

James Comey Didn't Even See It Coming

President Donald Trump, at the recommendation of both Deputy Attorney General Rod Rosenstein and Attorney General Jeff Sessions, fired FBI Director James Comey on Tuesday night over his handling of the investigation into former Secretary of State Hillary Clinton.

The president's letter to the director stated:

I have received the attached letters from the Attorney General and Deputy Attorney General of the United States recommending your dismissal as the Director of the Federal Bureau of Investigation. I have accepted their recommendation and you are hereby terminated and removed from office, effective immediately.

While I greatly appreciate you informing me, on three separate occasions, that I am not under investigation, I nevertheless concur with the judgment of the Department of Justice that you are not able to effectively lead the Bureau.

It is essential that we find new leadership for the FBI that restores public trust and confidence in its vital law enforcement mission.

I wish you the best of luck in your future endeavors.

Comey didn't even see it coming. In fact, he wasn't at FBI Headquarters when the termination letter arrived, so he learned about it by watching the news. According to *The Washington Examiner*, he at first joked about the reports, thinking they were a prank, until a staffer confirmed they were true.

Immediately, Washington happened.

Liberals, who less than a week earlier, were calling for the president to fire Comey, were suddenly outraged that he had done so. Senate Minority Leader Chuck Schumer declared it was a “Nixon-level coverup” that proves the president was colluding with Russia.

The compliant liberal mainstream media didn’t help matters by distorting the rationale behind the termination. Some even went so far as to suggest there was now a pattern of dismissals of key law enforcement figures who were engaged in investigations of the president—former U.S. Attorney Preet Bharara, former acting Attorney General Sally Yates and now Comey—again, distorting the truth.

Bharara was terminated when he refused to offer his resignation when asked for it as part of the president’s effort to appoint his own corps of U.S. attorneys. Yates was terminated for refusing to comply with a lawful directive from the president. Comey was terminated for incompetence.

Rosenstein’s letter recommending the FBI director be fired appears to have been the catalyst that led to the president’s actions. In that letter, the deputy attorney general wrote:

The Federal Bureau of Investigation has long been regarded as our nation’s premier federal investigative agency. Over the past year, however, the FBI’s reputation and credibility have suffered substantial damage, and it has affected the entire Department of Justice. That is deeply troubling to many Department employees and veterans, legislators and citizens.

The current FBI Director is an articulate and persuasive speaker about leadership and the immutable principles of the Department of Justice. He deserves our appreciation for his public service. As you and I have discussed, however, I cannot defend the director’s handling of the conclusion of

the investigation of Secretary Clinton's emails, and I do not understand his refusal to accept the nearly universal judgment that he was mistaken. Almost everyone agrees that the director made serious mistakes; it is one of the few issues that unites people of diverse perspectives.

The director was wrong to usurp the attorney general's authority on July 5, 2016, and announce his conclusion that the case should be closed without prosecution. It is not the function of the director to make such an announcement. At most, the director should have said the FBI had completed its investigation and presented its findings to federal prosecutors. The director now defends his decision by asserting that he believed attorney general Loretta Lynch had a conflict. But the FBI director is never empowered to supplant federal prosecutors and assume command of the Justice Department. There is a well-established process for other officials to step in when a conflict requires the recusal of the attorney general. On July 5, however, the director announced his own conclusions about the nation's most sensitive criminal investigation, without the authorization of duly appointed Justice Department leaders.

Compounding the error, the director ignored another longstanding principle: we do not hold press conferences to release derogatory information about the subject of a declined criminal investigation. Derogatory information sometimes is disclosed in the course of criminal investigations and prosecutions, but we never release it gratuitously. The director laid out his version of the facts for the news media as if it were a closing argument, but without a trial. It is a textbook example of what federal prosecutors and agents are taught not to do.

In response to skeptical question at a congressional hearing, the director defended his remarks by saying that his "goal was to say what is true. What did we do, what did we find, what do we think about it." But the goal of a

federal criminal investigation is not to announce our thoughts at a press conference. The goal is to determine whether there is sufficient evidence to justify a federal criminal prosecution, then allow a federal prosecutor who exercises authority delegated by the Attorney General to make a prosecutorial decision, and then—if prosecution is warranted—let the judge and jury determine the facts. We sometimes release information about closed investigations in appropriate ways, but the FBI does not do it sua sponte.

Concerning his letter to the Congress on October 28, 2016, the director cast his decision as a choice between whether he would “speak” about the FBI’s decision to investigate the newly-discovered email messages or “conceal” it. “Conceal” is a loaded term that misstates the issue. When federal agents and prosecutors quietly open a criminal investigation, we are not concealing anything; we are simply following the longstanding policy that we refrain from publicizing non-public information. In that context, silence is not concealment.

My perspective on these issues is shared by former attorneys general and deputy attorneys general from different eras and both political parties. Judge Laurence Silberman, who served as deputy attorneys general under President Ford, wrote that “it is not the bureau’s responsibility to opine on whether a matter should be prosecuted.” Silberman believes that the director’s “Performance was so inappropriate for an FBI director that [he] doubt[s] the bureau will ever completely recover.” Jamie Gorelick, deputy attorney general under President George W. Bush, opined that the director had “chosen personally to restrike the balance between transparency and fairness, department from the department’s traditions.” They concluded that the director violated his obligation to “preserve, protect and defend” the traditions of the department and the FBI.

