

# CREW | citizens for responsibility and ethics in washington

May 12, 2017

The Honorable Rod J. Rosenstein  
Deputy Attorney General  
United States Department of Justice  
950 Pennsylvania Ave., NW  
Washington, D.C. 20530-0001

Dear Deputy Attorney General Rosenstein:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Department of Justice appoint a special counsel to investigate whether President Donald J. Trump or any others obstructed justice in firing Federal Bureau of Investigation Director James Comey in order to impede investigations including the FBI’s ongoing investigation into Russian interference with the 2016 presidential election and potential collusion between Russia and the Trump campaign. We understand that opening such an investigation is a momentous step, and the decision to do so should not be taken lightly. But given the emerging and troubling evidence of potential obstruction, we believe that there is no acceptable alternative to an immediate and credible investigation to resolve these questions.

On March 20, 2017, Director Comey testified before the House Intelligence Committee that the FBI is investigating “the Russian government’s efforts to interfere in the 2016 presidential election and that includes investigating the nature of any links between individuals associated with the Trump campaign and the Russian government and whether there was any coordination between the campaign and Russia’s efforts.”<sup>1</sup> Comey confirmed on May 3, 2017 to the Senate Judiciary Committee that the investigation was ongoing.<sup>2</sup> Press reports indicate that the investigation was “heating up” with Comey receiving “daily instead of weekly updates on the investigation.”<sup>3</sup> On May 9, 2017, CNN reported that that federal prosecutors had issued grand jury subpoenas requesting business records from associates of former National Security Advisor Michael Flynn “as part of the ongoing probe of Russian meddling in last year’s election.”<sup>4</sup> In

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<sup>1</sup> Full transcript: FBI Director James Comey testifies on Russian interference in 2016 election, *Washington Post*, Mar. 20, 2017, available at [https://www.washingtonpost.com/news/post-politics/wp/2017/03/20/full-transcript-fbi-director-james-comey-testifies-on-russian-interference-in-2016-election/?utm\\_term=.66cf59b82134](https://www.washingtonpost.com/news/post-politics/wp/2017/03/20/full-transcript-fbi-director-james-comey-testifies-on-russian-interference-in-2016-election/?utm_term=.66cf59b82134).

<sup>2</sup> Read the full testimony of FBI Director James Comey in which he discusses Clinton email investigation, *Washington Post*, May 3, 2017, available at [https://www.washingtonpost.com/news/post-politics/wp/2017/05/03/read-the-full-testimony-of-fbi-director-james-comey-in-which-he-discusses-clinton-email-investigation/?utm\\_term=.2daa1b46479a](https://www.washingtonpost.com/news/post-politics/wp/2017/05/03/read-the-full-testimony-of-fbi-director-james-comey-in-which-he-discusses-clinton-email-investigation/?utm_term=.2daa1b46479a).

<sup>3</sup> Shane Harris and Carol E. Lee, *Comey’s Firing Came as Investigators Stepped Up Russia Probe*, *Wall Street Journal*, May 10, 2017, available at <https://www.wsj.com/articles/james-comey-had-requested-more-money-for-fbi-s-russia-investigation-before-being-fired-u-s-official-1494433061>.

<sup>4</sup> Evan Perez, Shimon Prokupez, and Pamela Brown, *CNN exclusive: Grand jury subpoenas issued in FBI’s Russian investigation*, *CNN*, May 9, 2017, available at <http://www.cnn.com/2017/05/09/politics/grand-jury-fbi-russia/>.

addition, both the House Intelligence Committee and the Senate Intelligence Committee have publicly announced investigations into the same set of issues.<sup>5</sup>

Hours after reporters first learned of the grand jury subpoenas, President Trump fired Director Comey. Initial White House statements primarily, and strenuously, indicated that the firing was a result of recommendations from Attorney General Jeff Sessions and you because of alleged mishandling of the investigation of Secretary of State Hillary Clinton's private email server.<sup>6</sup>

