

May 10, 2017

Hon. Rod J. Rosenstein
Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Deputy Attorney General Rosenstein:

Our organizations are deeply concerned about the actions taken yesterday by President Donald Trump and Attorney General Jeff Sessions in firing FBI Director James Comey.

As you know, Mr. Comey was leading an FBI investigation into Russian involvement in the 2016 presidential election and any role that may have been played by the Trump campaign and by associates of President Trump. This is an investigation that could reach White House officials and potentially the President himself.

The investigation could also reach Attorney General Sessions who had previously recused himself from any involvement in the Russia investigation. As a leading participant in the Trump campaign, he is a potential subject of the investigation. His recusal has left you as the senior Justice Department official in charge of this investigation.

We call on you to promptly appoint an independent Special Counsel, as authorized by Justice Department regulations, to now oversee the Russia investigation that Director Comey was leading for the FBI when he was fired yesterday.

To put it simply, President Trump yesterday inappropriately fired the FBI Director who was leading an investigation into whether the Trump presidential campaign colluded with Russian agents to influence the results of the 2016 presidential election.

Attorney General Sessions inappropriately recommended firing the FBI Director who was leading the Russia investigation, and in doing so failed to comply with his public commitment to recuse himself from any role in this investigation. The fact that a different matter was cited as the basis for firing Director Comey is irrelevant to the reality that, as a practical matter, Sessions directly intervened in the Russia investigation in contravention of his recusal obligation.

Furthermore, you are also involved in this action, having written a memo to Attorney General Sessions that recommended the firing of Director Comey, barely two weeks after you assumed office as Deputy Attorney General. Your personal involvement in the firing of Director

Comey undermines your ability to continue to lead the Justice Department's Russia investigation.

Having fired Director Comey following a recommendation by Attorney General Sessions, President Trump is now in position to name a new FBI director who is then supposed to investigate the 2016 Trump presidential campaign and possibly President Trump himself.

The chain of events has left the Justice Department with no public credibility in conducting one of the most important investigations undertaken by the Justice Department since the historic Watergate investigation.

With the integrity and public credibility of the Justice Department clearly at stake now, it is incumbent upon you, and within your authority, to promptly appoint an independent Special Counsel to oversee the Russia investigation and to make all decisions about whether criminal prosecutions are warranted.

Justice Department regulations state that the Attorney General, "or in cases in which the Attorney General is recused, the Acting Attorney General":

will appoint a Special Counsel when he or she determines that a criminal investigation of a person or matter is warranted and—

(a) That investigation or prosecution of that person or matter by a United States Attorney's Office or litigating Division of the Department of Justice would present a conflict of interest for the Department or other extraordinary circumstances; and

(b) That under the circumstances, it would be in the public interest to appoint an outside Special Counsel to assume responsibility for this matter.

28 C.F.R. § 600.1 (emphasis added).

The explanation of this regulation at the time it was promulgated in 1999 states that it is intended to provide for the appointment of a Special Counsel "when the Attorney General concludes that extraordinary circumstances exist such that the public interest would be served by removing a large degree of responsibility for the matter from the Department of Justice." 64 Fed. Reg. 37038 (July 9, 1999).

This standard is clearly met here.

In your memo recommending the firing of Director Comey, you state that the FBI was "unlikely to regain public and congressional trust until it has a director who understands the gravity of the mistakes."

Given your view of the need for "public and congressional trust" in the FBI, that same standard certainly holds true for the Justice Department. "Public and congressional trust" in the

Justice Department cannot be restored unless and until you act to protect the integrity and credibility of the Department by promptly appointing an independent Special Counsel.

Under the “extraordinary circumstances” present here, the Justice Department regulation requires you to now appoint a Special Counsel. Given the provisions of the regulation, it would be wrong for you to control the Russia investigation after you and Attorney General Sessions have participated in the firing of Director Comey, particularly because the investigation itself may involve the Attorney General as well as Trump campaign operatives and White House officials, and potentially the President himself.

In the context of the regulation, it “would be in the public interest to appoint an outside Special Counsel” to assume responsibility for these matters. The language of the regulation states that an independent Special Counsel “will” be appointed in the circumstances involved here.

The regulation authorizes an independent Special Counsel to “exercise, within the scope of his or her jurisdiction, the full power and independent authority to exercise all investigative and prosecutorial functions of any United States Attorney.” *Id.* at § 600.6. As explained in the document promulgating the regulation:

The Special Counsel would be free to structure the investigation as he or she wishes and to exercise independent prosecutorial discretion to decide whether charges should be brought, within the context of established procedures of the Department.

64 Fed. Reg. 37038.

The integrity and credibility of the Justice Department are at stake here. In the wake of yesterday’s extraordinary firing of the FBI Director, you need to act immediately to restore public confidence in the Justice Department and in its investigation of Russian interference in the 2016 election by appointing an independent Special Counsel to lead that investigation.

Sincerely,

American Oversight
 Brennan Center for Justice
 Center for Media and Democracy
 Common Cause
 CREW
 Demand Progress
 Democracy 21
 Demos
 Every Voice
 Free Speech for People
 Kathleen Clark
 MAYDAY America
 Norman Eisen, chief White House ethics lawyer, 2009-2011

Norman Ornstein
People for the American Way
Project On Government Oversight
Public Citizen
Richard Painter, chief White House ethics lawyer 2005-2007
Represent.Us
Revolving Door Project
Sarah Chayes
Sunlight Foundation
The Agenda Project
United to Protect Democracy