Former Attorney General Michael Mukasey, who served under

President George W Bush, observed the director “stepped way outside his job in disclosing the recommendation in that fashion” because the FBI director “doesn’t make that decision”. Alberto Gonzales, who also served as attorneys general under President George W Bush, called the decision “an error in judgement.” Eric Holder, who served as deputy attorneys general under President Clinton and attorneys general under President Obama, said that the director’s decision “was incorrect. It violated long-standing Justice Department policies and traditions. And it ran counter to guidance that I put in place four years ago laying out the proper way to conduct investigations during an election season.” Holder concluded that the director “broke with these fundamental principles” and “negatively affected public trust in both the Justice Department and the FBI”.

Former deputy attorneys General Gorelick and Thompson described the unusual event as “read-time, raw-take transparency taken to its illogical limit, a kind of reality TV of federal criminal investigation,” that is “antithetical to the interests of justice”.

Donald Ayer, who served as deputy attorneys general under President H.W. Bush, along with former Justice Department officials, was “astonished and perplexed” by the decision to “[break] with longstanding practices followed by officials of both parties during past elections.” Ayer’s letter noted, “Perhaps most troubling ... is the precedent set by this departure from the department’s widely-respected, non-partisan traditions.”

We should reject the departure and return to the traditions.

Although the President has the power to remove an FBI director, the decision should not be taken lightly. I agree with the nearly unanimous opinions of former department officials. The way the director handled the conclusion of the email investigation was wrong. As a result, the FBI is

unlikely to regain public and congressional trust until it has a director who understands the gravity of the mistakes and pledges never to repeat them. Having refused to admit his errors, the director cannot be expected to implement the necessary corrective actions.

That letter was sent to Sessions, not the president. The attorney general made his own determination, and wrote his own letter—this time to Trump—concurring with Rosenstein's assessment and adding his own recommendation to fire Comey:

As attorney general, I am committed to a high level of discipline, integrity and the rule of law to the Department of Justice—an institution that I deeply respect. Based on my evaluation, and for the reasons expressed by the deputy attorney general in the attached memorandum, I have concluded that a fresh start is needed at the leadership of the FBI. It is essential that this Department of Justice clearly reaffirm its commitment to longstanding principles that ensure the integrity and fairness of federal investigations and prosecutions. The director of the FBI must be someone who follows faithfully the rules and principles of the Department of Justice and who sets the right example for our law enforcement officials and others in the Department. Therefore, I must recommend that you remove Director James B. Comey Jr. and identify an experienced and qualified individual to lead the great men and women of the FBI.

Just as a reminder, Sessions had serious misgivings about Comey long before he became attorney general. In the closing days of the 2016 election, when he was a member of the Senate Judiciary Committee—which has oversight of the FBI—the then senator from Alabama said he had lost confidence in the director over the handling of evidence and the immunity that had been given to Clinton Foundation director Cheryl Mills, Clinton's former chief of staff at the Department of State.

"It is a breathtaking thing," he said at the time.

Conservatives have since dog-piled on Comey, as well, saying he had been providing cover for President Barack Obama, former Attorney General Loretta Lynch, and former Secretary of State Hillary Clinton. Some have even suggested this opens the door for the criminal prosecution of all four.

While that all may be true—there is at least circumstantial evidence to suggest it—there is one very troubling, and completely unavoidable, effect Comey's dismissal will create. Deputy FBI Director Andrew McCabe, who himself is under investigation, will now lead the bureau until the president's successor is confirmed by the Senate.

McCabe, a career FBI official who rose through the ranks after starting out as a field agent, is being investigated by the Department of Justice inspector general after his wife received a large donation from Virginia Gov. Terry McAuliffe, a longtime friend and supporter of Clinton, for her state senate campaign.

At the time, McCabe was leading the investigation into Clinton's use of a private, unsecured email server and for mishandling classified material—an investigation that Comey ultimately decided should end without prosecution. McCabe never recused himself in spite of the donation from a close personal friend and supporter of the target in his investigation.

The now-acting FBI director also may have been involved in the acquisition of the Christopher Steele dossier on the president, which has since been all but disproved. But, concerns the bureau may have tried to pay the former British spy to continue his "investigation"—which began as political opposition research on the president—are also focused on McCabe.

Senate Judiciary Committee Chairman Chuck Grassley (R-Iowa)

had been demanding answers to his questions about McCabe's involvement in both situations, but had not been getting any answers. He, too, responded to Comey's firing on Tuesday night with the following statement:

Over the course of the last several months, Director Comey's decisions on controversial matters have prompted concern from across the political spectrum and from career law enforcement experts.

The handling of the Clinton email investigation is a clear example of how Comey's decisions have called into question the trust and political independence of the FBI. In my efforts to get answers, the FBI, under Comey's leadership, has been slow or failed to provide information that Comey himself pledged to provide.

The effectiveness of the FBI depends upon the public trust and confidence. Unfortunately, this has clearly been lost.

The FBI director serves at the pleasure of the president. Under these circumstances, President Trump accepted the recommendation of the Justice Department that the director lacked the confidence needed to carry out his important duties.

Grassley will play a direct role in getting the president's nominee to replace Comey confirmed in the Senate. Democrats will undoubtedly put up a fight—and perhaps demand an independent prosecutor in exchange for an easier confirmation process—but ultimately, their own decision to invoke the so-called “nuclear option” will ensure the president's nominee is confirmed, as long as it has the support of at least 50 Republicans. {eoa}