

D. Events Leading Up To and Surrounding the Termination of FBI Director Comey

Overview

Comey was scheduled to testify before Congress on May 3, 2017. Leading up to that testimony, the President continued to tell advisors that he wanted Comey to make public that the President was not under investigation. At the hearing, Comey declined to answer questions about the scope or subjects of the Russia investigation and did not state publicly that the President was not under investigation. Two days later, on May 5, 2017, the President told close aides he was going to fire Comey, and on May 9, he did so, using his official termination letter to make public that Comey had on three occasions informed the President that he was not under investigation. The President decided to fire Comey before receiving advice or a recommendation from the Department of Justice, but he approved an initial public account of the termination that attributed it to a recommendation from the Department of Justice based on Comey's handling of the Clinton email investigation. After Deputy Attorney General Rod Rosenstein resisted attributing the firing to his recommendation, the President acknowledged that he intended to fire Comey regardless of the DOJ recommendation and was thinking of the Russia investigation when he made the decision. The President also told the Russian Foreign Minister, "I just fired the head of the F.B.I. He was crazy, a real nut job. I faced great pressure because of Russia. That's taken off. . . . I'm not under investigation."

Evidence

1. Comey Testifies Before the Senate Judiciary Committee and Declines to Answer Questions About Whether the President is Under Investigation

On May 3, 2017, Comey was scheduled to testify at an FBI oversight hearing before the Senate Judiciary Committee.³⁸³ McGahn recalled that in the week leading up to the hearing, the President said that it would be the last straw if Comey did not take the opportunity to set the record straight by publicly announcing that the President was not under investigation.³⁸⁴ The President had previously told McGahn that the perception that the President was under investigation was hurting his ability to carry out his presidential duties and deal with foreign leaders.³⁸⁵ At the hearing, Comey declined to answer questions about the status of the Russia investigation, stating "[t]he Department of Justice ha[d] authorized [him] to confirm that [the Russia investigation] exists," but that he was "not going to say another word about it" until the investigation was completed.³⁸⁶ Comey also declined to answer questions about whether investigators had "ruled

³⁸³ *Hearing on Oversight of the FBI before the Senate Judiciary Committee*, 115th Cong. (May 3, 2017).

³⁸⁴ McGahn 12/12/17 302, at 10-11.

³⁸⁵ McGahn 12/12/17 302, at 7, 10-11 (McGahn believed that two foreign leaders had expressed sympathy to the President for being under investigation); SC_AD_00265 (Donaldson 4/11/17 Notes) ("P Called Comey – Day we told him not to? 'You are not under investigation' NK/China/Sapping Credibility").

³⁸⁶ *Hearing on FBI Oversight Before the Senate Judiciary Committee*, 115th Cong. (CQ Cong. Transcripts, at 70) (May 3, 2017) (testimony by FBI Director James Comey). Comey repeated this point

out anyone in the Trump campaign as potentially a target of th[e] criminal investigation,” including whether the FBI had “ruled out the president of the United States.”³⁸⁷

Comey was also asked at the hearing about his decision to announce 11 days before the presidential election that the FBI was reopening the Clinton email investigation.³⁸⁸ Comey stated that it made him “mildly nauseous to think that we might have had some impact on the election,” but added that “even in hindsight” he “would make the same decision.”³⁸⁹ He later repeated that he had no regrets about how he had handled the email investigation and believed he had “done the right thing at each turn.”³⁹⁰

In the afternoon following Comey’s testimony, the President met with McGahn, Sessions, and Sessions’s Chief of Staff Jody Hunt.³⁹¹ At that meeting, the President asked McGahn how Comey had done in his testimony and McGahn relayed that Comey had declined to answer questions about whether the President was under investigation.³⁹² The President became very upset and directed his anger at Sessions.³⁹³ According to notes written by Hunt, the President said, “This is terrible Jeff. It’s all because you recused. AG is supposed to be most important appointment. Kennedy appointed his brother. Obama appointed Holder. I appointed you and you recused yourself. You left me on an island. I can’t do anything.”³⁹⁴ The President said that the recusal was unfair and that it was interfering with his ability to govern and undermining his authority with foreign leaders.³⁹⁵ Sessions responded that he had had no choice but to recuse, and it was a mandatory rather than discretionary decision.³⁹⁶ Hunt recalled that Sessions also stated at

several times during his testimony. *See id.* at 26 (explaining that he was “not going to say another peep about [the investigation] until we’re done”); *id.* at 90 (stating that he would not provide any updates about the status of investigation “before the matter is concluded”).

