

Criminal referral filed against former FBI deputy director

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20 April 2018

The inspector general (IG) of the Justice Department has filed a criminal referral against former FBI Deputy Director Andrew McCabe with the US Attorney for the District of Columbia. The action could lead to the criminal prosecution of McCabe for misleading other officials and the IG office itself in its investigation into how the FBI handled the Clinton email controversy.

Attorney General Jeff Sessions fired McCabe last month after the release of an IG report that made similar charges against the deputy director. In addition to losing his position only one day before his pension was to be fully vested, McCabe now faces the possibility of criminal charges.

The US attorney for the District of Columbia, Jessie K. Liu, is a Trump appointee who was confirmed by the Senate last September. Liu's boss, the president, has repeatedly tweeted that McCabe is a liar who should be prosecuted and jailed, meaning the prosecutor will be under direct pressure from above to move ahead with criminal charges.

The criminal referral is an indication of the extreme tensions building up within the American state. While the anti-Russia investigation against Trump, instigated by sections of the military-intelligence apparatus and backed by the Democrats, continues at full blast, the White House is striking back at its opponents, even threatening to send former top officials to jail.

The criminal charges against McCabe are as flimsy and concocted as the claims of collusion with Russia directed against Trump. McCabe is charged in the inspector general's report with concealing from his own boss—then-FBI Director James Comey—that he had authorized leaking information about the Clinton investigation to the *Wall Street Journal* in October 2016, apparently to rebut lower-level FBI agents who were telling the *Journal* that McCabe was stalling a

probe of the Clinton Foundation.

The leaking itself did not violate any law, as McCabe, as deputy director, had the authority to speak with the press and to disclose sensitive information if he felt it necessary. The issue is whether he concealed this action after the fact.

If the IG report is to be believed, McCabe's statement to Comey violated FBI procedures but was not itself illegal. However, under questioning by the inspector general's office, McCabe denied being the source of the leak on three occasions, each time under oath. This is the offense for which he could now face criminal prosecution and, if convicted, a sentence of up to five years in prison.

McCabe and his lawyers have denounced the IG report and have likewise attacked the criminal referral, while attempting to dismiss its significance. McCabe has claimed that the IG investigation and other legal actions taken against him are aimed at discrediting him as a potential witness in the Russia investigation by special counsel Robert Mueller.

Michael R. Bromwich, his lead attorney, issued a statement saying, "We were advised of the referral within the past few weeks. Although we believe the referral is unjustified, the standard for an IG referral is very low. We have already met with staff members from the US Attorney's Office. We are confident that, unless there is inappropriate pressure from high levels of the Administration, the US Attorney's Office will conclude that it should decline to prosecute."

In addition to the charges relating to alleged deception of other FBI and Justice Department officials, McCabe is also the target of congressional Republicans. A group of 11 House Republicans sent a letter to Attorney General Sessions and FBI Director Christopher Wray demanding an investigation into

whether McCabe or other officials committed crimes in relation to the Clinton email investigation, the investigation into Russian interference in the 2016 elections and other matters.

Meanwhile, there were further indications that the Trump White House is gearing up for a confrontation with the Mueller investigation, with the goal of bringing the probe to an end. Late Thursday afternoon, former New York Mayor Rudolph Giuliani, a former US attorney, revealed that he had agreed to join the Trump legal defense team formed to deal with the Mueller investigation.

Giuliani and two other attorneys, Jane and Martin Raskin, are replacing John Dowd, who quit last month after reported disagreements with Trump over relations with the Mueller probe. Dowd was reported to be adamantly opposed to Trump giving any sworn testimony to Mueller.

Giuliani told the press that his first task after joining the team will be to “find out what Bob Mueller needs to complete the investigation.” He continued, “I’m pretty sure we can comply with it,” but said no decision had been made on whether that included Trump testifying under oath before the special counsel.

In response to media inquiries, Giuliani said that he had no indication of any plans by Trump to fire special counsel Mueller, but he could give no such assurances for Deputy Attorney General Rod Rosenstein, Mueller’s immediate supervisor. The dismissal of Rosenstein would be the first step to firing Mueller, since the special counsel can be discharged only by his Justice Department supervisor, and then only for “just cause.”

Trump, however, downplayed talk of such firings. Speaking Wednesday at his Mar-a-Lago estate, Trump said that despite media predictions, he had no plans dismiss Mueller or Rosenstein. “They’ve been saying I’m going to get rid of them for the last three months, four months, five months,” he said. “And they’re still here. We want to get the investigation over with, done with, put it behind us. And we have to get back to business.”



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