

Some Obvious Thoughts About the Comey Firing

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As it says on the tin, most of what I have to say about the dismissal of FBI Director James Comey is obvious, and indeed, most of it has already been said well by others. But sometimes it's worth rehearsing the obvious.

First: The position of FBI director has—since 1976, and following J. Edgar Hoover's umbral half century tenure—been set for 10 years, in substantial part to keep it both symbolically and practically removed from the vicissitudes of electoral cycles. Formally, any president can, of course remove a director short of that term, but it's happened exactly once, 24 years ago, when Bill Clinton sacked early-90s arcade screen mainstay William S. Sessions, for ethics violations. It is not, traditionally, one of those posts that just routinely swaps occupants when a new administration pitches its tent: Firing a director is an extraordinary event, for which one expects strong, clear reasons.

Second: The stated reasons for Comey's dismissal are pretextual. They are so transparently, ludicrously pretextual that we should all feel at least a little bit insulted. The putative basis for Comey's firing is a three page memo, dated May 9, faulting his public handling of the Hillary Clinton e-mail server investigation, and a recommendation from Attorney General Jeff Sessions, also dated May 9, that Comey be dismissed on that basis. The three-page memo levels a number of fundamentally valid criticisms. It is also, as perhaps three page memos must necessarily be, pretty conclusory: It renders a verdict without much more than a gesture in the direction of an argument, and preempts a pending Inspector General investigation that would have produced a lengthy and serious account and analysis of Comey's actions. While I'm inclined to agree with the memo's critiques, underdeveloped as they are, they would be an extraordinarily thin basis on which to remove an FBI director, even if you thought they *were* the real basis. And they're clearly not the real basis.

We are asked to believe that the decision to fire the FBI director—so abruptly he learned about it from a cable news chyron while out of D.C.—was based on a dashed off memo, and a response from the Attorney General, both issued the same day. We are asked to believe that it was motivated by Comey's breaches of FBI protocol: First, in publicly criticizing Hillary Clinton, rather than letting Attorney General Loretta Lynch announce the decision that the former Secretary would not be indicted, and then in informing Congress that he had (fruitlessly, as it turned out) reopened the investigation into her e-mails. These are breaches both Trump and Sessions praised effusively at the time, with Sessions even declaring that Comey had an

“absolute duty” to act as he did. All of them, of course, were well known long before Trump took office and chose to retain Comey.

The most charitable thing one can say about this narrative is that it is not even intended as a serious attempt to advance a genuine rationale. It is an attempt to be cute. Having been directed to concoct a reason to eliminate Comey, the Attorney General ran with a slapdash pastiche of Democrats’ complaints. Anyone who’s been on a long car trip with a sibling knows this gag: “Stop hitting yourself! Stop hitting yourself!” The only people even pretending to take this explanation seriously are those paid for the indignity.

Third: In another sense, that hastily cobbled together memo probably *does* reflect, indirectly, the authentic rationale for Comey’s cashiering. What Comey has demonstrated, after all, is that he is—sometimes to a fault—dedicated to preserving the appearance of the Bureau’s independence from improper political influence. He is willing to go over the heads of the political appointees to whom he reports when necessary to do so, publicly announcing the findings of an FBI investigation without vetting by the administration. To a substantial extent, Comey owes his current post to the fact that he was, famously willing to say “no” to the White House when he believed a president’s demands to be at odds with the law. This seems like a quality that Trump—who rages against the intransigence of “so-called judges” in staying his executive orders—would find intolerable in a subordinate under any circumstances. Against the backdrop of a protracted and embarrassing investigation into Russian electoral interference it must be downright terrifying. Unsurprisingly, press reports citing anonymous administration sources are already claiming that Trump’s rage at Comey’s unwillingness to take dictation—both on the Russia question and Trump’s claims about being wiretapped by his predecessor—are what ultimately doomed him.

My own suspicion—for reasons not worth delving into here—is that we’re unlikely to get any unambiguous, smoking gun proof of knowing collusion between senior Trump campaign officials and the Russian government, at least as far as electoral interference is concerned. But it also seems quite likely that an investigation into the campaign’s Russian ties—which on the public record alone raise more eyebrows than a Spock cosplay convention—would turn up any number of other unseemly or embarrassing facts the White House would prefer not to have aired. Comey has demonstrated that he would likely be prepared to disclose any findings he believed the American public had a right to know, whether or not they amounted to clearly indictable offenses—perhaps even over the objections of Attorney General Jeff Sessions.

Fourth: It is no longer possible for the FBI to conduct its investigation into the Trump campaign’s involvement in Russian electoral interference in any meaningfully independent way. Agents who might once have hoped that the FBI director would shield them from retaliation if their inquiry turned up truths inconvenient to the White House have now seen that director summarily and humiliatingly dismissed, for inconveniencing the White House. Nobody lower down the totem pole can possibly believe themselves safe from reprisal under these circumstances, and even people of great integrity have mortgages. Even if the next FBI director avoids any hint of improperly seeking to influence the investigation, the damage has been done; the sight of Comey’s head on a pike is influence enough. And that’s the optimistic scenario. That Trump chose to send Comey his pink slip in Los Angeles, with no warning, ought to at least prompt some inquiries into whether both his own files and those of the investigation remain secure. The manner of his termination may be merely one more

humiliation, but it also had the side-effect of limiting his ability to take any last-minute steps to forestall tampering. This last is, I hope, a remote possibility, but it no longer seems inconceivable that this administration might believe it can quash the investigation, purge the case files, “move on,” and ride out a week or two of negative coverage. Either way, whatever remains of a congressional investigation once the FBI has been bent to the yoke would almost certainly be rendered a cosmetic exercise, dependent as it necessarily would be on raw materials provided by the intelligence community, even if we assume the political will to continue a serious inquiry. Only a genuinely independent investigation can at this point be credible.

Fifth: The fields of punditry are littered with failed predictions that *this* scandal, at last, will be the one Trump cannot survive, but it is nevertheless stunning how badly the White House seems to have misread the politics of this. Even many senior Republicans are balking at making excuses for the timing of Comey’s sacking. Trump, rather notoriously, seems to regard any form of criticism as personal betrayal—a declaration that one has joined the enemy camp. He therefore seems not to have grasped that, notwithstanding the array of harsh criticisms leveled at Comey by lawmakers of both parties, the director enjoyed broad bipartisan respect, built up over a long career. His actions over the past six months may have drawn down that reservoir of goodwill, but they have not exhausted it. Much has been made of Trump’s willingness to flout longstanding political norms, but what’s less often observed is that this appears to be as much a function of ignorance as brazenness. That is, it’s not just that he’s decided he can get away with breaking the rules—which thus far he has—but that he routinely seems to do so unwittingly, unaware of what the rules *are*. Many have expressed incredulity that the White House truly believed it could take this step without provoking a political firestorm; I find it all too plausible. As a result, they’ve been caught unprepared, without any credible story that would give members of his own party cover to defend the move with a straight face.

Sixth, and finally: The question of Comey’s replacement is hugely significant, and the confirmation hearings for the next FBI director are bound to be explosive. One consistent theme of Trump’s business career is that he has always viewed the law as a cudgel with which to bludgeon adversaries—whether it’s contractors coerced to accept half-payments by the prospect of ruinously expensive litigation or journalists mired in frivolous libel suits for printing unflattering sentences. The prospect of a Federal Bureau Investigation run in the same way ought to be genuinely frightening, and with Comey out of the way, it seems all too possible.

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