However, the statements of President Trump himself and several of his key advisers, as well as subsequent reporting, have clarified that the firing happened because of President Trump's unhappiness with the Russia investigation and that he and his advisors wanted the investigation to end. According to President Trump, he was thinking of the Russia issue when he fired Director Comey, telling NBC News, "And in fact when I decided to just do it, I said to myself, I said you know, this Russia thing with Trump and Russia is a made up story, it's an excuse by the Democrats for having lost an election that they should have won."<sup>7</sup> Although he indicated he wanted the Russian investigation to be "absolutely done properly," President Trump stated that it "should have been over with a long time ago."<sup>8</sup> The *Washington Post* also cited accounts of officials from the White House and other government agencies to assert in connection with the firing, "Trump was frustrated when Comey revealed in Senate testimony the breadth of the counterintelligence investigation into Russia's effort to sway the 2016 U.S. presidential election. And he fumed that Comey was giving too much attention to the Russia probe and not enough to investigating leaks to journalists."<sup>9</sup> The *New York Times* also reported yesterday that at a private dinner soon after President Trump was inaugurated in January – when the FBI was already investigating Russia's possible intervention in the election – Director Comey repeatedly refused to pledge his loyalty to President Trump.<sup>10</sup>

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<sup>5</sup> See U.S. Senate Select Committee on Intelligence, "Joint Statement on Committee Inquiry into Russian Intelligence Activities," Jan. 13, 2017, available at <https://www.intelligence.senate.gov/press/joint-statement-committee-inquiry-russian-intelligence-activities>; House Permanent Select Committee on Intelligence, "Intelligence Committee Chairman, Ranking Member Establish Parameters for Russia Investigation," Mar. 1, 2017, available at <https://intelligence.house.gov/news/documentsingle.aspx?DocumentID=767>.

<sup>6</sup> Philip Rucker, Trump threatens to cancel White House briefings because it is 'not possible' for his staff to speak with 'perfect accuracy, *Washington Post*, May 12, 2017, available at [https://www.washingtonpost.com/news/post-politics/wp/2017/05/12/trump-threatens-to-cancel-white-house-briefings-because-it-is-not-possible-to-always-tell-the-truth/?hpid=hp\\_rhp-top-table-main\\_pressbriefing-840a%3Ahomepage%2Fstory&utm\\_term=.a326a8fde1f0](https://www.washingtonpost.com/news/post-politics/wp/2017/05/12/trump-threatens-to-cancel-white-house-briefings-because-it-is-not-possible-to-always-tell-the-truth/?hpid=hp_rhp-top-table-main_pressbriefing-840a%3Ahomepage%2Fstory&utm_term=.a326a8fde1f0).

<sup>7</sup> Partial transcript: NBC News Interview with Donald Trump, *CNN*, May 11, 2017, available at <http://www.cnn.com/2017/05/11/politics/transcript-donald-trump-nbc-news/>.

<sup>8</sup> *Id.*

<sup>9</sup> Philip Rucker, Ashley Parker, Sari Horowitz and Robert Costa, Inside Trump's anger and impatience and his sudden decision to fire Comey, *Washington Post*, May 10, 2017, available at [https://www.washingtonpost.com/politics/how-trumps-anger-and-impatience-prompted-him-to-fire-the-fbi-director/2017/05/10/d9642334-359c-11e7-b373-418f6849a004\\_story.html?tid=pm\\_politics\\_pop&utm\\_term=.55e457859f58](https://www.washingtonpost.com/politics/how-trumps-anger-and-impatience-prompted-him-to-fire-the-fbi-director/2017/05/10/d9642334-359c-11e7-b373-418f6849a004_story.html?tid=pm_politics_pop&utm_term=.55e457859f58).

<sup>10</sup> Michael S. Schmidt, In a Private Dinner, Trump Demanded Loyalty. Comey Demurred, *New York Times*, May 11, 2017, available at <https://www.nytimes.com/2017/05/11/us/politics/trump-comey-firing.html>.