³⁸⁷ *Hearing on FBI Oversight Before the Senate Judiciary Committee*, 115th Cong. (May 3, 2017) (CQ Cong. Transcripts, at 87-88) (questions by Sen. Blumenthal and testimony by FBI Director James B. Comey).

³⁸⁸ *Hearing on FBI Oversight Before the Senate Judiciary Committee*, 115th Cong. (May 3, 2017) (CQ Cong. Transcripts, at 15) (question by Sen. Feinstein).

³⁸⁹ *Hearing on FBI Oversight Before the Senate Judiciary Committee*, 115th Cong. (May 3, 2017) (CQ Cong. Transcripts, at 17) (testimony by FBI Director James B. Comey).

³⁹⁰ *Hearing on FBI Oversight Before the Senate Judiciary Committee*, 115th Cong. (May 3, 2017) (CQ Cong. Transcripts, at 92) (testimony by FBI Director James B. Comey).

³⁹¹ Sessions 1/17/18 302, at 8; Hunt 2/1/18 302, at 8.

³⁹² Sessions 1/17/18 302, at 8; Hunt-000021 (Hunt 5/3/17 Notes); McGahn 3/8/18 302, at 6.

³⁹³ Sessions 1/17/18 302, at 8-9.

³⁹⁴ Hunt-000021 (Hunt 5/3/17 Notes). Hunt said that he wrote down notes describing this meeting and others with the President after the events occurred. Hunt 2/1/17 302, at 2.

³⁹⁵ Hunt-000021-22 (Hunt 5/3/17 Notes) (“I have foreign leaders saying they are sorry I am being investigated.”); Sessions 1/17/18 302, at 8 (Sessions recalled that a Chinese leader had said to the President that he was sorry the President was under investigation, which the President interpreted as undermining his authority); Hunt 2/1/18 302, at 8.

³⁹⁶ Sessions 1/17/18 302, at 8; Hunt-000022 (Hunt 5/3/17 Notes).

some point during the conversation that a new start at the FBI would be appropriate and the President should consider replacing Comey as FBI director.³⁹⁷ According to Sessions, when the meeting concluded, it was clear that the President was unhappy with Comey, but Sessions did not think the President had made the decision to terminate Comey.³⁹⁸

Bannon recalled that the President brought Comey up with him at least eight times on May 3 and May 4, 2017.³⁹⁹ According to Bannon, the President said the same thing each time: “He told me three times I’m not under investigation. He’s a showboater. He’s a grandstander. I don’t know any Russians. There was no collusion.”⁴⁰⁰ Bannon told the President that he could not fire Comey because “that ship had sailed.”⁴⁰¹ Bannon also told the President that firing Comey was not going to stop the investigation, cautioning him that he could fire the FBI director but could not fire the FBI.⁴⁰²

2. The President Makes the Decision to Terminate Comey

The weekend following Comey’s May 3, 2017 testimony, the President traveled to his resort in Bedminster, New Jersey.⁴⁰³ At a dinner on Friday, May 5, attended by the President and various advisors and family members, including Jared Kushner and senior advisor Stephen Miller, the President stated that he wanted to remove Comey and had ideas for a letter that would be used to make the announcement.⁴⁰⁴ The President dictated arguments and specific language for the letter, and Miller took notes.⁴⁰⁵ As reflected in the notes, the President told Miller that the letter should start, “While I greatly appreciate you informing me that I am not under investigation concerning what I have often stated is a fabricated story on a Trump-Russia relationship – pertaining to the 2016 presidential election, please be informed that I, and I believe the American public – including Ds and Rs – have lost faith in you as Director of the FBI.”⁴⁰⁶ Following the dinner, Miller prepared a termination letter based on those notes and research he conducted to support the President’s arguments.⁴⁰⁷ Over the weekend, the President provided several rounds of

³⁹⁷ Hunt-000022 (Hunt 5/3/17 Notes).

³⁹⁸ Sessions 1/17/18 302, at 9.

³⁹⁹ Bannon 2/12/18 302, at 20.

⁴⁰⁰ Bannon 2/12/18 302, at 20.

⁴⁰¹ Bannon 2/12/18 302, at 20.

⁴⁰² Bannon 2/12/18 302, at 20-21; *see* Priebus 10/13/17 302, at 28.

⁴⁰³ S. Miller 10/31/17 302, at 4-5; SCR025_000019 (President’s Daily Diary, 5/4/17).

⁴⁰⁴ S. Miller 10/31/17 302, at 5.

⁴⁰⁵ S. Miller 10/31/17 302, at 5-6.

⁴⁰⁶ S. Miller 5/5/17 Notes, at 1; *see* S. Miller 10/31/17 302, at 8.

⁴⁰⁷ S. Miller 10/31/17 302, at 6.