. 20510-6275

Re: Response to Letters of May 30 and May 31, 2018

Dear Senator Grassley:

We represent former FBI Deputy Director Andrew McCabe. This letter responds to your letters, dated May 30, 2018 ("May 30 Letter"), and May 31, 2018 ("May 31 Letter").

The May 30 Letter invited Mr. McCabe to testify at a hearing entitled, "Examining the Inspector General's First Report on Justice Department Decisions Regarding the 2016 Presidential Election." In an exchange of emails with your staff on May 31, I pointed out that Mr. McCabe was not one of the key decisionmakers during the events described in the forthcoming Office of the Inspector General (OIG) report that will be the focus of the hearing, as reflected in the draft OIG report we recently reviewed. In response, your staff acknowledged the actual purpose for the invitation – to explore "the circumstances of Mr. McCabe's termination and the IG's role in that," which of course has nothing to do with the stated central purpose of the hearing. Shortly after the email exchange with your staff, we received the May 31 Letter, in which you stated, "I consider it very likely that Mr. McCabe's termination and issues related to it will arise during the course of the hearing." May 31 Letter at 2.

Letter to Chairman Grassley

June 4, 2018

Page 2

In addition to reaffirming the invitation to testify, you have requested information and materials relevant to Mr. McCabe. The May 31 Letter requests emails that we have argued demonstrate that Mr. McCabe advised former Director Comey, in October 2016, that Mr. McCabe was working with FBI colleagues to correct inaccuracies before certain media stories were published. The May 31 Letter also asks for the March 16, 2018, formal reply we submitted to the Department of Justice during the proceedings that led to Mr. McCabe's termination.

Unfortunately, we are unable to provide the materials you requested, but we can share information about them. The emails in question are dated October 21, 2016, and October 23, 2016. Both are from Mr. McCabe to Director Comey, and included as recipients other senior FBI executives. We do not have the emails. We received copies of them in response to specific requests we made for relevant and exculpatory emails during the unconstitutionally truncated administrative process by which Mr. McCabe's employment was terminated. However, pursuant to the non-disclosure agreement that Mr. McCabe and counsel were required to sign as a pre-condition to obtaining temporary access to relevant materials, we were required to return everything that had been shared with us, including those emails. Separately, the FBI has prohibited us from sharing our formal March 16, 2018, reply on the grounds that doing so would violate the same non-disclosure agreement. We previously received from Congressional staff a similar request for our reply and sought the FBI's permission to share it. The FBI objected in writing on April 18, 2018. Upon receiving your May 31 Letter, we have again contacted the FBI. Although the agency has acknowledged this most recent request, we have not yet received a substantive response. Without the FBI's consent, we are unable to produce the reply.

Mr. McCabe welcomes your invitation to testify and is eager to answer any questions that you or other members of the Committee have about the events that relate to his termination, both the underlying events and the rush to judgment and dismissal. He has a credible and compelling story to tell. However, as the result of a stream of leaks from the Department of Justice, it is now well-known that the OIG has made a criminal referral to the United States Attorney's Office for the District of Columbia. As you know, the grounds for such a referral is the very low standard of "reasonable grounds to believe there has been a violation of Federal criminal law." 5 U.S.C. App. 3 § 4(d). Even so, and even though Mr. McCabe committed no crime, these leaks have forced us to acknowledge the criminal referral. And, unfortunately, the stream of leaks has continued: As recently as last Thursday, additional leaks led to the reporting of specific investigative steps allegedly taken by the United States Attorney's Office in response to the referral. We are outraged by these leaks and last Friday requested an

Letter to Chairman Grassley
June 4, 2018
Page 3

investigation by the Department of Justice's Office of Professional Responsibility into the source(s) of the leaks.

Mr. McCabe is willing to testify, but because of the criminal referral, he must be afforded suitable legal protection. Accordingly, we hereby request that the Judiciary Committee authorize a grant of use immunity to Mr. McCabe, pursuant to Section 6002 of Title 18 of the United States Code. This Committee has the authority under Section 6002 to obtain a court order compelling Mr. McCabe to testify, and granting him immunity for his testimony. *See* 18 U.S.C. § 6002(3). Under the terms of such a grant of use immunity, no testimony or other information provided by Mr. McCabe could be used against him in any criminal case.

This is a textbook case for granting use immunity. This Committee and other committees in both the Senate and House are eager to hear Mr. McCabe's testimony; Mr. McCabe is eager to give such testimony; he has a legitimate fear of criminal prosecution based on the criminal referral that has already been made, the irregularities in the process by which he was terminated, and the improper command influence that continues to be exercised by the President of the United States; and if there is a criminal case to be made, which we vigorously dispute, the relevant witnesses are known and they have already given sworn testimony during the OIG's investigation.

For these reasons, we urge this Committee to apply for a Court order compelling Mr. McCabe's testimony and granting him use immunity. If this Committee is unwilling or unable to obtain such an order, then Mr. McCabe will have no choice but to invoke his Fifth Amendment privilege against self-incrimination.

Please let us know if you have any questions.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Michael R. Bromwich", written in a cursive style.

Michael R. Bromwich

cc: Honorable Dianne Feinstein