This morning, President Trump tweeted, “James Comey better hope that there are no ‘tapes’ of our conversations before he starts leaking to the press!”<sup>11</sup> He also acknowledged the inaccuracy of the initial White House explanations in a tweet this morning, writing, “As a very active President with lots of things happening, it is not possible for my surrogates to stand at podium with perfect accuracy!....”<sup>12</sup> In addition, Principal Deputy White House Press Secretary Sarah Huckabee Sanders said on May 11 about the Russia investigation, “[W]e want this to come to its conclusion. We want it to come to its conclusion with integrity. And we think that we’ve actually, by removing Director Comey, taken steps to make that happen.”<sup>13</sup>

Federal law includes several key criminal obstruction of justice statutes. Section 1503 of the criminal code provides for criminal penalties for whoever “corruptly ... influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice.” 18 U.S.C. § 1505 provides for criminal penalties for whoever “corruptly ... influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress.” 18 U.S.C. § 1512(c) provides for criminal penalties for “[w]hoever corruptly ... obstructs, influences, or impedes any official proceeding, or attempts to do so.” 18 U.S.C. § 1515 provides relevant definitions, clarifying that “official proceeding” includes a proceeding before a federal grand jury or a federal government agency authorized by law and that “corruptly” for the purpose of § 1505 means “acting with an improper purpose ... including making a false or misleading statement, or withholding, concealing, altering or destroying a document or other information.”

President Trump’s statements, together with the reported statements of other senior officials, indicate that the decision to fire Director Comey was made in connection with the ongoing investigation into Russian interference with the election and possible collusion between Russia and the Trump campaign. President Trump has consistently made clear his anger about the investigation, and his and Ms. Sanders’ statements make clear that he and other White House officials want the investigation to end quickly. The statements suggest that Director Comey may have in fact been fired to bring about that result. If Director Comey was fired for the improper purpose of influencing the conduct of the FBI’s investigation, the grand jury proceeding, or congressional and other investigations that relied on information from Director Comey and the

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<sup>11</sup> Philip Rucker, Trump suggests there may be ‘tapes’ of his private conversations with former FBI director, *The Washington Post*, May 12, 2017, available at [https://www.washingtonpost.com/news/post-politics/wp/2017/05/12/trump-suggests-there-may-be-tapes-of-his-private-conversations-with-former-fbi-director/?hpid=hp\\_rhp-top-table-main\\_trumpcomey-940a%3Ahomepage%2Fstory&utm\\_term=.b8a7e55ea66b](https://www.washingtonpost.com/news/post-politics/wp/2017/05/12/trump-suggests-there-may-be-tapes-of-his-private-conversations-with-former-fbi-director/?hpid=hp_rhp-top-table-main_trumpcomey-940a%3Ahomepage%2Fstory&utm_term=.b8a7e55ea66b).

<sup>12</sup> Rucker, Trump threatens to cancel White House briefings because it is ‘not possible’ for his staff to speak with ‘perfect accuracy, *Washington Post*, May 12, 2017.

<sup>13</sup> The White House, “Press Briefing by Principal Deputy Press Secretary Sarah Sanders and Homeland Security Advisor Tom Bossert,” May 11, 2017, available at <https://www.whitehouse.gov/the-press-office/2017/05/11/press-briefing-principal-deputy-press-secretary-sarah-sanders-and>.

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FBI,<sup>14</sup> he may have violated one or more federal obstruction of justice laws. Moreover, the fact that White House officials initially presented an explanation for the firing that President Trump himself has now conceded was inaccurate could suggest that the President or other White House officials were attempting to conceal with false statements an improper purpose for the firing.

Only a thorough and independent investigation will be able to ascertain whether or not a monumentally serious offense – obstruction of investigations by the President or his senior advisors – has occurred. Attorney General Sessions is appropriately recused from this matter. Because you participated in the decision to fire Director Comey, the best practice would be for you to refer the appointment of a special counsel to an appropriate career Department of Justice official. For the nation to have confidence in its leadership and its institutions, it is essential that such an investigation commence at once.

Sincerely,



Noah Bookbinder  
Executive Director  
Citizens for Responsibility and Ethics in Washington

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<sup>14</sup> See, e.g., Senator Richard Burr, Statement from Senate Intel Chairman Burr on the Dismissal of FBI Director Comey, May 9, 2017, available at <https://www.burr.senate.gov/press/releases/statement-from-senate-intel-chairman-burr-on-the-dismissal-of-fbi-director-comey> (“I have found Director Comey to be a public servant of the highest order, and his dismissal further confuses an already difficult investigation by the Committee.”)